

**EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS**

**Kathleen A. Theoharides, Secretary**  
**Grant Announcement**



**BID ENV 24 DCS 04**

**Posting Date: February 13, 2023**

**Local Acquisitions for Natural Diversity (LAND) Grant**  
**FY 2024**

**BID #: BD-23-1042-ENV-ENV01-84412**

**1. GRANT OPPORTUNITY SUMMARY:**

**A. PROPOSALS SOUGHT FOR:** Financial assistance to municipalities for the acquisition of conservation land.

**B. OVERVIEW AND GOALS:** The Executive Office of Energy and Environmental Affairs (EEA) protects, conserves, and restores the natural resources of the Commonwealth. To fulfill this mission, Rebecca Tupper, Secretary of EEA, is making available funding through the FY 2024 round of the Local Acquisitions for Natural Diversity (LAND) Grant Program to assist municipal conservation and agriculture commissions in acquiring interests in land for conservation and passive recreation.

The LAND Grant Program is part of the Healey Administration's goal of protecting and enhancing outdoor recreation opportunities, conserving natural resources and open space, and addressing climate change. It is part of a longstanding tradition of protecting the Commonwealth's rich natural heritage for generations to come. The LAND Grant Program also supports Executive Order 569, which calls for state government to adapt to climate change and build a more resilient Commonwealth, by including resiliency criteria in its rating system and incorporating priority projects from EEA's Municipal Vulnerability Preparedness program.

**C. ELIGIBLE PROJECTS:** Purchase of land in fee simple or a Conservation Restriction (CR). See further details regarding project eligibility in section 2B.

**D. ELIGIBLE APPLICANTS:** This Bid is open to municipal conservation and agriculture commissions. Municipalities must have an approved Open Space and Recreation Plan (OSRP) or have submitted a draft OSRP to EEA by the LAND Grant Program application deadline. See further detail on applicant eligibility in section 2A.

**E. APPLICATION DEADLINE:** **Thursday, July 13, 2023 at 3:00 pm.** See section 3.

**F. FUNDING AVAILABILITY:** Maximum grant award is \$500,000 per municipality unless increased at the discretion of the Secretary. See further detail on funding availability in section 2E.

**G. BUDGET REQUIREMENT:** This is a reimbursement program. Applicants selected to receive funding must demonstrate municipal expenditure for the total project cost. See further detail on budget requirements in section 2F.

**H. TOTAL ANTICIPATED DURATION OF CONTRACT(S):** Contracts issued pursuant to this Bid limit reimbursement to approved project costs expended on or before the end of the fiscal year for which the grant

is awarded (June 30, 2024 for FY24 awards; June 30, 2025 for FY25 awards) unless project applicant is informed otherwise by EEA in writing. See further detail on anticipated duration of contracts in section 2H.

**I. REGULATIONS, STATUTES, OR AUTHORIZATION GOVERNING THIS GRANT PROGRAM:** This Bid is issued according to Chapter 312, Section 2A of the Acts of 2008, 2000-7013, Chapter 286, Section 2A of the Acts of 2014, 2000-7066, Chapter 102, Section 2A of the Acts of 2021, as well as legislation referenced as the Self-Help Program, M.G.L. Chapter 132A Section 11, and the regulations described in 301 CMR 5.00.

All properties for which grant assistance is provided will become permanently protected open space under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, dedicated to conservation and passive recreation purposes in accordance with M.G.L. Chapter 40, Section 8C and 301 CMR 5.00. All properties must be open to the public for appropriate passive recreational use. See Attachment E.

**J. CONTACT INFORMATION:** Vanessa Farny  
Executive Office of Energy and Environmental Affairs  
100 Cambridge Street – Suite 900  
Boston, MA 02114  
(857)330-1978  
vanessa.farny@mass.gov

## 2. Performance and Contract Specifications

**A. ELIGIBLE APPLICANTS:** Municipal conservation commissions and agriculture commissions in communities that meet the following requirements:

### 1. Open Space and Recreation Plan

Have an approved *Open Space and Recreation Plan* (OSRP) on file with the EEA – Division of Conservation Services (DCS), or submit a draft plan by the LAND Grant Program application deadline. To be eligible to apply with a draft OSRP, the community must have completed its public participation process and the draft plan must include all nine required sections. Sections 6-9 of the Plan must be final, with the potential of additional edits to be made in Sections 1-5 post-submission. If awarded a grant, completion and final approval of a community's OSRP will be a condition of final reimbursement. Assistance is available for small communities with a population 7,000 or below to prepare OSRPs through the Planning Assistance Grant Program (<https://www.mass.gov/service-details/planning-assistance-grants>), and the Small Communities Grant (<https://www.mass.gov/service-details/conservation-assistance-for-small-communities-grant-program>). Communities may check their OSRP status [here](#). Contact Melissa Cryan at [melissa.cryan@mass.gov](mailto:melissa.cryan@mass.gov) for more information on OSRPs.

### 2. No unresolved protected open space conversion issues with EEA.

See the Article 97 Disposition Policy at:  
[https://www.mass.gov/files/documents/2018/06/06/article97\\_LandDisposition\\_Policy.pdf](https://www.mass.gov/files/documents/2018/06/06/article97_LandDisposition_Policy.pdf).

### 3. Granted authorization to acquire the property, expend funds, and accept the grant award, through a town meeting or city council vote.

The vote must:

- o authorize the appropriation, transfer from available funds or borrowing of the total cost of the

project stated in the LAND Grant application. A municipality may vote to borrow funds in anticipation of state or federal reimbursement prior to receiving agreement of reimbursement (M.G.L. C. 44, §8C). The vote may be contingent upon receiving grant funding.

- identify the specific parcel to be acquired, and designate the conservation commission or agriculture commission to hold and manage the property for agricultural, conservation and passive recreation purposes (M.G.L. C. 40, §8C);
- authorize the application to, and acceptance of funds from, the LAND Grant Program (M.G.L. C. 132A, §11); and
- authorize the applicant to enter into any contracts for the project, as well as permit the conveyance of a CR if a CR is applicable to the project.

Applicants are encouraged to consult the sample vote language contained in Attachment D, and must send draft warrant articles or council orders to DCS for review to confirm draft vote language meets the requirements of Section 2.A.3.

Joint applications of two or more municipalities for funding under the LAND Grant program require each municipality to submit authorization as provided in this section. The application package should include a letter signed by each participating municipality that designates a lead contact for the municipality. Property proposed for acquisition in a joint application must be contiguous.

Reimbursements may be re-appropriated to the community's Conservation Fund, but authorization to do so is required to be voted in the original article or in subsequent Town Meeting or City Council votes; otherwise, reimbursements must be deposited into the General Fund as per Massachusetts General Law. Communities utilizing accounts funded by the Cape Cod Land Bank Act, other local land bank acts, or the Community Preservation Act (CPA), should consult with the Department of Revenue, Division of Local Services, for guidelines.

#### **4. Community Preservation Act (CPA) and Cape Cod Land Bank Communities:**

Successful grant applicants that purchase real property interests for open space or recreational purposes using the Community Preservation Fund or Cape Cod Land Bank Fund must record permanent CRs (as described in M.G.L. Chapter 184, Section 31) approved by the Secretary of EEA on all such properties. CRs must be recorded prior to reimbursement by EEA, as required by Section 12 of Chapter 44B or Chapter 293 of the Acts of 1998, respectively. See Attachment C for further details on CPA and Cape Cod Land Bank funding requirements.

Multiple applications will be accepted from the same municipality.

### **B. ELIGIBLE PROJECT(S)/SCOPE(S) OF WORK:**

EEA seeks to further land conservation in the Commonwealth. Applications may be to purchase land in fee simple or to purchase a CR.

Landholdings that are contiguous, under the same ownership, or proposed for acquisition for a single purpose may be submitted in a single application. Two or more municipalities may submit a joint application for contiguous lands that span multiple municipalities. Unrelated, discontinuous parcels must be submitted as separate projects in individual applications.

The Property:

- 1.) Must be currently unprotected.** Land that is already protected for any purpose under Article 97 or under an EEA-approved CR is ineligible for funding. Article 97 status may be conferred on a property through an EEA grant program (LAND, PARC, Conservation Partnership, Landscape Partnership, or LWCF); a CR; Agricultural Preservation Restriction; or by virtue of its acquisition by a government entity for any Article 97 purpose or dedication to an Article 97 purpose after acquisition.

Lands enrolled in Chapter 61, 61A or 61B are not classified as permanently protected land and are , eligible to receive funding.

- 2.) Cannot be already owned by a 501(c)(3) non-profit environmental or conservation organization** unless it was purchased no earlier than January 1, 2023 for this grant with the sole intention of pre-purchasing the land until the applicant receives a potential LAND grant. Any exercise of this exemption is at the risk of the non-profit organization. EEA does not guarantee funding as a result of this exemption.
- 3.) Cannot be already owned by the municipality.** Land already owned by the applicant municipality, regardless of purpose (e.g., general municipal land), is not eligible. Land that an applicant municipality purchased prior to receiving an executed contract from EEA is not eligible.
- 4.) Cannot be located in an Executive Office of Housing and Economic Development (EOHED)-designated Priority Development Area (PDA),** as shown on the South Coast Rail Corridor Plan, I-495/MetroWest Development Compact Plan, Merrimack Valley Regional Plan, Central Massachusetts Land Use Priority Plan, Metro North Land Use Priority Plan, or other regional plan as they become available (if applicable). See:  
<http://www.mass.gov/hed/economic/eohed/pro/zoning-and-permitting/regional-planning.html> and Executive Order No. 525.

**The LAND Grant Program requires properties acquired with assistance from this program (whether fee or CR) to provide passive recreational opportunities to the public.** Each property and community has unique characteristics that will guide what specific uses are appropriate; permitted public uses are determined by the municipality but must be consistent with the permitted and prohibited uses below, and are subject to EEA approval. Permitted and prohibited uses will be identified in the Land Management Plan that grant recipients will be required to submit to EEA, as further described in Section 2.I. Projects to acquire a CR over property that will remain in private ownership must still provide public access for passive outdoor recreation including meaningful accommodations for parking or trails.

**Permitted uses:** Conservation; public passive recreation; limited, sustainable agriculture and/or forestry that is compatible with conservation and passive recreation.

Examples: hiking, biking, swimming in a natural waterbody, hunting, fishing, skiing, wildlife viewing, environmental education, community gardens, approved timber management or agriculture, camping.

**Prohibited uses:** Active recreation or developed uses.

Examples: athletic fields (baseball, soccer), off highway vehicles and off-road driving, pools, play structures, wells, golf courses, tennis courts, shooting ranges, enclosed dog parks, etc.

## C. APPRAISAL REPORTS:

Applications must include the appropriate type of appraisal. Appraisals must have an effective date no earlier than one year prior to the grant application deadline. The Applicant or one of the Applicant's project partners must be the client for the appraisal; the owner of the property cannot be the client. All appraisal reports must be prepared in accordance with the EEA Specifications for Analytical Narrative Appraisal Reports. See the DCS website for detailed Appraisal Report Requirements at <https://www.mass.gov/doc/eea-grant-programs-appraisal-report-requirements/download>.

1. **Parcels with an estimated value of under \$28,000:**  
One certified appraisal report, restricted appraisal report, or contracted market analysis.
2. **Parcels with an estimated value of between \$28,000 and \$72,000:**  
One certified appraisal report or restricted appraisal report.
3. **Parcels with an estimated value of between \$72,000 and \$750,000:**  
One certified appraisal report.
4. **Parcels with an estimated total value of over \$750,000:**  
One certified appraisal report. Applicants are strongly encouraged to obtain a second appraisal report or review appraisal.

EEA reserves the right to request additional or review appraisals as it deems necessary.

## D. EVALUATION CRITERIA:

Each application will be scored using the criteria below. See Attachment B for more detailed description of the project selection criteria.

- **Demographic and socioeconomic characteristics of applicant community (40%)**
- **Quality of project in meeting program priorities (60%)**

In order to support the Municipal Vulnerability Program (MVP), applications that rate in the top two-thirds of those received will receive up to five bonus points if the application meets two criteria: 1.) The applicant is an MVP community, and; 2.) the MVP plan includes priority implementation project(s) relevant to parks and land conservation such as tree planting or land acquisitions in floodplains. If the MVP plan has no connections to land conservation, an application will not receive extra points.

More information on the MVP Program can be found online here: <https://www.mass.gov/municipal-vulnerability-preparedness-program>.

A grant application review team composed of EEA staff will review all applications, conduct site visits, and develop funding recommendations.

## E. FUNDING AVAILABILITY, BUDGETING GUIDELINES & ALLOWABLE EXPENDITURES:

Reimbursement rate: 52% to 70% of the total project cost based on applicant municipality's equalized valuation per capita decile rank. (See: LAND Grant Program website at <https://www.mass.gov/how-to/apply-for-a-local-acquisitions->

[for-natural-diversity-land-grant](#)). The rate for joint applications will be the average of the municipalities' reimbursement rates.

Maximum award amount: \$500,000 (\$500,000 per participating municipality for joint applications) unless increased at the discretion of the Secretary.

Applicants must submit the appropriate type of appraisal for their project, an itemized budget estimate, and a specific grant request. Applicants will not be reimbursed for land purchased prior to contract execution except as provided in the exemption noted in sections B1.

Costs **eligible** for reimbursement include all approved project costs incurred within the grant recipient's contract period, including:

- |   |   |
|---|---|
| -Property acquisition   | -Recording fees   |
| -Title search & certification   | -Survey   |
| -Baseline Documentation Report & Land Management Plan   | -Stewardship activities (including assuring access to the property) |
| -Other contractual services such as consultants to negotiate transaction terms, facilitate due diligence and other services for the conservation transaction (up to 10% of grant request, and with EEA approval). Please include sufficient detail in project budget. |   |

Costs that are **ineligible** for reimbursement include any cost incurred outside of the contract period, as well as:

- |   |   |
|---|---|
| - Staff salaries                              | -21E compliance fees                              |
| -Application preparation and submission costs | -Appraisal  |
| -Equipment or goods                           | -Anything else determined by EEA to be ineligible |

All contracts shall be subject to available funding, if available funding ceases for any reason, a contract shall be deemed under suspension and contract performance must halt. A contractor will not be entitled to compensation for any performance provided during the period of contract suspension. EEA may lift the suspension if additional funding is received. In the absence of foreseeable available funding, EEA may terminate the contract.

## **F. BUDGET REQUIREMENT:**

Applicants selected to receive LAND Grant Program funding may not use other state funding sources for acquisition costs on the same property. Use of CPA or Cape Cod Land Bank funds is permitted.

Municipalities must appropriate and authorize municipal expenditure of the total project cost. Other sources of funding, such as grants from private or non-profit foundations and cash contributions from local partners or individuals, may be used, but must first be deposited into a dedicated municipal account for the project. LAND Grant Program reimbursements will be made based only on the total amount actually spent, as shown by canceled municipal checks, wire transfer statements, and/or a Treasurer's statement.

## **G. PROJECT TERMS:**

Awarded projects must abide by the Standard Commonwealth of Massachusetts Terms and Conditions. All contracts are subject to successful negotiation of a Final Scope of Services. EEA does not guarantee that any contracts may result from this bid, or that any particular funding level will be awarded. It is anticipated that contracting will commence immediately upon award announcement. Contracts will be reviewed during their course and, upon request by the Contractor, may be extended or otherwise amended at the sole discretion of EEA.

**Environmentally Preferable Products and local wood use:** Where building materials are required to meet obligations for signage, access, or to serve any other allowable use, the municipality should seek to minimize the environmental impact of the work and materials (see Executive Order 515: <https://www.mass.gov/executive-orders/no-515-establishing-an-environmental-purchasing-policy>) and is strongly encouraged to use locally-grown and produced wood products unless the grantee can demonstrate that wood is not a suitable material, or that Massachusetts grown and manufactured products are not available, or will cost more than 10% more than equivalent products (see M.G.L. C. 7, §23B and M.G.L. C. 30, §20). Where possible, municipalities should use firms that are certified by the Massachusetts Department of Agricultural Resources as part of the Commonwealth Quality Program (<https://www.mass.gov/service-details/commonwealth-quality-program-cqp>), which verifies their sustainable practices and that the products are grown and manufactured in Massachusetts.

#### **H. ANTICIPATED DURATION OF CONTRACTS:**

Contracts issued pursuant to this bid must limit reimbursable costs to approved project costs expended on or before the end of the fiscal year of the award (June 30, 2024 for FY24 awards; June 30, 2025 for FY25 awards) unless project applicant is informed otherwise by EEA in writing. Extension of a contract is at the sole discretion of EEA.

#### **I. DELIVERABLES, OWNERSHIP, AND CREDIT DUE:**

Acquisitions resulting from this bid must be held by the municipality's conservation commission or agriculture commission. Municipalities must have certification of good, clear title to all properties acquired with the use of grant funds. A sign acknowledging receipt of LAND grant funds and describing allowable public use must be erected at the property entrance. A recent property survey, Baseline Documentation Report, and Land Management Plan must be provided to, and approved by, DCS for all properties acquired prior to receiving reimbursement. The Baseline Documentation Report and Land Management Plan may be submitted together as a single document using the template provided by DCS. No major alteration of uses described in the Land Management Plan shall be made without prior approval of EEA. Communities that have received federal Land and Water Conservation Fund (LWCF) awards in the past may be required to complete a brief site inspection of LWCF-funded properties. Projects for which municipal CPA or Cape Cod Land Bank funds are used must include the conveyance of an appropriate CR. See Attachment C. EEA representatives must be invited to any public events sponsored by the grant recipient in celebration of a LAND Grant Program award. LAND Grant Program funding must be acknowledged in any press issued by the applicant or its partners pertaining to the project.

**J. REPORTING:** Awardees will be required to submit periodic progress reports.

**K. INVOICING:** The LAND Grant Program is a reimbursement program. Award recipients must submit a LAND Grant Program billing form and invoices and documentation of municipal payment for all project costs for which reimbursement is sought. Only approved expenses incurred during the period of contract are

eligible for reimbursement.

### 3. Instructions for Application Submission

#### A. APPLICATION SUBMISSION:

Applications must be received in electronic copy via the online form by **3:00 pm, Thursday, July 13, 2023**. Applications received after the deadline will be rejected. Submit an application using the online application form [here](#) and **mail one original paper copy of the complete application** to:

Vanessa Farny – Division of Conservation Services  
Executive Office of Energy and Environmental Affairs  
100 Cambridge Street – Suite 900  
Boston, MA 02114

***Help reduce waste**—Please print double sided when possible. Use the minimum packaging necessary for good organization.*

#### B. REQUIRED DOCUMENTS:

A complete application package includes:

1. Application form
2. Appraisal report(s)
3. Cover letter signed by an authorized signatory for the applicant organization (e.g., Chair of the Board of Selectmen, Mayor), authorizing the project manager to apply for the grant on behalf of the municipality.
4. Town Meeting or City Council resolution authorizing the acquisition for conservation and passive recreation and expenditure of the total project cost (if not yet voted, include draft language).
5. Project Narrative
6. Property map(s) (at minimum, include a topographic map with the property identified)
7. Conservation Restriction draft (if LAND Grant funding is requested for a CR purchase)
8. Evidence of whether Environmental Justice populations in your community (or neighboring communities) were provided an opportunity to participate in the project selection (e.g. flyers, mailings, etc. and where they were distributed.) For more information, please review EEA’s Environmental Justice Policy at <https://www.mass.gov/service-details/environmental-justice-policy>
8. Comments from the Massachusetts Natural Heritage & Endangered Species Program (NHESP) regarding the presence or absence of rare species listed under the Massachusetts Endangered Species Act (MESA) on or near the proposed land for purchase. To request comments, send an email to NHESP at [natural.heritage@mass.gov](mailto:natural.heritage@mass.gov) with the subject line “LAND comment letter request”. The email should include a brief description of the acquisition, including a shapefile or map of the subject property. A response from NHESP is acceptable after the application deadline, however proof of the request must be included in the application. There is no charge for this comment letter.
9. Comments from the Massachusetts Historical Commission (MHC) regarding the presence or absence of historic or archaeological sites. To obtain a letter, submit to MHC a Project Notification Form, available here: <http://www.sec.state.ma.us/mhc/mhcform/formidx.htm>. A response from MHC is acceptable after the application deadline, however if a response has not been received at the time of submission, the Project Notification Form must be included in the application. There is no charge for this comment letter.
10. Documentation of good land stewardship of past DCS grants or a municipal conservation land. This may include up to three examples including, but not limited to, the following: stewardship monitoring



reports; photo documentation of invasive species control, trail building, or way-finding or educational kiosks; recent trail condition surveys; recent baseline documentation reports, and/or forest or land management plans. If your community does not currently own any conservation land, please describe how your community will steward land subject to this application in the project narrative.

### C. DOCUMENTATION REQUIRED IF SELECTED TO RECEIVE FUNDING:

If selected, the Applicant will be required to submit the following forms to complete a contract:

- Commonwealth Standard Contract with Scope and Budget Form Form
- Completed Contractor Authorized Signatory Listing (both sides)
- LAND Grant Program Project Agreement

Applicants should review the Commonwealth Standard Contract Form, Commonwealth Scope and Budget Form, and Contractor Authorized Signatory Listing prior to submission of an application, available under the Forms and Terms tab of this CommBuys posting, as well as:

<https://www.mass.gov/lists/osd-forms>.

### D. APPLICATION STEPS AND PROCEDURES:

1. **Municipality submits application.**
2. **EEA contacts applicants to arrange in-person site visits.**
3. **EEA evaluates applications:** DCS scores applications using LAND Grant Program selection criteria. See Attachment B for further detail on project selection criteria.
4. **Awards are announced:** DCS sends awardees a grant award letter, LAND Grant Program Project Agreement, State Standard Contract, and signatory forms for approved projects. State funds are obligated by the Commonwealth upon execution of contract documents for approved projects. Applicants not selected to receive funding will receive a notification letter.
5. **Municipal authorization to apply for funding and acquire land is secured through Town Meeting or City Council resolution** (if not already completed). See Attachment D for further details.
6. **Contract is signed by municipality and submitted to EEA for execution.** Municipality will be notified when the contract is executed by EEA.
7. **Survey the property.** Unless already surveyed, a recordable survey must be completed.
8. **Conservation Restriction review:** Projects that involve a CR must submit a draft CR to DCS for review. The model CR template and CR review application form are available at: <https://www.mass.gov/service-details/conservation-restriction-review-program>. The draft CR, CR review application and required attachments should be e-mailed separately to: Denise Pires ([denise.pires@mass.gov](mailto:denise.pires@mass.gov)) at least four (4) months prior to the expected closing.
9. **Follow state procurement law:** Recipients must adhere to the state's procurement laws, M.G.L.C. 30B (Uniform Procurement Act). LAND Grant Program projects fall under Section 16(e)(2). Work with your municipal procurement officer to ensure that your project conforms to the law, including advertising in the Central Register 30 days prior to closing. Communities using CPA funds for the acquisition are exempt from this requirement. EEA cannot reimburse project costs incurred prior to the starting date on the state standard contract for the project.
10. **Title exam and certification:** Municipalities must demonstrate good, clear, marketable title for the property they will acquire. Title research must cover the time immediately up to the point of recording the municipal acquisition.
11. **Purchase property:** Municipality purchases the property interest and records the deed or CR. Municipalities using CPA or Cape Cod Land Bank funds must convey a CR to an eligible entity in accordance with M.G.L. c. 184, §§ 31-33.
12. **Prepare the property for public use:** Municipality performs site cleanup as needed, ensuring that any existing debris are cleared by the time of acquisition, that encroachments have been identified and addressed and parking and public access are adequate. A sign acknowledging LAND Grant Program funding is installed at the property's main entry point. Use of locally-grown wood is encouraged (see Section 2G above).

13. **Submit Baseline Documentation Report (BDR) and/or Land Management Plan:** Awardee details the condition of the property at the time of acquisition (but after any cleanup/remediation) and details long term management plans in a Land Management Plan (template to be provided as needed). A BDR is completed if a CR is being acquired. DCS must approve the Land Management Plan.
14. **Complete OSRP:** Awardees that had only a draft OSRP by the application deadline must receive final approval of it prior to receiving grant reimbursement.
15. **Request reimbursement:** Submit billing form to DCS.
16. **Reimbursement payment is made:** Municipality reimbursed by electronic funds transfer.
17. **Post completion:** Property acquired using LAND Grant Program funds is permanently protected conservation land under Article 97. See Attachment E, Sections 5.07 and 5.08 for information on restrictions on fees, user limitations, and prohibitions against converting conservation land to any other use, or ownership transfer.
18. **Public records:** Please note that all responses and information submitted in response to this bid are subject to the Massachusetts Public Records Law, M.G.L. c. 66, § 10, and to c. 4, § 7, cl. 26. Any statements in submitted responses that are inconsistent with these statutes, including marking of information as confidential, shall be disregarded. Please do not submit any information that the Applicant may not wish to disclose publicly, such as home addresses or personal telephone numbers, social security numbers, or other similar information.

## 4. Deadlines and Procurement Calendar

**A. RELEASE OF BID:** February 13, 2022

**B. INFORMATION SESSION:** Two information sessions will be held. Applicants are encouraged to attend the ‘in-person’ session that will be hosted at the DFW Field Headquarters in Westborough on May 4, 2023 at 11:00 am. A second ‘virtual’ session for those unable to attend in person will be held on May 9, 2023 at 2:00 pm via MS Teams. Please RSVP to Vanessa Farny (vanessa.farny@mass.gov; (857) 330-1978) no later than Monday, May 1 if you plan to attend either workshop. The workshop presentation and answers to any questions received in writing by Thursday, June 29, 2023 will be posted on the DCS website. While not required, it is strongly recommended that applicants attend the workshop.

**C. QUESTION PERIOD:** Questions about this bid will be answered until Thursday, June 29, 2023.

**D. APPLICATION DUE DATE:** Thursday, July 13, 2023 at 3:00 pm

**E. ESTIMATED AWARD DATE:** Awards for land acquisitions are estimated to be announced about 120 days after the grant application deadline, subject to budget finalization, with contract negotiations to begin immediately thereafter. A community should not expect to close on a property during calendar year 2022.

**F. ESTIMATED CONTRACT START DATE:** Notwithstanding any verbal representations by the parties, or an earlier start date listed in the Standard Contract Form, and only after an award is issued and a final scope of services has been negotiated, the effective start date of a contract shall be the latest of the following dates: the date the Standard Contract Form has been executed by an authorized signatory of the contractor and the procuring department; the date of secretariat or other approval(s) required by law or regulation; or a later date specified in the Standard Contract Form.

## 5. Miscellaneous

**A. TYPE OF PROCUREMENT:** Grant

**B. USE OF THIS PROCUREMENT BY SINGLE OR MULTIPLE DEPARTMENTS:** This bid is a single department procurement. All contracts awarded under this bid will be utilized solely by EEA.

**C. REQUEST FOR SINGLE OR MULTIPLE CONTRACTORS:** This bid is seeking multiple contracts.

**D. BID DISTRIBUTION METHOD:** This bid has been distributed electronically using the CommBuys system. It is the responsibility of every Applicant to check CommBuys for any addenda or modifications to the bid to which they intend to respond. The Commonwealth of Massachusetts and its subdivisions accept no liability and will provide no accommodations to Applicants who fail to check for amended bids and submit inadequate or incorrect responses. Potential Applicants are advised to check the “last change” field on the summary page of bids for which they intend to submit a response to ensure they have the most recent bid files. The application and answers to questions will be posted on the DCS website at [www.mass.gov/grant-programs-offered-by-the-division-of-conservation-services](http://www.mass.gov/grant-programs-offered-by-the-division-of-conservation-services).

Applicants may not alter bid language or any bid component files. Those submitting a proposal must respond in accordance to the bid directions and complete only those sections that prompt an applicant for a response. Modifications to the body of this bid, specifications, terms and conditions, or which change the intent of this bid are prohibited. Any unauthorized alterations will disqualify the response.

**E. LIST OF ATTACHMENTS TO THIS BID:**

- A. Application Form
- B. Conservation Land Acquisition Project Selection System-Massachusetts LAND Grant Program
- C. Requirements for Acquisition Projects Funded Through the Community Preservation Act or Cape Cod Land Bank Act
- D. Sample Municipal Vote
- E. LAND Grant Program Policies, Regulations, and Legislation

**Attachment A: Application Form**

**Local Acquisitions for Natural Diversity (LAND) Grant Program  
APPLICATION FORM – FY 2024**

*Instructions:*

- *An application must be submitted through [this online form](#). The Applicant will be asked to enter all of the information below directly into the form.*
- *The application **can** be saved while working on it. Click “Save and Resume Later” at the bottom of the form and then click on “Save and Get Link.” A link to the application will be provided which must be copied and saved in order to return to the application. A good way to avoid losing the link is to email it to yourself.*
- *Please note that attachments can **not** be saved with the application until it is ready to submit. The files should be uploaded just prior to submitting the application. If documents are uploaded to the application and the user navigates away from the site without submitting, the files will need to be uploaded again.*
- *Maximum total size of all attachments cannot exceed 25 MB.*
- *Please upload files as PDFs to the extent possible unless otherwise specified.*
- ***Please label all files as follows: [Municipality]\_[Shorthand of project title]\_[Name of attachment]\_LAND.***

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**I. APPLICANT INFORMATION**

**Project name:** \_\_\_\_\_

**Municipality/ies:** \_\_\_\_\_

*(Applications with land in more than one municipality should average demographic metrics.  
Project quality will be based on the whole project).*

**Municipal project manager**

This is the person who will be the day-to-day contact for the project and who will represent the municipality in communication with DCS. **Attach authorization from the Chief Executive Officer identifying the individual named below.**

Name: \_\_\_\_\_

Affiliation with Municipality: \_\_\_\_\_

Address at City / Town Hall: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

**2. PROJECT DETAILS**

**Municipality**

Population 2020: \_\_\_\_\_ Population 2010: \_\_\_\_\_

Seasonal population (including student population): \_\_\_\_\_

Source of data: \_\_\_\_\_

Describe seasonal population: \_\_\_\_\_

**Housing Choice Initiative**

Has your community been designated as a Housing Choice Community? For more information please visit <https://www.mass.gov/housingchoice>.

Yes

No

**Property (Provide this information directly from the appraisal report)**

Acres: \_\_\_\_\_ Number of parcels: \_\_\_\_\_

Upland acreage: \_\_\_\_\_

Interest municipality will acquire:

Fee

Conservation Restriction (CR)

Both fee and CR

If both, explain:

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

**Parcel Information**

County: \_\_\_\_\_

Assessor's map/lot number: \_\_\_\_\_

Current owner(s) \_\_\_\_\_

**Access**

Does property have frontage on a street?

Yes

No

If yes, list street(s):

\_\_\_\_\_

If *no*, describe how the public can access the property through adjacent landholdings. Grant funds are for the purchase of land for conservation and public passive recreational use. Properties that do not have suitable public access will not be funded.

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

**Zoning:** \_\_\_\_\_

\_\_\_\_\_

**Past use(s):** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Present use(s):** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Proposed use(s):** \_\_\_\_\_

\_\_\_\_\_

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**Enhanced Outreach to Environmental Justice Populations**

Describe how Environmental Justice populations in your community (or neighboring communities) were provided the opportunity to participate in the project selection. Include any flyers, mailings, etc. that were distributed and describe how they were distributed.

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**Is the acquisition consistent with any nearby State Priority Preservation Areas as shown on the South Coast Rail Corridor Plan or the 495/MetroWest Development Compact Plan, or any other regional plan?** *If yes, please name the plan and describe its relevance.*

Yes  No

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**Are there buildings or structures on the property?**

Yes  No

If yes, list each and indicate current and planned use. The LAND Grant Program is intended to preserve undeveloped land, not to purchase buildings. Buildings are ineligible for funding. Any buildings proposed to be kept must serve a legitimate conservation, outdoor education, or public passive recreational use.

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Will this project involve the removal of structures?

Yes  No

### 3. ACQUISITION AND FUNDING DETAILS

Appraisal Report #1

Valuation: \$ \_\_\_\_\_

Appraiser: \_\_\_\_\_

Date: \_\_\_\_\_

Appraisal Report #2 (if needed)

Valuation: \$ \_\_\_\_\_

Appraiser: \_\_\_\_\_

Date: \_\_\_\_\_

**Acquisition details:**

Do you have a Purchase & Sales Agreement?

Yes

No

If yes, amount of negotiated sale:

\$ \_\_\_\_\_

Has a title search been conducted?\*

Yes

No

Is an eminent domain taking anticipated?

Yes

No

If yes, what is the proposed pro tanto award amount:

\$ \_\_\_\_\_

\* A certificate of clear title is required for reimbursement. If clear title is not available, the applicant may decide to acquire the property by a friendly taking (eminent domain) process to clear the title. Please

notify DCS of any potential title problems as soon as possible since this can complicate the acquisition process.

Can this project be completed next Fiscal Year, FY 2025 (July 1, 2024 – June 30, 2025)?

Yes, if necessary     Yes, FY 25 Preferred     No

**Funding request:**

Recipients of LAND grant funding are reimbursed *after* they have expended the total project cost and submitted proof of payment. Only costs incurred during a grant recipient’s contract period will be reimbursed. The reimbursement rate is 52-70%, based upon a municipality’s Equalized Valuation Per Capita. The rate for joint applications will be the average of the municipalities’ reimbursement rates. See the DCS LAND Grant webpage for the list of rates.

List your anticipated expenditures and requested grant amount below.

Reimbursement rate: \_\_\_\_\_%

Item	Cost	Grant request
Property acquisition*	\$	\$
Recording fees	\$	\$
Title certification	\$	\$
Survey	\$	\$
Other eligible cost(s) (list below):		
	\$	\$
	\$	\$
	\$	\$
<b>Total</b>	<b>\$</b>	<b>\$</b>

\*Grant award amount is based upon the appraised value or agreed upon purchase price, whichever is less.

Will funds from the Community Preservation Act (CPA) be used?     Yes     No

Will funds from the Cape Cod Land Bank be used?     Yes     No

*Use of CPA or Land Bank funds require the conveyance of a permanent Conservation Restriction (CR), within the meaning of Ch. 184, to an eligible non-profit organization.*

Have you identified an organization willing to hold the CR?

*If the funding requested is for the purchase of a CR that will be co-held between a conservation commission and another party, the conservation commission must be designated as the primary CR holder.*

Yes     No

Name of organization: \_\_\_\_\_

Are you using or seeking funds from other sources or partners? Please list:

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Are you using or seeking funds from the Conservation Land Tax Credit program? Please describe:

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#### 4. PROJECT NARRATIVE

Please include a 1-2 page narrative that describes the following as applicable:

- The property characteristics including habitat, recreational, historical, educational, forestry or agricultural values.
- The development threat to the property.
- Purpose of acquisition and proposed uses; how acquisition of the property will protect or enhance outdoor recreation opportunities, promote existing forestry or agricultural management, conserve natural resources and open space, or address climate change.
- Plans for property stewardship and demonstrated capacity to achieve stewardship; does the applicant presently manage similar properties or have stewardship arrangements with partners?
- If footpaths, bridges, signage or other infrastructure are proposed for the property, whether local wood will be used.
- How the proposed project enhances other protected open space and/or whether the proposed project will catalyze the conservation of additional acreage through landowner or other agreements (provide evidence such as ownership information and/or agreements with landowner).
- How the project furthers the goals identified in the community Open Space & Recreation Plan, Statewide Comprehensive Outdoor Recreation Plan and/or the Municipal Vulnerability Preparedness Plan.
- Whether the property provides flood and stormwater risk mitigation, or protection for drinking water supply.
- An outline of the project schedule; please address any existing agreements with project partners.

#### 5. PROJECT QUALITY

##### Landscape preservation:

How much permanently protected land does this project abut? \_\_\_\_\_acres

Does protection of this land catalyze the conservation of additional, adjacent lands through any existing agreements?  Yes (\_\_\_\_Acres)  No

Describe the risk of potential development (e.g. developable land?) and allowable uses (e.g. zoning) or scale of development if known:

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##### Recreational opportunities:

##### Municipal Open Space and Recreation Plan (OSRP):

To apply for this grant, the municipality must have an approved OSRP or have submitted a draft OSRP by the grant application deadline and have completed the public participation process.

List the goals, objectives, or action plan items in your current or draft OSRP that this project serves. Attach the relevant pages (**not the whole plan**).

	<b>Goal, objective, or action plan item from current OSRP</b>	<b>Page no.</b>
1		
2		
3		
4		
5		
6		

What public recreational opportunities will the project provide? (*Recreational opportunities will be verified by DCS staff during the site visit.*)

- Wilderness-based activities (e.g. camping, hunting)
- Trail-based activities (e.g. hiking, Nordic skiing, biking, horseback riding)
- Water-based activities (e.g. canoeing, swimming, fishing, skating)
- Historic, cultural, or environmental education
- Community gardening or other community agriculture

Additional description (as needed): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Biodiversity and natural resource protection:**

How much of the project area is designated as ‘Core Habitat’ or ‘Critical Natural Landscape’ as defined by the MA Natural Heritage and Endangered Species Program? (*Include a map showing designated areas as applicable.*)

Core Habitat: \_\_\_\_\_ acres

Critical Natural Landscape: \_\_\_\_\_ acres

Does the project protect a landscape, wetland or aquatic habitat or contain vernal pools or rare species designated as being of Regional or Local Significance in BioMap? (*If yes, include a map showing designated areas.*)

\_\_\_ Yes      Type of resource: \_\_\_\_\_  
 \_\_\_ No

What is the project location's average climate resiliency score, as defined by The Nature Conservancy's Resilient Land map - <http://maps.tnc.org/resilientland/> ?

SD: \_\_\_\_\_ Category: \_\_\_\_\_ (e.g. "above average", "slightly below average")

**Working lands:**

Is the property currently managed for active forestry or agriculture?  
 Yes  No

Is active forestry or agriculture proposed for the property after acquisition?  
(Note: agriculture and forestry activities must be compatible with conservation and public use of the property.)  
 Yes  No

If yes, describe planned forestry or farming:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Water resources:**

What portion of the property is within an existing public drinking water supply area (Zone I/II or A/B), OR over a medium- or high-yield aquifer? (Include a map showing drinking water supply area or aquifer.)

None  1-24%  25-50%  >51%

**Bonus Points:**

**Community Compact**

Has your community signed a Community Compact?  
 Yes  No

If "yes", please list the Sustainable Development and Land Protection Best Practices included in it.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Municipal Vulnerability Program**

Is your community an MVP Community?  
 Yes  No

If "yes", please list the priority implementation project(s) relevant to land conservation, such as tree planting or land acquisitions in floodplains..  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. MUNICIPAL AUTHORIZATION:**



## REQUIRED APPLICATION ATTACHMENTS:

1. Municipal CEO's Authorization of Project Manager (e.g. cover letter signed by an authorized signatory for the applicant organization such as Chair of the Board of Selectmen, or Mayor, authorizing the project manager to apply for the grant on behalf of the municipality. See page 19 for template language.)
2. Project narrative
3. Property maps showing the conservation values and resources protected, proximity to other conservation lands, etc. Include maps of NHESP designations, drinking water supply, or other features to support the application.
4. Comments from the MA Natural Heritage and Endangered Species Program
5. Comments from the MA Historical Commission
6. Appraisal report(s)
7. Draft Conservation Restriction (if a CR is proposed for purchase with LAND Grant funding)
8. Certified Town Meeting Vote authorizing the acquisition for conservation and passive recreation and expenditure of the total project cost (or draft language, if vote is pending)
9. Evidence of how Environmental Justice populations in your community were able to participate in the project selection. Please include any flyers, mailings, etc. that were sent and describe where they were distributed and how they were relevant to the population. (*For more information see EEA's Environmental Justice Policy online at <https://www.mass.gov/service-details/environmental-justice-policy>*)
10. Documentation of good land stewardship on past DCS grant or municipal conservation land. Attach supporting documentation with the application for one or more past LAND/Self-Help grants or municipally-owned conservation land. Documentation should include examples from up to three different activities from the following list: stewardship monitoring report on municipal land, invasive species control, trail building, educational kiosks, recent surveys outlining the conditions of trails or land boundaries, recent baseline documentation reports, and/or forest or land management plans. Applicants can submit documentation of other land stewardship activities. Photos of land stewardship activities are encouraged. If your community does not currently own any conservation land, please describe how your community will steward land subject to this application in the project narrative.

## **Attachment B: Conservation Land Acquisition Project Selection System Massachusetts LAND Grant Program**

A grant review committee will consider each project and make funding recommendations based upon demographic and project quality criteria. The criteria are used to identify projects for funding that best protect both natural resources and public outdoor recreation opportunities.

The following criteria are evaluated and scored:

### **1. Municipal Demographics [Scores are calculated by DCS]**

- Median income
- Environmental Justice community
- Population growth rate between 2010 and 2020
- Availability of open space
- Seasonal population increase
- Population density
- Housing Choice Community Designation

### **2. Project Quality**

- Project size and proximity to protected land or capacity to catalyze additional land protection.
- Threat of development and impact of potential development upon resource values.
- BioMap Core Habitat or Critical Natural Landscape, as identified by the MA Natural Heritage and Endangered Species Program.
- Climate change resiliency
- Degree to which the project advances goals, objectives identified in the community's current Open Space and Recreation Plan
- Passive recreational opportunities provided for the public, consistent with the community's Open Space and Recreation Plans and Statewide Comprehensive Outdoor Recreation Plan. Projects that include accessible trails will be given additional points.
- Whether project provides recreational access to lakes, rivers, ponds and coastal beaches.
- Protection of lands that contribute to drinking water supply, wetland habitats, and freshwater resources.
- Projects that support sustainable forestry and/or agricultural uses compatible with the goals of conservation and/or public recreation.
- Applicants demonstrated capacity to manage municipal conservation or recreational lands.
- Municipality has conducted a public meeting with enhanced outreach to environmental justice populations.
- Applicant has not received a LAND grant in the past 5 grant rounds.
- Overall project quality.

### **3. Other**

- Applicant has signed a Community Compact with a Sustainable Development and Land Protection Best Practice
- Applicant is a MVP community and application ranks in the top 2/3 of applications, if the MVP plan includes priority implementation projects relevant to land conservation or natural resource protection.

**RATING SYSTEM for FY24 LAND Grant Program Projects**

<b>DEMOGRAPHICS (40%)</b>		<b>Max points</b>
Median income	Data obtained from Department of Revenue and put into rank order by DCS	1-13
Environmental Justice community	Determined by DCS	0 - 4
Public Meeting	Municipality has conducted a public meeting on project with enhanced outreach to Environmental Justice populations.	2
Population growth rate between 2010 to 2020	No growth (or loss)      0-3.9%      4-6.9%      7-11.9%      12-19.9%      ≥20% 0                                      1                                      2                                      3                                      4                                      5	5
Availability of open space	Percent of protected open space in municipality where property is located. Project located in municipality with less open space relative to other applications will receive more points.	0 - 6
Seasonal population	% seasonal increase in resident population:    0-9%    10-24%    25-49%    50% or more 0                                      1                                      3                                      4	4
SCORP – project proximity to population	Population density of municipality where property is located (ppl/mile <sup>2</sup> ). Projects located in municipalities with higher population density relative to other projects will receive more points.	0 - 4
Housing Choice Community	Applicant has been designated as a Housing Choice Community	2
<b>PROJECT QUALITY (60%)</b>		<b>Max points</b>
Landscape Conservation	Total acreage protected:    >100.0      50.0-99.9      25.0-49.9      10.0-24.9      Fewer than 10.0 5                                      4                                      3                                      2                                      1	15
	Total adjacent protected open space: 1-25 acres    25.1-50 acres    50.1 - 75      75.1+ acres 1                                      2                                      3                                      4	
	Project will serve as catalyst for conservation of additional land (e.g. adjacent landowner property that will be secured, etc.) 0-25 acres                                      26-75 acres                                      76+ acres 1                                      2                                      3	
	How significantly will the subject parcel's resource value be impacted if parcel is developed? Project will be ranked relative to other application received and rated accordingly. High Impact                                      Medium Impact                                      Low Impact 3                                      2                                      1	
Biodiversity and Resource Protection	Percentage of the project area within NHESP BioMap Core Habitat or Critical Natural Landscape 100.0 -80.0%    79.9 – 60.0%    59.9 – 40.0%    39.9 -20.0%    19.9 – 1% 5                                      4                                      3                                      2                                      1	11
	Does the project protect a Landscape, Wetland or Aquatic Habitat or contain Vernal Pools or Rare Species of Regional or Local Significance in BioMap?    Yes – 2    No - 0	
	The climate resilient value of the project location as defined by TNC's Resilient Site Map: Less than Avg (<-0.5 SD)      Average (-0.5 – 0.5 SD)      Slightly Above Avg (0.51 – 1.0 SD)      Above Avg (1.01 – 2.0 SD) 0                                      1                                      2                                      3 Far Above Avg (>2.01 SD) 4	
Recreational Opportunities	Number of goals, objectives, or action plan items in the OSRP that project advances: 5 or more items      2-4 items      1 or fewer items 3                                      2                                      0	17
	Recreational opportunities provided (these will be verified at the site visit).	
	Wilderness activities (camping, hunting, etc.)                                      3                                      2                                      0 Trail-based activities* (hiking, etc.)                                      3                                      2                                      0 Historic or cultural interpretation, or environmental education                                      2                                      1                                      0 Water-based activities (canoeing, skating, etc.)                                      2                                      0                                      0 Community gardens                                      2                                      0                                      0 *Accessible Trails get maximum points under trail-based activities	
	Property provides recreational access to lakes, rivers, ponds and coastal beaches                                      Yes – 2      No - 0	
Water Resources	Percentage of project within surface drinking water supply Zones A/B or ground drinking water supply Zones I/II or a high or medium yield aquifer:    >51%      50.9 - 1%      0% 2                                      1                                      0	2
Working Lands	Will active forest/farm management continue or be restored? Must demonstrate clear intention to re-initiate or continue these uses.	3
Stewardship Capacity	Applicant has demonstrated capacity to manage land held in fee or CR based on past stewardship of comparable land. Excellent    Good    Average 3                                      2                                      1	3
Distribution of state resources	Has applicant received a LAND grant in the past five grant rounds?    Yes - 0                                      No - 4	4
Overall project quality	Excellent      Very Good      Good      Average 5                                      4                                      3                                      1	5
<b>TOTAL</b>		<b>100</b>
<b>Bonus Points</b>		
Municipal Vulnerability Preparedness Program	MVP communities ranked in the top two-thirds of applications are eligible for up to 5 points IF the MVP plan includes priority implementation project(s) relevant to land conservation or natural resource protection.	1 – 5
Community Compact	Applicant has signed a Community Compact with a Sustainable Development and Land Protection Best Practice	2

## **Attachment C: Requirements for Acquisition Projects Funded Through the Community Preservation Act or Cape Cod Land Bank Act**

The Community Preservation Act (CPA) and Cape Cod Land Bank Act state that land acquired with CPA or land bank funds **must be bound by a permanent restriction** (excerpt of acts below). Property acquired with LAND grant program funding is protected Article 97 conservation land. However, this status does not supersede the requirements of the CPA or Cape Cod Land Bank Act. The CPA requires that, for fee acquisitions, the municipality convey a Ch. 184 Sec. 32 Conservation Restriction to a qualified 501(c)(3) organization whose purpose is land and/or water conservation (e.g., land trust). It may not be an internal deed restriction. Fulfillment of the CPA is the responsibility of the municipality. **Conveyance of a CR to a qualified entity is required for reimbursement under this grant program if a property is acquired in part with CPA funding or Cape Cod Land Bank funding.**

### **Pointers for authorizing, drafting & conveying a Conservation Restriction (CR):**

1. At the same time that it votes to acquire the property, the municipality should vote to authorize the grant of the CR and also indicate that the purchase of the property and conveyance of the CR be a simultaneous closing.
2. The deed to the municipality should indicate that the municipality might grant a CR to the specific entity identified to hold it or to an entity authorized to hold a CR under M.G.L. Ch. 184, Sec. 32.
3. As long as the CR is recorded **after** the deed of acquisition (even if immediately after), the unrestricted value (and therefore higher value) of the property is used for DCS grant funding determinations.
4. The fact that the funding statute *requires* the restriction may mean that a party seeking a charitable contribution deduction in connection with a bargain sale of property may not be able to use the unrestricted value of the property in calculating the tax benefit.
5. The “proceeds” clause of the CR, if conveyed at no cost to the grantee, must provide that the municipality (as the fee owner) receives all of the proceeds of an extinguishment or taking, and the grantee receives none of such proceeds. In the event that the land ever is converted to non-conservation use, the municipality would still be responsible for replacing the converted property with land of equal or greater monetary value and conservation use as described in the Program Regulations, as though the land were owned in fee simple. Applicants should consult with DCS for guidance on drafting Conservation Restrictions for the appropriate language.

### **Community Preservation Act**

#### **Section 12 of the Chapter 44B Real property interest; deed restriction; management**

(a) A real property interest that is acquired with monies from the Community Preservation Fund shall be bound by a permanent restriction, recorded as a separate instrument, that meets the requirements of sections 31 to 33, inclusive, of chapter 184 limiting the use of the interest to the purpose for which it was acquired. The permanent restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The permanent restriction may also run to the benefit of a nonprofit organization, charitable corporation or foundation selected by the city or town with the



right to enforce the restriction. The legislative body may appropriate monies from the Community Preservation Fund to pay a non-profit organization created pursuant to chapter 180 to hold, monitor and enforce the deed restriction on the property.

(b) Real property interests acquired under this chapter shall be owned and managed by the city or town, but the legislative body may delegate management of such property to the conservation commission, the historical commission, the board of park commissioners or the housing authority, or, in the case of interests to acquire sites for future wellhead development by a water district, a water supply district or a fire district. The legislative body may also delegate management of such property to a nonprofit organization created under chapter 180 or chapter 203.

### **Chapter 293 of the Acts of 1998: AN ACT RELATIVE TO THE ESTABLISHMENT OF THE CAPE COD OPEN SPACE LAND ACQUISITION PROGRAM**

**Section 3.** Any real property interest in open space purchased with land bank funds shall be retained in natural, scenic, or open condition and shall be bound by a permanent deed restriction limiting the use of the interest to the purpose for which it was acquired. Said deed restriction shall run with the land...

### **Sample Vote Language for Community Preservation Act Projects**

To see if the Town [or City] will vote to raise, borrow and/or appropriate \$Total Project Cost for the acquisition by gift, negotiated purchase or eminent domain of a parcel of land of approximately \_\_\_ +/- acres owned by OWNER as described on Assessors Map \_\_\_, Parcel \_\_\_, to be managed and controlled by the Conservation Commission of the Town [or City] of XXX in accordance with Chapter 40, Section 8C for conservation and passive recreation by the public, and to meet said appropriate with funds transferred and/or borrowed in accordance with M.G.L. Chapter 293, the Community Preservation Act and to authorize the Treasurer, with the approval of the Board of Selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by M.G.L. Chapter 44, or any other enabling authority, and that the Town Manager [or Board of Selectmen or City Council or Mayor] be authorized to file on behalf of the Town [or City] of XXX any and all applications deemed necessary under the Self-Help Act (M.G.L. Chapter 132A, Section 11) [or LWCF or USH] or any other applications for funds in any way connected with the scope of this acquisition, and the Town Manager and the Board of Selectmen [or Mayor and the City Council] and the conservation commission be authorized, as they deem appropriate, to enter into all agreements and execute any and all instruments including the conveyance of a perpetual conservation restriction in accordance with M.G.L. Chapter 184 as required by Section 12(a) of Chapter 44B or Chapter 293 Section 10 of the Acts of 1998 as amended, as may be necessary on behalf of the Town [or City] of XXX to affect said purchase. Said conservation restriction may be granted to the [Name of Grantee] or any other organization qualified and willing to hold such a restriction.

## **Attachment D: Sample Municipal Vote**

Each community should draft its warrant article or city council resolution with the guidance of municipal counsel. The form will vary with the type of project, source of funding, etc. All should include the following elements:

- I. Authorization to expend an amount equal to the full acquisition cost of the project. All DCS grant programs are *reimbursement* programs, not match programs; therefore, the total project cost must be raised or appropriated through current tax levy or borrowed; project bills paid by the municipality and then a reimbursement request is made to DCS for the grant amount.
- II. Indication of the source of funding (Conservation Fund, Community Preservation Act Fund, general fund, borrowing, etc.). M.G.L. Chapter 44, sections 7, 8C, and 12(a) on Municipal Indebtedness, allows cities and towns to borrow in anticipation of reimbursement. It is strongly recommended that the warrant article or city council order is prepared with the advice of city/town counsel, treasurer and accountant to ensure that the appropriate section is noted in the warrant article. These sections permit the municipality to borrow in anticipation of a grant and require that a grant agreement be executed before the treasurer actually obtains the borrowed amount. This assures DCS that the municipality has budgeted for 100% of the total project cost, and assures the municipality that the project need not be completed if the proposal does not receive grant assistance. For further advice, please contact the Department of Revenue, Division of Local Services at (617) 626-2300.
- III. Acquisition projects: indicate that land is being acquired for conservation, agriculture use, and passive outdoor recreation purposes (Chapter 40, Section 8c) and will be in the care and control of the conservation commission or agriculture commission per the program regulations.
- IV. Authorization for the conservation commission or the agriculture commission to seek reimbursement under the LAND program, (formerly known as the Self-Help program), Chapter 132A, §11, and enter any necessary contracts thereto.
- V. If a taking is involved in an acquisition project, the conservation commission must, in writing, request the selectmen or city council to take the property via eminent domain.
- VI. Communities may also consider allowing the subsequent conveyance of a Conservation Restriction.
- VII. Communities may also consider language permitting a license or lease agreement to manage the property consistent with the LAND grant program for maintenance, etc.

The following is a sample vote authorizing the acquisition of conservation land using LAND financial assistance. This is intended only as a point of reference. **Municipal Counsel should always be consulted when drafting Town Meeting warrant articles or City Council resolutions.** The draft article or order should be submitted to DCS for review prior to the Town Meeting or City Council to ensure compliance with the grant program.

Sample for Conservation Acquisition Project – Town Meeting Warrant Article

To see if the CITY/TOWN will vote to appropriate, and authorize the Treasurer with the approval of the Selectmen [describe method of appropriation and/or borrowing according to M.G.L. Chapter 44, note particularly Section 8C], to borrow the sum of \$TOTAL PROJECT COST, for the purpose of purchasing for conservation and passive recreation purposes, by eminent domain or negotiated purchase or otherwise, a certain property together with buildings thereon, known as the PROPERTY NAME consisting of XXX acres, more or less, as shown on a plan entitled "Plan of Land in MUNICIPALITY made by SURVEYING FIRM dated XX/XX/XX"; that said land be conveyed to said CITY/TOWN under the provisions of Massachusetts General Laws, Chapter 40, Section 8c, and as it may hereafter be amended and other Massachusetts statutes relating to Conservation, to be managed and controlled by the Conservation Commission of MUNICIPALITY, and the Conservation Commission be authorized to file on behalf of MUNICIPALITY any and all applications deemed necessary for grants and /or reimbursements from the Commonwealth of Massachusetts deemed necessary under Chapter 132A, Section 11 and/or any others in any way connected with the scope of this Article, and the CITY/TOWN and the conservation commission be authorized to enter into all agreements and execute any and all instruments as may be necessary on behalf of MUNICIPALITY to affect said purchase.

Sample for Conservation Acquisition Project – City Council Vote

A RESOLUTION TO APPLY FOR, ACCEPT, AND EXPEND A GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS, DIVISION OF CONSERVATION SERVICES' LOCAL ACQUISITIONS FOR NATURAL DIVERSITY (LAND) GRANT PROGRAM

- WHEREAS: The Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs (EEA) Division of Conservation Services (DCS) is making funding available through the Local Acquisitions for Natural Diversity (LAND) Program;
- WHEREAS: The LAND Program was established in 1961 to assist municipal conservation commissions in acquiring land for natural resources protection and passive outdoor recreation purposes;
- WHEREAS: The permanent preservation of open space is a priority of the NAME OF THE CITY; and
- WHEREAS: The CITY will vote to appropriate, and/or borrowing according to M.G.L. Chapter 44, notes particularly Section 8C], to borrow the sum of \$TOTAL PROJECT COST, for the purpose of purchasing for conservation and passive recreation purposes, by eminent domain or negotiated purchase or otherwise.

WHEREAS: The NAME OF THE CITY has identified an assembly of parcels of TOTAL LAND ACREAGE known as PROJECT NAME that would be preserve for PURPOSE OF THE PROJECT.

WHEREAS: The NAME OF THE CITY intends to submit an application to EEA to fund up to REIMBURSEMENT RATE of the purchase price of the PURCHASE IN FEE/CR for the property known as PROJECT NAME.

NOW THEREFORE, BE IT RESOLVED:

1. That the City Manager be and is hereby authorized and requested to file an application with EEA for a LAND grant;
2. That the city manager be and is hereby authorized to accept grant funds and execute contracts, and any amendment thereto, in order to carry out the terms, purposes, and conditions of EEA DCS LAND Grant Program;
3. That the city manager be and is hereby authorized to take such other actions as are necessary to carry out the terms purposes, and conditions of EEA DCS LAND Grant Program.

## **Attachment E: Policies, Regulations, and Legislation Guiding the LAND Grant Program**

### 301 CMR 5.00: LAND AND PARC PROGRAMS

NOTE: Self-Help is now the LAND program: Local Acquisitions for Natural Diversity  
Urban Self-Help is now the PARC Program: Parkland Acquisition and Renovation for Communities

#### Section

5.01: Purpose

5.02: Definitions

5.03: Eligibility

5.04: Project Application and Selection

5.05: Project Conditions

5.06: Project Costs

5.07: Post-Completion Responsibilities

5.08: Conversion

5.09: Guidance Documents

5.10: Severability

#### 5.01: Purpose

301 CMR 5.00 is promulgated to implement the LAND and PARC grant programs by establishing uniform grant application procedures, project selection standards, and program administration requirements. Both the LAND and PARC grant programs have two separate programs: an annual program in accordance with the grant cycle of 301 CMR 5.05(4); and a rolling program subject to periodic notice of availability as described in 301 CMR 5.05(5).

#### 5.02: Definitions

Active Outdoor Recreation. Outdoor recreation that occurs in parks and requires significant alteration of the natural landscape to provide playground or active sports facilities such as tennis, basketball or other sport courts, ball fields, swimming pools or spray pads, paved bike or walking trails, golf courses, marinas, enclosed dog parks, boat rentals, concession stands, community gardens, outdoor skating rinks, bathroom buildings, bleachers or stands or other developed facilities needed for active outdoor recreation.

Conservation Land. Land owned by a municipality for conservation and passive public outdoor recreation purposes and managed for those purposes under the Conservation Commission consistent with M.G.L. Chapter 40 section 8C. In order to receive funds from the LAND Program Conservation Land must be dedicated in the deed to conservation and passive public recreation purposes.

Director of Environmental Justice. A person so named and designated by the Secretary to review PARC and LAND grant applications and advise the Secretary on the importance of each application in addressing environmental justice concerns.

Division. The Division of Conservation Services in the Executive Office of Energy and Environmental Affairs.

LAND Program. A grant program that provides reimbursements to municipalities of up to 90% of the allowable project costs towards the purchase of land for conservation and passive outdoor recreation purposes and/or planning, design, access, or stewardship projects on LAND funded conservation land.

Management Plan. A plan reviewed and approved by the Division that guides future use and stewardship of the Park or Conservation Land for appropriate active or passive outdoor recreation.

Open Space and Recreation Plan. A plan reviewed and approved by the Division, having a duration of up to ten years, containing those elements required by the Division such as: a summary; statement of purpose including planning process and public participation; community setting; environmental inventory and analysis; inventory of lands of conservation and recreation interest; community goals; analysis of needs; goals and objectives; an action plan; and maps and letters of comment from the chief municipal officer, planning board, and regional planning agency. Guidelines and a workbook for developing plans are available from the Division.

PARC Program. A grant program that provides reimbursements to municipalities of up to 90% of allowable costs towards the acquisition of land, and the construction, restoration, or rehabilitation of land for park and outdoor recreation purposes.

Park. Land owned by a municipality and managed for active public outdoor recreation purposes under the Park, Playground or Recreation Commission. In order to receive PARC Program funding a park must be dedicated in the deed to active public outdoor recreation purposes.

Passive Outdoor Recreation. Any outdoor activity that occurs in a natural setting with minimum disturbance of the natural and cultural resources and that is consistent with quiet enjoyment of the land including but not limited to hiking, nature study, outdoor education, cross country skiing, snowshoeing, horseback riding, trail bicycling, hunting, fishing, picnicking, canoeing, ice-skating, community gardening in existing fields, swimming in a natural water body with minimal site development, or informal sports activities on an open natural field. For the purpose of eligibility and reimbursement under these regulations snowmobiling may be considered passive outdoor recreation if the municipality determines that it is compatible with other activities. Facilities necessary to support passive recreation with a minimum of disturbance to the natural and cultural resources such as natural surface trails and wood roads, and appropriately-scaled parking areas, bathrooms, and nature centers are considered consistent with passive outdoor recreation. Passive outdoor recreation areas may also be managed for sustainable forestry and farming including community farms and forests.

Project. Reimbursement for the acquisition of land for passive outdoor recreation and conservation purposes, and/or appropriate planning, design, access, or stewardship projects on LAND funded conservation land (including ancillary costs such as title, survey, management planning, design and installation of low impact trails or educational signs or other low impact and appropriate projects to support passive outdoor recreation). Project also means the acquisition, development, restoration, or renovation of parkland reimbursed by the PARC Program that meets all policies and specifications of EEA and the Division. Projects shall require that a project agreement be recorded at the appropriate Registry of Deeds with a reference to the conservation or park land that has been funded with the grant. The project agreement includes reference to all requirements and policies of the grant that apply in perpetuity to the land.

Project Quality Criteria. Rating criteria used in project selection such as park and conservation land accessibility, public participation in design, water and trail access, land and park stewardship, consistency with state and local plans, and environmental attributes such as habitat for rare, threatened, or endangered species and species of greatest conservation need, water resources, farm, forestry, landscape and biodiversity conservation resources, historic and archaeological resources, climate resiliency, stormwater reduction, tree planting, and support of EEA and agency policies.

Project Selection System. A project rating system based on a 100-point scale. The LAND Project Selection System shall award no less than 30 points based on demographic factors, focusing on financial need of the applicant community, and up to 70 points based on project quality criteria. The PARC Project Selection System shall award no less than 30 points based on demographic characteristics, focusing on financial need of the applicant community, and up to 70 points based on project quality criteria. Each program's selection system awards points for implementation of the community's open space and recreation plan and up to ten bonus points at the discretion of the Secretary. The Secretary shall develop and may review and modify, at his discretion, selection systems for the LAND, Rolling LAND, PARC, and Rolling PARC grant programs. The selection systems shall be set forth in Guidance Documents available from the Division.

Regional Project. A recreation facility that has parking for at least 100 cars and adequate comfort stations. Regional Projects generally provide multiple opportunities for picnicking, walking, canoeing, boating, fishing, children's recreation, and swimming. The Secretary may waive the vehicle accommodation requirement if direct access to a public transportation route with regularly scheduled hourly service is available at the project site. Guidelines for regional projects are available from the Division.

Rolling LAND Program. A rolling grant program that conforms with the minimum requirements of the LAND Program, plus guidelines established by the Secretary, excluding the grant cycle requirement described in 301 CMR 5.05(4).

Rolling PARC Program. A rolling grant program that conforms with the minimum requirements of the PARC Program, plus guidelines established by the Secretary, excluding the grant cycle requirement described in 301 CMR 5.05(4).

Secretary. The Secretary of Energy and Environmental Affairs or the Secretary's designee.

Small Town Project. A Project which qualifies only for a maximum of \$100,000 where a community does not meet the population criteria of a city or town of over 35,000 and is not undertaking a Regional or Statewide Project.

Statewide Project. A recreation facility located within a one hour driving time from more than one Metropolitan Statistical Area, accommodates at least 200 vehicles, provides adequate comfort stations, and will also provide for more dispersed or uncommon recreation opportunities such as equestrian trail use, overnight camping, nature center programs, golf, group picnicking, large beach use, boating, skiing, and live animal viewing such as zoos. Any Project located on Nantucket Island, Martha's Vineyard, or Cape Cod is considered statewide regardless of the project scope. The Secretary may waive the vehicle accommodation requirement if direct access to a public

transportation route with regularly scheduled hourly service is available at the project site. Guidelines for statewide projects are available from the Division.

### 5.03: Eligibility

- (1) Planning Requirement. No application will be considered by the Secretary until the Applicant has filed an approved Open Space and Recreation Plan or submits a draft plan with the preliminary application.
- (2) LAND Program.
  - (a) Only municipalities with Conservation Commissions duly established pursuant to M.G.L. c. 40, § 8C are eligible to participate in the LAND Program.
  - (b) LAND Program grants are available to fund the acquisition of land for passive outdoor recreation and conservation purposes, and/or appropriate planning, design, access, or stewardship projects on conservation land.
- (3) PARC Program.
  - (a) Only municipalities with a Park, Playground, or Recreation Commission, or any combination thereof, duly established pursuant to M.G.L. c. 45, § 2, and a Conservation Commission duly established pursuant to M.G.L. c. 40, § 8C, are eligible to participate in the PARC Program.
  - (b) PARC Program grants are available to fund the acquisition of land for park and active outdoor recreation purposes, and for the construction, restoration, or rehabilitation of land for park and outdoor recreation purposes.
  - (c) The following municipalities are eligible to apply for PARC grants:
    1. Any city, or a town of over 35,000 year round inhabitants; or
    2. Municipalities with a population of less than 35,000 year-round inhabitants that:
      - a. propose a Statewide or Regional Project and demonstrate regional or statewide usage to the satisfaction of the Secretary; or
      - b. propose a Small Town Project.
  - (d) The Director of Environmental Justice may publicize in urban areas the existence of the PARC Program, and publicize, make available and assist municipalities with interpreting the PARC Program guidelines.
- (4) Affirmative Action and Accessibility. To be eligible for assistance, municipalities must be in compliance with a Civil Rights Review Comment from the Massachusetts Commission Against Discrimination, and Executive Order No. 215, concerning Disbursement of State Development Assistance for Affordable Housing. Municipalities must also show that all parks and recreation facilities are in compliance with the Americans with Disabilities Act (P.L. 101-336), formerly required under Section 504 of the Rehabilitation Act of 1973, P.L. 93-112 (Federal Handicapped Accessibility Guidelines), as amended; and Department of Interior Regulations 43 CFR 17, Subpart B, or show how and when such facilities will be brought into compliance with the above regulations.
- (5) Upon request, the municipality or its authorized representative shall provide all records, books, papers, documents, or other data relating to the Program grant to the Secretary for examination.



(6) Each program participant shall cause work on the Project to proceed within a reasonable period of time after receiving a signed state standard contract from the Division and will pursue the Project to completion with reasonable diligence.

#### 5.04: Project Application and Selection

(1) Application Step Procedures. Applications shall be submitted to the Secretary in accordance with the Application Guidelines of the Division, which are available on the Division's web site.

(2) Appraisal Reports. Applications for acquisition assistance shall be accompanied by an appraisal report prepared according to the Appraisal Report Guidelines of the Division, which are available on the Division's web site.

(3) Project Selection System. In order to distribute limited LAND and PARC funds among many deserving applicants, the Secretary has developed a review process called the Project Selection System. The Project Selection System considers a number of demographic and project quality factors in order to identify those projects which best protect natural resources or provide recreation amenities where appropriate in communities that have the greatest need for financial assistance and that have made efforts to implement their open space and recreation plans in coordination with local planning for future growth. The Project Selection System Guidelines for each grant program are available on the Division's web site.

(4) LAND Program and PARC Program Grant Cycle.

The annual filing deadline for applications shall be no later than August 15<sup>th</sup> of each year. The Secretary may alter or extend this deadline provided that public notice of the change is given at least 90 days in advance of the new deadline. Grants shall be made only once in the annual fiscal cycle; however, grants may be adjusted after the award for cause. Grant applicants shall receive notice no later than November 15<sup>th</sup> of each year from the Division as to whether an award will be issued.

(5) Rolling Program Specific Requirements.

- (a) Rolling LAND Program grants must meet all requirements applicable to the LAND grant program, excluding the grant cycle requirement as described in 301 CMR 5.05(4).
- (b) Rolling PARC Program grants must meet all requirements applicable to the PARC grant program, excluding the grant cycle requirement as described in 301 CMR 5.05(4).
- (c) The Secretary may establish additional guidelines for the Project Selection System of the Rolling LAND Program.
- (d) The Secretary may establish additional guidelines for the Project Selection System of the Rolling PARC Program.
- (e) The Secretary shall provide notice of availability of funding and the associated filing deadline for any grant funding offered under either the Rolling PARC or the Rolling LAND Programs. Such notice shall be effective when published either in the Massachusetts Register or the *Environmental Monitor*.
- (f) The Secretary may announce rolling grant rounds and accept applications from time to time and subject to available funding.

#### 5.05: Project Conditions

- (1) Off-street parking and land use and management plans may be required at the discretion of the Secretary depending upon the size of the project area, its intended use(s), the nature of the resource(s), and the availability of public transportation and on-site parking.
- (2) Additional project conditions may be required by the Secretary to enhance public benefit or protection of natural resources.
- (3) Program participants shall provide for fair and equitable treatment of persons and businesses to be displaced as a result of the project, and shall comply with M.G.L. c. 79A, as amended, Titles II and III of the federal Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) where concurrent federal financial assistance is sought or intended for subsequent project phases.
- (4) Property acquired or improved with LAND Program assistance shall be under the care, custody, and control of the Conservation Commission. Property acquired or improved with PARC Program assistance shall be under the care, custody, and control of the Recreation, Park, or Playground Commission. For acquisition projects, the grantee on the deed shall state that the care, custody and control is with either the Conservation Commission for LAND grants or Recreation, Park, or Playground Commission for PARC grants.
- (5) A failure to comply with the conditions of any grant contract may result in the reduction, suspension, or withdrawal of awarded grant funds.

#### 5.06: Project Costs

- (1) Each grant program provides reimbursement of up to 90% of eligible project costs towards the acquisition of land for active outdoor recreation or conservation and passive outdoor recreation purposes, planning design, access, or stewardship projects on conservation land, or the construction, restoration or rehabilitation of facilities for park and active outdoor recreation purposes. The maximum reimbursement percentage allowed for an approved project will be based on the municipality's equalized valuation per capita decile rank among all Massachusetts municipalities as determined by the Secretary of Administration and Finance. A municipality's rank, and therefore its percentage of reimbursement potential, may change annually based on its increase or decrease in property valuation and population growth. The Secretary may reduce the maximum reimbursement percentage to allow for a more equitable distribution of limited funds among all municipalities. The annual reimbursement schedules are available from the Division.
- (2) Subject to the approval of the Secretary, all reasonable costs associated with acquisition projects shall be eligible for reimbursement, as long as they are incurred within the contract period. Costs for title searches, recording fees, boundary surveys, baseline documentation reports, management plans, planning, design, and stewardship projects and other approved project costs from the project proposal, as well as the actual approved purchase price, are deemed to be eligible acquisition, planning, design, access, and stewardship project costs. In addition, for PARC Projects, the actual approved purchase price, recording fees, boundary surveys, engineering, design, construction, and construction supervision are deemed eligible project costs; however, the Secretary shall retain the right to set a fixed limit on the reimbursement of Project costs. Additional information on reimbursement procedures is available from the Division upon request.

(3) As required by M.G.L. c. 132A, § 11, reimbursement under the LAND Program will occur only after the participant has expended an amount equal to the total cost of the project and not until the project has been completed to the satisfaction of the Secretary. Billing procedures and forms are available from the Division.

(4) Federal funding sources such as Community Development Block Grants or Revenue Sharing that are defined by the federal government to be local money may be used to match program funds. Community Preservation Act (CPA) funds are also considered local money and may be used to match program funds. Program reimbursements for PARC projects may be paid periodically upon request for payments made by a municipality. Billing procedures and forms are available from the Division.

(5) The Division encourages charitable contributions for conservation purposes either in cash or real property. While real property contributions are not reimbursable, cash contributions may be utilized as the municipality's share of the project providing said cash contribution is deposited into a separate municipal account such as authorized under M.G.L. c. 40, § 5, Cl. 51 and is expended therefrom as part of the municipal appropriation for the acquisition or development.

(6) Project reimbursements are to be based on the receipt of invoices and canceled municipal checks and compliance with current reimbursement requirements of the Division. Municipal staff time and non-cash donations are not eligible for reimbursement.

#### 5.07: Post-completion Requirement

(1) Operation, Maintenance, and Reasonable Use Limitations. Property acquired or developed with LAND or PARC Program assistance shall be operated and maintained in accordance with management plans reviewed and approved by the Division and project contract and project agreement specifications.

(2) Nondiscrimination. Property acquired or developed with Program assistance will be open to entry and use by all persons regardless of race, color, national origin, sex, sexual preference, age or disability.

(3) Nondiscrimination on the Basis of Residence.

(a) Discrimination on the basis of residence, including preferential reservation, membership or annual permit systems, or user fees is prohibited on the Project site.

(b) The Secretary will approve or deny all proposed fee or access limiting systems. Waivers will not be granted which are inconsistent with the Federal Land and Water Conservation Fund Act, P.L. 88-578, Section 6(f)(8), 16 U.S.C. § 4601-4. et seq.

#### 5.08: Conversion and Reversion

(1) Conversion. Property acquired or developed with assistance from the LAND or PARC Program shall be retained and used at all times for conservation and passive outdoor recreation purposes for LAND projects or park and active outdoor recreation purposes for PARC projects in accordance with M.G.L. c. 132A, § 11, St. 1977, c. 933, and M.G.L. c.45 § 1 and 3 as amended. Any property so acquired or developed shall not be wholly or partly converted to other than public active or passive outdoor recreation, park or conservation purposes without the approval

of the Secretary. Converted property shall comply with Article 97 of the Massachusetts Constitution and shall be replaced with land of at least equal fair market value, natural resources or park values, acreage and of equivalent usefulness for active or passive outdoor recreation. The Secretary may disapprove conversion requests or reject proposed property substitutions. Grant contracts, at the discretion of the Secretary, may be subject to specific performance.

(2) Reversion. Property acquired or improved with LAND or PARC Program funds shall be retained and used at all times for open space purposes in accordance with M.G.L. c. 132A, § 11, as amended, St. 1977, c. 933, as amended; or M.G.L. c. 45 § 1 and 3 as amended. In the event that the property ceases to be used, either in whole or in part, for such purposes, all interest in the property shall revert to the Commonwealth, unless the Secretary demands specific performance of the grant contract.

(a) Owners of property so acquired or improved shall notify the Secretary in writing of any change in use or potential change in use of the property that is inconsistent with said conservation, park, or active or passive outdoor recreation purposes. The owner shall have 90 days from the date written notice was received by the Secretary to present evidence acceptable to the Secretary that the basis for reversion has been cured, in which case the property shall not revert. Upon receipt of written notice, the Secretary may review the circumstances of the property and determine that reversion of the property is not appropriate or essential to the protection of public conservation or park land, and find that the provisions of 301 CMR 5.09(1) shall apply.

(b) If the Secretary finds that a property acquired or improved with Program funds has ceased to be used for such conservation, park, or active or passive outdoor recreation purposes, the Secretary shall notify the owner of the property in writing of this basis. The owner shall have 90 days from the date written notice was mailed to the owner to present satisfactory evidence acceptable to the Secretary that the basis for reversion has been cured, in which case the property shall not revert.

#### 5.09: Guidance Documents

The Guidelines or Guidance Documents referenced herein are available free of charge to municipalities upon request from the Division.

#### 5.10: Severability

The provisions of 301 CMR 5.00 are severable, and if any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of the remainder of 301 CMR 5.00.

#### REGULATORY AUTHORITY

301 CMR 5.00: M.G.L. c. 21A, § 2; c. 132A, § 11; St. 1977, c. 933; St. 1987, c. 564, §§ 8 and 9; St. 1996, c. 15, § 2; St. 2002, c. 236, § 2; St. 2007, c. 27, § 2; St. 2008, c. 312, § 2; St. 2014, c. 286.