



CITY CLERK  
GLOUCESTER, MA

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**GLOUCESTER CITY COUNCIL**

9 Dale Avenue, Gloucester, MA 01930  
Office (978) 281-9720 Fax (978) 282-3051

**Budget & Finance Committee**

Thursday, July 19, 2012 – **5:30 p.m.**  
1<sup>st</sup> Fl. Council Committee Rm. – City Hall

**AGENDA**

*(Items May be taken out of order at the discretion of the Committee)*

1. *Memorandum from CFO re: Loan Order for purchase of Briernneck Crossing*
2. *Memorandum from Police Chief re: request to accept equipment from the Department of Defense*
3. *Memorandum & documentation from General Counsel re: City's obligations to enact regulations to insure Compliance with the Clean Water Act*
4. *Memo from City Auditor regarding accounts having expenditures which exceed their authorization And Auditor's Report*

**COMMITTEE**

**Councilor Paul McGeary, Chair**  
**Councilor Joseph Ciolino, Vice Chair**  
**Councilor Melissa Cox**

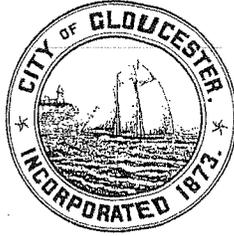
**Committee members – Please bring relevant documentation**

Back-up and Supporting Documentation all on file at the City Clerk's Office, City Hall

CC: Mayor Carolyn Kirk  
Jim Duggan  
Kenny Costa  
Jeffrey Towne  
Suzanne Egan  
Police Chief Michael Lane

**The listing of matters is those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.**

City Hall  
Nine Dale Avenue  
Gloucester, MA 01930



TEL 978-281-9707  
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**CITY OF GLOUCESTER**  
**OFFICE OF THE CHIEF FINANCIAL OFFICER**

**MEMORANDUM**

**TO:** Mayor Carolyn A. Kirk  
**FROM:** Jeffrey Towne, CFO   
**RE:** Loan Order – Purchase of Briernneck Crossing  
**DATE:** July 2, 2012

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Per Councilor Paul McGeary's request, following is the language which should be forwarded to City Council:

**ORDERED:** That the City of Gloucester appropriates Seven Hundred Fifty Thousand Dollars (\$750,000) to pay costs of purchasing two parcels of land located at 70 and 74 Thatcher Road in Gloucester, comprising 5.94 acres, more or less, which are shown on Assessors' Map 184, as Lots 5 and 9, and more commonly known as Briernneck Crossing, including the payment of all costs incidental or related thereto. To meet this appropriation the Treasurer, with the approval of the Mayor is authorized to borrow said amount under and pursuant to M.G.L. Chapter 44, M.G.L. Chapter 44B (the Community Preservation Act), or pursuant to any other enabling authority. The Mayor and any other appropriate official of the City are authorized to apply for and accept any and all grants or gifts that may be available to the City to pay costs of this purchase. In the event that Community Preservation Act funds are utilized for this purchase, the Mayor is authorized to grant a conservation restriction in that portion of the property purchased with such funds, to the Essex County Greenbelt Association, as required by the Community Preservation Act. The amount authorized to be borrowed by this Order shall be reduced by any grants or gifts received by the City on account of this project.

**FURTHER ORDERED:** That the Treasurer is authorized to file an application with the Municipal Finance Oversight Board to qualify under Chapter 44A of the General Laws any or all of the bonds authorized by this order and to provide such information and execute such documents as the Municipal Finance Oversight Board may required for these purposes.

The order must be published at least 10 days prior to final passage and requires at least a two-third vote, as in the case of any other loan order for bonds.

I will be available to provide further information to the City Council, as well as to answer any questions they may have.

# **Good Harbor Gateway Project**

## **Salt Marsh Property Acquisition**

Application to:  
Community Preservation Committee  
City of Gloucester



Friends of Good Harbor, Inc.  
P.O. Box 3145  
Gloucester, MA 01931

**March 16, 2012**



# CITY OF GLOUCESTER COMMUNITY PRESERVATION COMMITTEE

## Application Cover Sheet

I. Project Information	
Project Title:	Good Harbor Gateway Project
Project Summary:	<p>The <i>Good Harbor Gateway Project</i> is a proposal for funding to acquire six acres of filled land, 70-74 Thatcher Road, across from the entrance to Good Harbor Beach, restore it as salt marsh, and preserve it for public access, appreciation, and education. The non-profit organization, Friends of Good Harbor Inc., and the owners of the property, Brierneck Realty LLC, have reached agreement on a purchase price of \$720,000. The overall budget for the project is \$750,000 with tri-partite funding in which one-third is to be a grant from the Community Preservation Act (City of Gloucester), one-third from the Executive Office of Energy and Environmental Affairs' LAND Grant Program (Commonwealth of Massachusetts), and one third from general fund raising (Friends of Good Harbor), including a substantial tax credit contribution by the owners. It is the vision of FOGH that the City of Gloucester will own the property, that ultimately it will be restored to its natural vegetation and wildlife habitat, that it will become a gateway to the Good Harbor marsh and wetlands, that a pedestrian walkway will encourage public access to the area, and that appropriate signage will promote public awareness and sensitivity related to the preservation of one of Gloucester's most prominent natural resources.</p>
Estimated start date:	<u>October 31, 2012</u> Estimated completion date: <u>January 31, 2013</u>
CPA Program Area (check all that apply):	<input checked="" type="checkbox"/> Open Space      Historic Preservation Community Housing      Recreation
II. Applicant/Developer Information	
Contact Person with primary responsibility for project:	<u>Denton Crews</u>
Organization (if applicable):	<u>Friends of Good Harbor, Inc.</u>
Mailing Address:	<u>P.O. Box 3145, Gloucester, MA 01931</u>
Daytime phone #: <u>617.367.9323</u>	Fax #: <u>617.723.4359</u>
E-mail address:	<u>dentoncrews@rcn.com</u>
III. Budget Summary	
Total budget for project:	750,000
CPA funding request:	250,000
CPA request as percentage of total budget:	33 %

Applicant's Signature:

Printed name and Position:

L. Denton Crews

## Executive Summary

### Good Harbor Gateway Project

The *Good Harbor Gateway Project* is a proposal for funding to acquire six acres of filled land, 70-74 Thatcher Road, across from the entrance to Good Harbor Beach, restore it as salt marsh, and preserve it for public access, appreciation, and education. The controversial property has been the City's "longest-running legal struggle," according to Richard Gaines, journalist for the *Gloucester Daily Times*. And it remains an enormous concern to many who are apprehensive about the impact of a previously approved condominium construction plan, known as Brierneck Crossing, on the salt marsh located behind Good Harbor Beach at the intersection of Thatcher Road and Witham Street in Gloucester, Massachusetts.

The non-profit organization, Friends of Good Harbor Inc., and the owners of the property, Brierneck Realty LLC, have reached agreement on a purchase price of \$720,000. The overall budget for the project is \$750,000 with tri-partite funding in which one-third is to be a grant from the Community Preservation Act (City of Gloucester), one-third from the Executive Office of Environmental Affairs' LAND Grant Program (Commonwealth of Massachusetts), and one third from general fund raising (Friends of Good Harbor), including a substantial tax credit contribution by the owners. It is the vision of FOGH that the City of Gloucester will own the property, that ultimately it will be restored to its natural vegetation and wildlife habitat, that it will become a gateway to the Good Harbor marsh and wetlands, that a pedestrian walkway will encourage public access to the area, and that environmentally appropriate signage will promote public awareness and sensitivity related to the preservation of one of Gloucester's most prominent natural resources.

This application is for a grant award by the City of Gloucester in the amount of \$250,000 from the Community Preservation Act for the purpose of open space acquisition and preservation. The goal is to implement the project in late 2012 and have the land placed under public ownership by early 2013. The project meets the following criteria required for CPA funding:

- Protects salt marsh and wetland resources that would otherwise be threatened
- Protects a wildlife habitat and promotes environmental biodiversity
- Preserves and enhances the essential character of the City as a preserved and vibrant sea oriented destination
- Creates an opportunity for a citywide trail linkage
- Comports with the goals of Gloucester in its Open Space and Recreation Plan
- Leverages additional public and private funds
- Has the endorsement of municipal and private agencies and community members

The City of Gloucester has the exceptional opportunity to bring to closure its longstanding and worthy effort to restore this parcel to its original natural state and additionally to create an environmental and educational gateway to one of its most treasured resources, the Good Harbor Marsh and Beach. The beneficiaries will be the residents of Cape Ann, the streaming visitors from afar, and the planet Earth, now and in future generations.

# Good Harbor Gateway Project

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## **Section 1. Project Background**

## Project Background

### Brierneck Crossing Initiative

The property at the northwest corner of the intersection of Thatcher Road and Witham Street in Gloucester, 70-74 Thatcher Road, formerly a wetland behind Good Harbor Beach, has been the subject of controversy since the 1970s when a section of the salt marsh was filled and partially paved. Nearly twenty years later, a developer proposed to build condominiums on the site, to be called Brierneck Crossing. This was followed by more than a decade of city opposition, citizen action, and a string of legal appeals culminating in a final ruling by the state Supreme Judicial Court in 2011 that the project could go forward. A synopsis of the property background is included as Attachment A.

Initially, the proponent of the project was the developer, James Grifoni, who held a purchase and sale agreement for the property. However, in October, 2008, according to the City of Gloucester Assessor's Office, Brierneck Realty LLC, comprising several investors, paid \$522,000 to secure title to the parcel. Thus, in June, 2011, the project was ready to proceed with an approved comprehensive permit, albeit with orders of conditions from the Gloucester Conservation Commission.

The plans for the condominium construction project are shown below layered over the property:



### Friends of Good Harbor Initiative

In the summer of 2011, the year-old community organization, Friends of Good Harbor, Inc., reached out to Briarneck Realty LLC with a plan to acquire the parcel for land restoration and a gateway to the Good Harbor salt marsh and wetlands. In meetings between representatives of FOGH and Steven Goodman, President of GFI Partners in Boston, representing the owners of the property, the two parties reached agreement on the merits of its restoration as marshland and the vision for its use as a gateway site with natural vegetation and environmentally appropriate signage related to the preservation of the Good Harbor Marsh and Wetlands. The owners indicated their willingness to consider a proposal from FOGH. Although the investors had valued the property at \$850,000, they accepted a proposed sale price of \$720,000, the assessed valuation of the land obtained by FOGH from Vadala Real Estate Appraisals, included as Attachment B.

Throughout the fall, 2011, and the early winter, 2012, members of FOGH, assisted by City Councilor Paul McGeary, were engaged in developing formal plans and partnerships in order to proceed with signing an “offer agreement” as the framework for acquiring the property. There were also consultations with the City of Gloucester Community Development Department, the Conservation Commission, the Open Space and Recreation Committee, and the Trust for Public Lands.

A description of the parties and partnerships in the Good Harbor Gateway Project is provided in Section 6 of this proposal, Applicant and Partners. The parcel at the corner of Thatcher Road and Witham Street to be acquired and restored is shown in the aerial view below:



## **Section 2. Project Need**

## Project Need

Encompassing an immense area of approximately 1,100 acres, the Good Harbor marsh and watershed represents a challenging problem and an uncommon opportunity. The problem is that this coastal habitat with all its diversity and its many tributaries is threatened. The opportunity is to restore and enhance what is one of the most attractive and beneficial resources in the City of Gloucester. The *Gateway Project* is the key component of a transformative vision for Good Harbor Beach, Marsh, and Watershed.

### Problem

The Good Harbor marsh and watershed is a significantly threatened coastal area with strong evidence of decline and neglect. In the past decade, at least four reports have been issued in which Good Harbor was targeted as a prime area for environmental restoration and protection.

**Great Marsh Study.** In 2007, the Division of Ecological Restoration, Massachusetts Department of Fish and Game, produced the *Great Marsh Coastal Wetlands Restoration Plan* for communities in the Great Marsh region of Massachusetts' North Shore. Eight projects identified in this study are in the Good Harbor Marsh and Wetland area.

- The parcel at 70-74 Thatcher Road (listed as Site 177) is identified for its need and potential as a restoration site but not as a likely candidate because of private ownership (which would be remedied by the *Good Harbor Gateway Project*).
- The adjacent marshland east of Witham Street is also listed (Site 179) as open water and wetland, an area historically diked off to create an impounded pond wherein the culvert under Witham Street limits the tidal flow to the upstream marsh and restricts tidal exchange.
- Other Good Harbor areas are listed as well: the area of historically-filled salt marsh along the western edge of the municipal parking lot at Good Harbor Beach (Site 181); the severely degraded area west of Marina Drive (Site 182); the degraded area west of Hartz Road (Site 201); the remnant marsh south of the Stop and Shop Plaza (Sites 204 and 422); and the wetland north of Good Harbor Beach and south of Route 127A impounded by the parking lot driveway (Site 205).

**Audubon Society Study.** Prepared by the Massachusetts Audubon Society in 2003, the *Comprehensive River and Stream Habitat Restoration Report* identifies 225 projects in the City of Gloucester which are potential restoration sites. The focus of the report is on Gloucester's wetlands and waterways and the purpose is to identify impaired or degraded sites which need to be returned to their natural ecological condition to produce healthy habitats and civic benefits. Nine of the projects are in the Good Harbor marsh area, and one of the projects listed for restoration is the parcel at 70-74 Thatcher Road.

**City of Gloucester Study.** In 2005, a comprehensive study of the Good Harbor marsh and watershed was undertaken as a collaboration of four City departments: Health Department, Conservation Commission, Shellfish Department, and Engineering Department. Funded by Coastal Zone Management, it was called the *CZM Coastal Nonpoint Source Assessment Report*. Its purpose was to serve as a first step in providing long term protection for the Good Harbor Drainage Area and Beach. The report documented water quality problems due to storm water runoff and pollution from sewers, lawn care, highway maintenance, commercial

activity, construction, the golf course, congregating waterfowl, and dog walking on the beach. The major finding in the report was the documentation of low salinity levels and brackish water in the salt marsh ecosystem. Among the recommendations in the report were the following: need for further assessment of freshwater flow to the area, recommendation of new sampling procedures at Saratoga Creek, removal of dog waste on the beach, development of a beach management plan, changes in catch basin cleaning and street sweeping, establishing a local ordinance pertaining to infiltration runoff, public education, and an information kiosk at the entrance to Good Harbor Beach.

**Salem Sound Coastwatch Study.** Also in 2005, the staff of Salem Sound Coastwatch undertook a study in Gloucester with a comparative assessment of salt marsh at Good Harbor and on Eastern Point. The report was entitled *Wetland Health Assessment Toolbox Program Report* and utilized the WHAT toolbox as the framework for the study. Although Good Harbor was the reference site, while Eastern Point was the restoration site, the report stated that at the beginning of the collection of baseline information in 2002-2003 the ecological integrity of Good Harbor was not impaired, but by 2005 the data indicated “somewhat impaired” placing Good Harbor salt marsh in a category to be studied further due to stressors such as degradation of water quality. Because of this finding, the Friends of Good Harbor has sponsored a marsh walk with the Executive Director of Salem Sound Coastwatch and is proposing a new comprehensive assessment and bio-monitoring project to be conducted at Good Harbor marsh.

With so much evidence of decline and neglect, there is a clear and compelling need for leadership in marsh protection, preservation, and restoration for Good Harbor and its watershed area. This is the imperative that prompts a collaborative response on the part of the community and the City, which is the focus of this proposal.

### **Opportunity**

The Friends of Good Harbor propose to launch a comprehensive campaign to transform the management of the marsh and wetlands. The *Good Harbor Gateway Project* is the linchpin of the program. The proposed acquisition of the property on Thatcher Road presents the rare opportunity to stop further development in the marsh and begin the process of restoring the filled land to its original habitat in one of the most visible locations imaginable. The vision of FOGH is that once the property is under the ownership of the City of Gloucester it will not only be protected in perpetuity but it will be restored with a small section serving as a sign and symbol for passersby to see, “Welcome to the Good Harbor Marsh and Wetlands.” It can be an educational station with a message to all who pass – walkers, bicyclists, motorists, and beachgoers – reminding everyone of the nature of this beautiful but fragile environment on which we all depend. The Friends envision the engagement of volunteers in monitoring the marsh, study projects to restore the marsh, and enhancements to enable the public to learn and care for the marsh. The property acquisition component and the related plans for restoration and enhancement are described in the next section of this proposal.

### **Section 3. Project Description and Feasibility**

## **Project Description and Feasibility**

### **Property Description**

The property is actually two vacant lots of nearly six acres located at the northwestern corner of the intersection of Thatcher Road and Witham Street, 70-74 Thatcher Road. The front upland part of the parcel (Lot 184.5), a salt meadow until it was filled, is nearly 1.5 acre. It is zoned EB (Extensive Business) which by special permit allows business, retail, and service uses. The rear portion (Lot 184.9) consists of 4.5 acres of salt marsh and is zoned R-10, formerly R-3 (Medium/High Density Residential). The rear portion is located in the flood plain while the front upland portion was in the flood plain until 1992 when the Federal Emergency Management Association (FEMA), upon petition from the developer, re-designated the parcel as outside the special flood hazard area. The two lots are shown on the City of Gloucester Zoning Map and the Wetlands Map in Attachment C.

### **Property Acquisition Component**

The acquisition of the property is predicated primarily on the commitments of the property owners, a community association, and of ultimate importance the City of Gloucester and its agencies. The owners, Briernack Realty, have agreed to an Offer to Purchase by the Friends of Good Harbor, by selling the property and contributing the value of a tax credit donation (as shown in Attachment D). The Friends of Good Harbor have pledged to a fund raising campaign for a substantial portion of the budget required for the acquisition (as enumerated in Section 4 Project Budget, and Attachment E, Letters of Support). And the City of Gloucester's Conservation Commission has committed to the submission of a proposal for grant funding under the Massachusetts Executive Office of Environmental Affairs' LAND Grant Program to fund the balance of the project costs (Attachment E, Letters of Support).

The procedure for executing these commitments can be described by the following sequential steps, once funding commitments are assured: (1) the Offer to Purchase between FOGH and Briernack Realty will be converted to a Purchase and Sale between the City of Gloucester and Briernack Realty; (2) FOGH will transfer its portion of funding to the City of Gloucester, including donor contributions and foundation grant awards; (3) the City of Gloucester will proceed to the closing based upon due diligence and full funding from all sources, including a CPA grant award and short-term financing for the EEA LAND Grant award; (4) the City of Gloucester will receive title to the property and reimbursement funding from the Massachusetts Executive Office of Environmental Affairs to repay the short-term loan.

### **Marsh Preservation, Access, and Education Component**

The Property Acquisition component is by far the major component of the Good Harbor Gateway Project. However, the acquisition of the property will also be the seed and catalyst of an ultimately larger component of the project which will require further long range planning and implementation. The Friends of Good Harbor are engaged in developing an overall plan for restoration and enhancement of the Good Harbor beach, marsh, and watershed area. To accomplish this, FOGH has four initiatives underway. First, with respect to property acquisition, FOGH has developed a conceptual vision of two "bookends" along Thatcher

Road, a two-lane highway which passes through the Good Harbor Marsh and provides access to Good Harbor Beach. This vision comprises the placement of tasteful and environmentally sensitive signage at two locations announcing the “Good Harbor Marsh and Wetlands”: at the corner of Thatcher and Witham on the eastern edge and at the corner of Thatcher and Barn Lane on the western edge. Second, FOGH has developed a conceptual proposal for a walkway along Thatcher Road between these two “bookends” enabling pedestrians and bicyclists safely to traverse alongside the marshland, reach the beach entrance, or continue along Gloucester’s citywide fitness trails (in figure below). Educational break-outs would be created to foster environmental awareness and appreciation. Third, FOGH has developed an initiative to continue the historical studies of the marsh (there have been several in the past ten years, as referenced in Section 5, CPA Evaluation Criteria) with scheduled volunteer monitoring coupled with restoration projects for which FOGH would assume fund raising responsibility. This initiative would also include monitoring and maintenance activities for the “acquired property” as well as the overall marsh and watershed. Fourth and finally, FOGH has developed plans for supporting Good Harbor Beach preservation and enhancement. Members are working with Gloucester’s Department of Public Works and the Police Department to improve beach and dune preservation, new signage, parking and traffic flow improvements, and pedestrian access.

The ambitious mission of the Friends of Good Harbor is stated in its charter: “to foster environmental preservation, restoration, and enhancement of the Good Harbor beach and marsh and watershed.” The acquisition of the property at Thatcher Road and Witham Streets is a keystone to achieving FOGH’s mission. The outcome will be a model of community commitment with multiplier effects for the City of Gloucester and the public at large.

The vision of a walkway along Thatcher Road between Barn Lane and Witham Street is shown below:



## **Section 4. Project Timeline**

## Project Timeline

### Overall Timeline

The overall timetable for acquisition is dependent on a sequence of funding commitment decisions and legal actions in order to achieve the transfer of land in early 2013. The planned timetable is as follows:

CPA Application with Offer Agreement	March 16, 2012
EEA LAND Grant Application	June 30, 2012
Completion of Donor Fund Raising Phase 1	June 30, 2012
Conversion of Offer to Purchase & Sale	June 30, 2012
Additional Grant Application	June 30, 2012
Notification of Grant Awards	October 1, 2012
Completion of Donor Fund Raising Phase 2	December 31, 2012
Completion of Due Diligence by City	January 15, 2013
Completion of Acquisition Closing	January 31, 2013

### Project Schedule Form

#### Community Preservation Committee Format

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#### PROJECT SCHEDULE

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*Please provide a project timeline below, noting all project milestones. Please note that because the City Council must approve all appropriations, CPA funds may not be available until up to two months following CPC approval.*

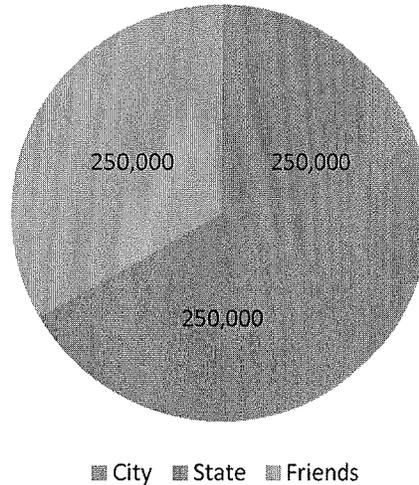
	Activity	Estimated Date
<b>Project Start Date:</b>	Initiate purchase process	Oct 1, 2012
<b>Project Milestone:</b>	Completion of transfer agreement to City	Nov 30, 2012
<b>50% Completion Stage:</b>	Completion of donor fund raising and transfer of all donor funds to City; award of additional grants to City to complete funding obligations	Dec 31, 2012
<b>Project Milestone:</b>	Completion of due diligence by City	Jan 15, 2013
<b>Project Completion Date:</b>	Acquisition: closing of sale to City	Jan 31, 2013

*Please note: If the project is approved, the recipient must provide progress reports to the CPC on a quarterly basis (the first of September, December, March and June). The recipient must also provide an interim report at the 50% Completion Stage, along with Budget Documentation in order to receive the second 30% of the awarded amount.*

## **Section 5. Project Budget**

## Project Budget

The budget and fund raising plan for acquisition of the Good Harbor Gateway property is based primarily on the equal participation of three parties: the City of Gloucester, the Commonwealth of Massachusetts, and the Friends of Good Harbor. This tri-partite arrangement blends local government, state government, and community resources.



## Detailed Budget

The proposed budget for the project is as follows:

Purchase Price	720,000
Appraisal	1,250
Environmental Site Assessment	2,500
Legal, Title Search, Closing	4,250
Survey/Engineering	7,500
Signage, Other Stewardship	2,500
Restoration Seed Funding	<u>12,000</u>
	750,000

## Fund Raising Plan

The sources of funding for the acquisition include the City of Gloucester's Community Preservation Act, the State's EEA LAND grant, one or more philanthropic organizations, individual contributions, and the tax credit or write-off component on the part of the owners to complete the financing package. The funding plan is as follows:

CPA Grant Award	250,000
EEA LAND Grant Award	250,000
Owners' Contribution (Tax Credit)	125,000
Additional Grant Award (Philanthropic Organization)	75,000
FOGH Funding (Donor Contributions)	<u>50,000</u>
	750,000

Besides the CPA grant award and the owners' contribution of tax credits (the latter documented in Attachment D, Offer to Purchase), the funding plan is based upon the Gloucester Conservation Commission's application to the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), Local Acquisitions for Natural Diversity (LAND) Grant Program. The GCC has agreed to make application for funding in the amount of \$250,000 as its priority for the next round of funding. Conversations have been held with the EEA grant program representative, encouraging FOGH to be optimistic about the prospects for state funding.

The funding plan also requires FOGH to raise \$50,000 in a two-phased fund raising plan (Phase 1 = \$25,000; Phase 2 = \$25,000 in pledges). To achieve these goals, FOGH has developed a plan for each phase. In the first phase, there will be a quiet campaign to raise \$25,000 with five contributors of \$5,000 each, or a variation thereof. Already, at meetings of FOGH and neighborhood association presentations, a show of hands has confirmed that individuals are open to commitments on this scale. In the second phase, there will be a public campaign to raise a second \$25,000. A pyramid of gifts has been developed and a fund raising strategy designed. There will be an event in the spring to kick off the campaign (a forum and reception on the Good Harbor Marsh and Wetlands) and a summer volunteer program to study and monitor the marsh environment. This will be followed by a publicized campaign to secure donations, supplemented by the launching of the FOGH web site.

Finally, the funding plan rests on an additional grant award from one or more private philanthropic organizations in the amount of \$75,000. Members of FOGH are currently making presentations to two such organizations which have local roots and award grants to local initiatives. Collateral materials have been developed and proposals are being prepared. FOGH will provide updates on the progress of these initiatives when requested.

### **Project Budget Form**

The Project Budget Form, required for CPA applications, is included on the next page of this proposal.

# CITY OF GLOUCESTER

## COMMUNITY PRESERVATION COMMITTEE

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### BUDGET FORM

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Project Name:           Good Harbor Gateway Project          

Applicant:                   Friends of Good Harbor, Inc.                  

SOURCES OF FUNDING		
Source	Amount	
Community Preservation Act Fund	250,000	
EEA LAND Grant	250,000	
Owner	125,000	
Friends of Good Harbor	125,000	
<b>Total Project Funding</b>	<b>\$ 750,000</b>	

PROJECT EXPENSES		
Expense	Amount	Please indicate which expenses will be funded by CPA Funds:
Community Preservation Sign	150.00	CPA
Purchase Price	720,000	CPA = \$250,000
Appraisal	1,250	
Environmental Site Assessment	2,500	
Legal, Title Search, Closing	4,250	
Survey/Engineering	7,500	
Other Stewardship	2,500	
Restoration Seed Funding	12,000	
<b>Total Project Expenses</b>	<b>\$ 750,150</b>	

## **Section 6. CPA Evaluation Criteria**

## CPA Evaluation Criteria

### General Evaluation Criteria

The *Good Harbor Gateway Project* meets several general evaluation criteria outlined in the Gloucester Community Preservation Committee's application requirements.

#### **1. Is consistent with various plans which are relevant to and utilized by the City regarding Open Space, Recreation, and Historic Resources and Affordable Housing**

The City of Gloucester "Open space and Recreation Plan, 2010-2017" articulates the following goals, of which all are addressed by the *Good Harbor Gateway Project*: (1) Improve stewardship of open space; (2) Improve existing recreation facilities and create new areas to meet defined needs; (3) Protect and improve gateways to open space, recreation areas, and the water; (4) Create strategic connections between existing open spaces, and (5) Strategic preservation of open space.

#### **2. Preserves and enhances the essential character of the City**

Gloucester is defined by its geography and its history. Its geography is shaped by the relationship of the land to the sea. Its character is the inescapable result. To restore the filled marshland to its natural state is to preserve the character of the City. To restore and enhance the beach, wetlands, and watershed is not only to act with civic responsibility but also to enhance the essential character of the City.

#### **3. Protects resources that would otherwise be threatened**

The parcel was originally part of "Little Good Harbor" and then became salt marsh. In the 1970s it was filled and developed for a restaurant which burned and was razed. It is now threatened by development again, this time as condominiums. The *Good Harbor Gateway Project* offers the opportunity to protect this salt marsh and preserve it as a natural resource.

#### **4. Leverages additional public and/or private funds**

The award of a CPA grant in the amount of \$250,000 represents one-third of the funding of the *Good Harbor Gateway Project*. The award leverages an additional \$250,000 in state funding and \$250,000 in local funding (the latter consisting of \$125,000 from the owner, \$75,000 from a private foundation, and \$50,000 from the community (the latter raised by the Friends of Good Harbor).

#### **5. Receives endorsement by other municipal boards, committees, and commissions or departments and broad-based support from community members**

The project is endorsed by the Gloucester Conservation Commission and the Open Space and Recreation Committee, as evidenced by letters of support in the Appendix.

### Category Specific Criteria

The Good Harbor Gateway Project also addresses specific criteria in the open space category outlined in the Gloucester Community Preservation Committee's application requirements.

### **1. Permanently protects important wildlife habitat, particularly areas that include locally significant biodiversity**

In the study of Good Harbor and Eastern Point salt marshes (Section 2), the following elements were assessed as biological evidence of the diversity of the habitat: birds, fish, aquatic macro-invertebrates, and vegetation. By way of illustration, the following species of birds were documented: Barn Swallow, Tree Swallow, Least Sandpiper, Yellow Warbler, Black-Bellied Plover, Semipalmated Plover, Greater Yellowlegs, Killdeer, Great Egret, Common Yellowthroat, Double-crested Cormorant, Great Blue Heron, Great Egret, Greater Yellowlegs, Herring Gull, Mallard, Red-winged Blackbird, and Salt Marsh Sharp-tailed Sparrow, as well as Starlings and Blackbirds. The following non-invasive types of vegetation were documented: *Atriplex patula*, *Spartina alterniflora*, *Spartina patens*, *Distichlis spicata*, *Juncus gerardii*, *Suaeda linearis*, *Salicornia europaea*, *Solidago sempervirens*, *Limonium nashii*, and *Iva frutescens*. Among the aquatic macro-invertebrates were: Ephydriidae shorefly larvae (93%), Amphipods, and Polychaetes. Among the fish (nekton) documented in the marsh were: *Fundulus heteroclitus* (mummichogs), *Fundulus majalis* (striped killfish), *Pungitius pungitius* (ninespine sticklebacks), and *Tautoglabrus adspersus* (cunner). Clearly the marsh and wetlands of Good Harbor, despite the presence of invasive species (e.g. *Phragmites australis* and *Carcinus maenas* or green crab), are a wildlife habitat with significant biodiversity to protect.

### **2. Provides opportunities for passive recreation and environmental education**

Good Harbor beach is already a passive recreational resource. Good Harbor marsh, which is visible to all who approach the beach, could also be a resource for environmental education, as described in the section of this proposal which envisions educational signage, educational breakouts along the Thatcher Road walkway, and scheduled programs and events promoting civic engagement in monitoring and protecting the marsh and wetlands.

### **3. Acquires land or easements for potential trail linkages**

To the extent that a walkway proposed by FOGH links other walking pathways envisioned by the City of Gloucester, the *Good Harbor Gateway Project* can create a vital connection along Thatcher Road at least from Barn Lane to Witham Street and possibly from Bass Avenue to the Rockport town line. At a minimum, it can provide walkers with access to Good Harbor beach with safety and enjoyment. As stated in this proposal, FOGH is developing a plan for a walkway along Thatcher Road that provides a safe path for pedestrians and bicyclists and provides as an educational experience as well.

### **4. Other Criteria**

Among other objectives for CPA projects, the *Good Harbor Gateway Project* is consistent with the following criteria: preserves scenic views; borders a scenic road; and serves as buffer for protected open space. Hopefully, it is self-evident that the project conforms exceedingly well to the evaluation criteria for the Community Preservation Act.

## **Section 7. Applicant and Partners**

## **Applicant and Partners**

### **Applicant**

The applicant, *Friends of Good Harbor, Inc.*, is a citizen-based organization dedicated to the natural, recreational, and educational uses of the expanse of land and water located along the ocean front and traversed by Thatcher Road in Gloucester, Massachusetts. FOGH's mission is to foster environmental preservation, restoration, and enhancement of the Good Harbor beach and marsh and its watershed. Representing primarily three neighborhoods abutting Good Harbor - Brier Neck, Old Nugent Farm, and Witham Street - members work on project initiatives and meet collectively as a non-profit association. FOGH is incorporated in the Commonwealth of Massachusetts as a non-profit corporation with pending status under Section 501c3 of the federal tax code. The five members of the Board of Directors are: Denton Crews, president; Dolores Mack, secretary; Colette Knowlton, treasurer; Chris Egan; and Tom Todd. The organization maintains a web site for members and the public at [www.goodharbor.org](http://www.goodharbor.org). FOGH is planning to expand its membership in 2012, concentrating initially on local outreach especially around the marsh area and East Gloucester but also throughout the city and even /beyond.

The role of the Friends of Good Harbor is as follows:

- Negotiate and obtain a reasonably priced purchase and sale agreement for the property on behalf of the prime parties
- Prepare and submit a proposal to the City for CPA funding
- Raise funding for matching funds and other costs of the project (possibly including restoration, although at a later date)
- Assist in coordinating and facilitating the planning and development process, including operational support as appropriate
- Provide continuing leadership and support for programs that enhance and benefit the Good Harbor beach, marsh, and wetlands

### **Principal Partners and Roles**

The Good Harbor Gateway Project involves several partners who are currently engaged in the planning of the project and in continuing activities. The principal parties and their roles are the City of Gloucester, the Gloucester Conservation Committee, the Gloucester Open Space and Recreation Committee, and Brierneck Realty LLC.

#### **City of Gloucester**

While the Friends of Good Harbor will have the primary role of proposer, facilitator, fund raiser, and ongoing supporter, the City of Gloucester will be the legally responsible party as ultimate owner and preserver of the property on behalf of all the parties and the general public. The role of the City of Gloucester will be:

- Assume ownership of the property for purposes of land preservation and restoration as salt marsh
- Award appropriate funding for land acquisition under the Community Preservation Act (CPA), based upon the outcome of a competition and upon recommendation of the Gloucester Community Preservation Committee

- Maintain the property as salt marsh and wetlands under the oversight of the Department of Public Works similar to other property owned by the City to ensure the protection and preservation of the land in perpetuity
- Provide guidance and direction for the project through the Community Development Department as needed

#### **Gloucester Conservation Commission**

The Gloucester Conservation Commission is also a principal party as the entity legally responsible for environmental policies and standards of restoration and preservation of marshlands and watersheds. The Conservation Commission is endorsing the Good Harbor Gateway Project with respect to land acquisition and restoration as salt marsh. The Commission is also committed to preparation and submission of a proposal for the Local Acquisitions for Natural Diversity (LAND) Grant Program of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA). The role of the Conservation Commission will be:

- Ensure the acquisition, restoration, and preservation of the property complies with environmental policies and standards established by the City and other regulatory agencies
- Initiate and oversee application for funding under the LAND Grant Program of the Executive Office of Energy and Environmental Affairs
- Provide guidance and direction for the project as needed

A letter of support by the Gloucester Conservation Commission is included in Attachment E.

#### **Gloucester Open Space and Recreation Committee**

The Gloucester Open Space and Recreation Committee has endorsed the Good Harbor Gateway Project as consistent with Open Space Plan for the City of Gloucester and a project worthy of support. The specific role of the Committee will be:

- Ensure the acquisition, restoration, and preservation of the property complies with environmental policies and standards established by the City and other regulatory agencies
- Provide guidance and direction for the project as needed

A letter of support from the Gloucester Open Space and Recreation Committee is included in Attachment E.

#### **Brierneck Realty LLC**

Brierneck Realty LLC is the owner of the property located at the intersection of Witham Street and Thatcher Road. Brierneck Realty was organized November 25, 2002, as a domestic limited liability company in the Commonwealth of Massachusetts. The resident agent and manager is James M. Grifoni, of Rolling Meadow Farm, Inc., North Andover, Massachusetts. The representative of the company, with whom FOGH has collaborated on the proposed purchase, is Steven Goodman, President of GFI Partners, in Boston, Massachusetts. The specific role of Brierneck Realty is:

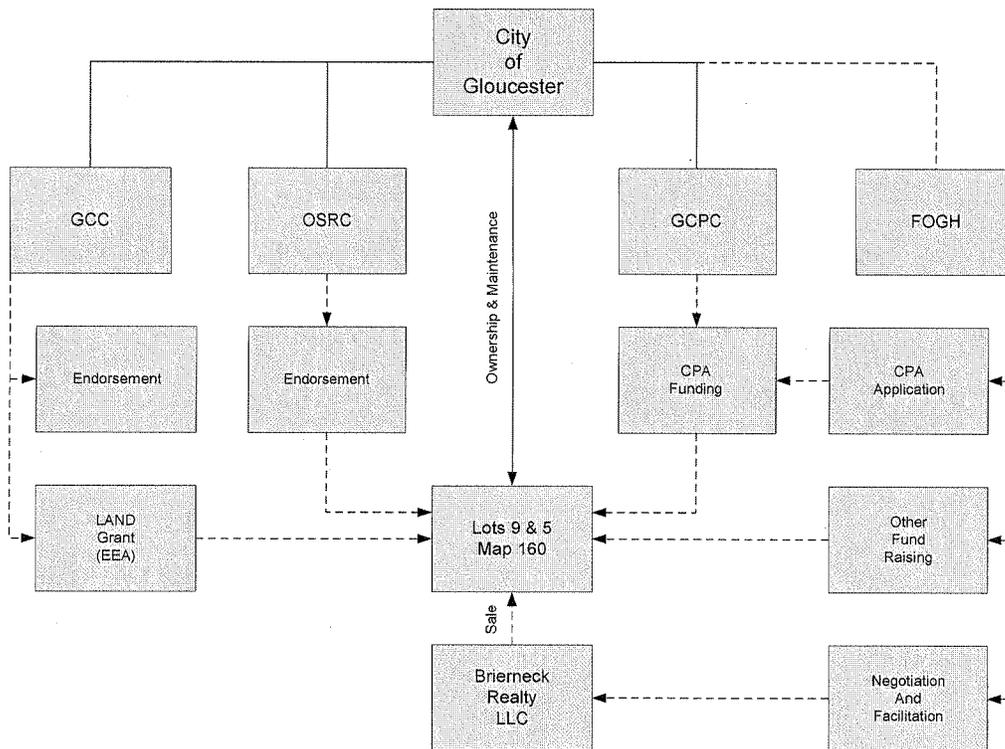
- Convey the property to FOGH or more importantly to the City of Gloucester as described in the Offer Agreement, Attachment D, and will be further prescribed in the Purchase and Sale Agreement (to be produced later)
- Contribute to the Good Harbor Gateway Project the agreed upon sum as a tax credit donation to offset the full purchase price

### Advisory and Future Partners

The Good Harbor Gateway Project has involved other partners who have been engaged in the planning of the project and are expected to have important roles in its execution. The Trust for Public Lands has agreed to provide advice to FOGH with regard to land acquisition and preservation as salt marsh on an as needed basis. In addition, the Division of Ecological Restoration, Massachusetts Department of Fish and Game, has agreed to provide advice for project planning and indicated a strong interest in further participation in developing and implementing a plan for restoration of the property to salt marsh.

### Partnership Diagram

The following is a diagram of the relationship of the principal partners engaged in supporting and implementing the Good Harbor Gateway Project.



Key: GCC = Gloucester Conservation Commission, OSRC = Open Space and Recreation Committee, GCPC = Gloucester Community Preservation Committee, FOGH = Friends of Good Harbor, EEA = Executive Office of Energy and Environmental Affairs, CPA = Community Preservation Act

## **Attachments**

## **A: Synopsis of Property Background**

The issue at 70-74 Thatcher Road began in the 1970s, when Majeed Sallah filled and partially paved the front portion of a parcel, mostly salt marsh, known as lots 5 and 9 on map 184 of the city zoning maps. An organization of abutters, the Brier Neck Beach Alliance, mounted legal opposition to the project, but Sallah won the case in a Superior Court ruling. Subsequently, a restaurant occupied the parcel until it burned and was razed.

In the late 1990s, the owner sold an option on the land for \$522,000 to James Grifoni, a developer based in North Andover. In the early 2000s, the developer announced plans to build market-rate condominiums on the site, but citizen opposition deterred the project as unlikely to be approved by the City Council. In 2003, the developer filed notice with the Massachusetts Housing and Finance Agency (MHFA) of his intention to build 23 units of mixed-income housing (six would be affordable units) under the affordable housing law, Chapter 40B of the General Laws of Massachusetts; the plan was rejected by the state as inappropriate for the site. In 2004, the plan was reduced to 12 units (three as affordable), and eligibility was certified by MHFA. However, in February 2005, the City of Gloucester Zoning Board of Appeals (ZBA) denied the developer's application for a comprehensive permit, although later recommending to reduce the project to eight units (two affordable) and dividing it into three separate buildings instead of a single building. An attempt was made to negotiate a compromise, but the ZBA rejected it in a closely divided decision in August 2006.

In February 2005, Briernack Realty, LLC (the developer) filed an appeal to the Commonwealth of Massachusetts' Housing Appeals Committee (HAC) to build 12 residential units (three affordable) in a single building. After various meetings including a remand to the ZBA in July 2006 in order to determine whether the ZBA and the developer might reach a compromise (subsequently rejected as stated above), the HAC issued a decision dated August 11, 2008, overturning the ZBA's rejection of a comprehensive permit. The decision indicated that HAC considered the issues of on-site flooding, storm-water management, off-site flooding, and emergency access as well as the regional need for low or moderate income housing and the fundability of the developer's proposal. HAC recognized the question of permitting housing near coastal zones and contributing to potential future problems resulting from environmental change but based its decision solely on the more focused issues in dispute. In the final analysis, its decision stated, "The ZBA did not meet its burden of demonstrating a valid local concern that outweighs the need for affordable housing."

In August 2008, the ZBA voted formally to appeal the order of the HAC to permit construction and authorized the City Attorney to file an appeal in the Essex County Superior Court. In November 2009, the Superior Court heard arguments by the City claiming that the developer had no right to build a state-subsidized project in a flood zone and that the project was not fundable in a flood hazard area. The court issued an opinion in December, 2009, siding with the developer. In March 2010, the ZBA authorized an appeal to overturn the Superior Court opinion, this time to the Massachusetts Appeals Court. In April, 2011, the Court rejected the claim of the City to be allowed to refuse construction. Finally, the City exercised its final option, appealing to the state Supreme Judicial Court, in June, 2011, but the appeal was denied and the project was clear to go forward with a comprehensive permit for construction.

## B. Property Appraisal



### RESTRICTED APPRAISAL REPORT

70 & 74 Thatcher Road  
Corner Witham Street and Thatcher Road  
Gloucester, MA 01930

Prepared for:  
Friends of Good Harbor  
c/o 45 Old Nugent Farm  
Gloucester, MA 01930

Report requested by:  
Denton Crews



Prepared by:  
Peter T. Vadala, MRA, RA  
VADALA REAL ESTATE APPRAISALS, INC.  
9D Dr. Osman Babson Road  
Mill Pond Professional Building  
Gloucester, MA 01930

*70 & 74 Thatcher Road,  
Gloucester, MA 01930  
Friends of Good Harbor*



Vadala Real Estate Appraisals, Inc.  
Mill Pond Professional Building  
9D Dr. Osman Babson Road  
Gloucester, MA 01930

Tel: 978-281-1111

Fax: 978-281-1569

e-mail: [appraisals@vadalarerealestate.com](mailto:appraisals@vadalarerealestate.com)

January 9, 2012

Friends of Good Harbor Beach Marsh  
45 Old Nugent Farm  
Gloucester, MA 01930

Re: 70 & 74 Thatcher Road, Gloucester, MA 01930  
Map 184 Lots 5 & 9



Dear Mr. Crews:

In compliance with your request, I have inspected the vacant site consisting of two city parcels, reviewed the plans, deeds, and relevant documents in order to render an opinion of market value of the fee simple interest as of the date of the inspection on January 2, 2012. The parcel is shown as Lots 5 & 9 on city of Gloucester Map 184 and is the same parcel as shown on property deeds recorded at the Essex South County Registry of Deeds Registered Documents 493718 and 499728 and Plan documents 16150-G (Lot 12) and 16150-J (Lot 16).



*70 & 74 Thatcher Road,  
Gloucester, MA 01930  
Friends of Good Harbor*

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Documents and a history of the site were provided by the client. The aerial views, plans, and maps are not duplicated in this report.

Market value is defined as the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- buyer and seller are typically motivated;
- both parties are well informed or well advised, and acting in what they consider their best interests;
- a reasonable time is allowed for exposure in the open market;
- payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

The restricted appraisal is communicated in a narrative format and is not so restricted as to be misleading to the reader. The intended use is to aid the client evaluate the land value relative to the proposed eight unit condominium project planned for the site. The accompanying report includes a description of the valuation methods and the data employed in their development and conclusions.

**SUMMARY OF SALIENT FACTS AND CONCLUSIONS**

**LOCATION:** 70 & 74 Thatcher Road, Gloucester, MA 01930

**LEGAL DESCRIPTION:** South Essex Registry of Deeds Reg. Doc. 49728 and Doc. 493718  
City Map 184 Lots 5 & 9  
Plans: 16150-G (Lot 12) and 16150-J (Lot 16)

**OWNER OF RECORD:** Briemeck Realty LLC  
Manager: Rolling Meadow Farm, Inc.  
James M. Grifoni, President

**DESCRIPTION:** Vacant Land, approximately 1.5 acres upland or filled, remaining 4.5 acres marsh

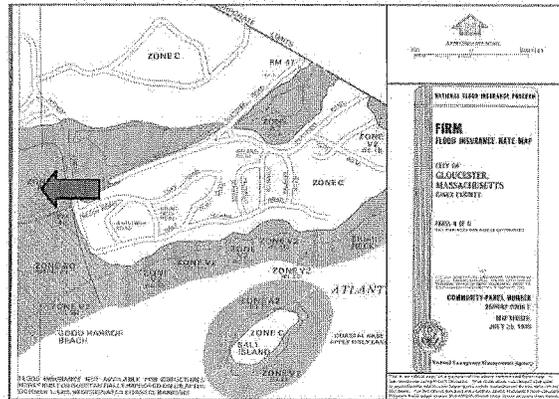
**LOT AREA:** 5.94+/- Acres

**PROPERTY RIGHTS APPRAISED:** Fee Simple

**HIGHEST AND BEST USE:** Appraised as is, land for proposed development

**ZONING:** Extensive Business (EB) and Residential R-10 (Formerly R-3) Medium Density Residential District

**FLOOD ZONE:** Zone A2, Community Flood Map 250082, Panel 0006E, dated 7/20/98



*70 & 74 Thatcher Road,  
Gloucester, MA 01930  
Friends of Good Harbor*



VALUES INDICATED:

Sales Comparison Approach:	\$720,000
Income Capitalization Approach:	N/A
Cost Approach	N/A

FINAL VALUE OPINION: \$720,000

DATE OF VALUE:	January 2, 2012
DATE OF INSPECTION:	January 2, 2012
DATE OF REPORT:	January 9, 2012

*70 & 74 Thatcher Road,  
Gloucester, MA 01930  
Friends of Good Harbor*

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**D. Offer to Purchase**

## Offer to Purchase Real Estate

TO: Briarneck Realty, LLC

DATE: March 10, 2012

RE: Two parcels of land located at 70-74 Thatcher Road, Gloucester, Essex County, Massachusetts, the first shown as document 499728 on Certificate of Title C83191 in the Essex South Registry Department of the Land Court and the second shown as document 493718 on Certificate of Title C82755 in the Essex South Registry Department of the Land Court.

The undersigned Buyer offer to purchase from you the aforesaid property (hereinafter "the Property") subject to the following terms and conditions:

1. Buyer to pay for the Property the sum of \$720,000, of which:
  - (a) \$100 shall be paid herewith as a good faith deposit to validate this Offer to Purchase Real Estate (hereinafter "Offer");
  - (b) \$24,900 shall be paid as an additional deposit no later than June 30, 2012;
  - (c) You shall grant Buyer a \$125,000 credit at closing; and
  - (d) \$570,000 shall be paid upon delivery of the Deed.
2. This Offer is good until 5 p.m. March 13, 2012, at or before which time a copy of this Offer must be executed by you and returned to Buyer or else this Offer shall be void and of no force or effect, and any and all monies paid pursuant to this Offer shall be returned to Buyer forthwith.
3. The Closing shall take place no later than March 10, 2013, at 10 a.m. This date may be extended by mutual written agreement.
4. If this Offer is accepted by you, then the obligation of Buyer to purchase the Property pursuant to this Offer is subject to and conditioned upon the following:
  - (a) Execution by both parties on or before June 30, 2012, of a mutually satisfactory Purchase and Sale Agreement setting forth all terms and conditions of this transaction, which shall then become the Agreement of, and binding upon, the Parties hereto;
  - (b) The Buyer may assign its rights to the City of Gloucester or any of its agencies at any time;

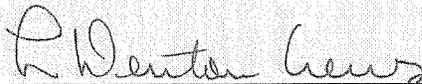
- (c) The transaction is contingent on funding from state and city grants. If such funding is not received by Buyer by January 1, 2013, this Offer shall be null and void, without recourse or penalty by either party;
- (d) Buyer agrees to support your efforts to toll permit deadlines until this transaction is either complete or terminated;
- (e) Neither party shall record this Offer in the Registry of Deeds.

Should the foregoing conditions not be satisfied subsequent to the acceptance of this Offer, this Agreement shall terminate, you shall refund any and all deposits paid, and neither Party shall have any further recourse as against the other.

- 5. In the event that Buyer shall fail to fulfill any obligation under this Offer after same has been accepted by you, said good faith deposit shall immediately become your property without further liability by Buyer to you.
- 6. Time is of the essence of this Offer.

Executed under seal by our hands.

**BUYER:**  
**FRIENDS OF GOOD HARBOR, INC.**

  
By its President, L. Denton Crews

  
By its Treasurer, Colette M. Knowlton

Dated: *March 12, 2012*

**ACCEPTED BY SELLER:**  
**BRIERNECK REALTY, LLC**

\_\_\_\_\_  
By its sole manager,  
Rolling Meadow Farm, Inc.  
James M. Grifoni,  
President and Treasurer

Dated:

## **E. Letters of Support**



CITY OF GLOUCESTER  
Conservation Commission  
3 Pond Road Gloucester MA 01930  
978-281-9781  
f 978-281-9779

March 12, 2012

To the Community Preservation Committee,

This is a letter of support for the Friends of Good Harbor's application for a Conservation Preservation Grant to acquire the six acre parcel on the corner of Thatcher and Witham Street, commonly known as Briernneck Crossing.

The parcel is certainly worthy of protection. The parcel contains a 1.5 acre buildable area that has been in imminent danger of being developed. The condominiums originally proposed for this site generated years of City opposition that eventually led to a series of protracted litigation. A final ruling by the Massachusetts Supreme Court in June 2011 has allowed the project to go forward. Protecting this parcel is a preferred alternative to the condominium development.

In addition to the buildable upland portion, the site contains acres of salt marsh contiguous with the Good harbor salt marsh system that supports a plethora of coastal and inland wildlife. The protection of this parcel upholds the Commission's goals of protecting Gloucester's valuable resource areas.

The Commission plans to join in the effort to protect Briernneck Crossing and apply for the Massachusetts Local Acquisitions for Natural Diversity (LAND) Grant as soon as the 2013 grant round begins.

The Commission appreciates the work of the Friend's of Good Harbor in preserving and enhancing this valuable corner of Gloucester.

Regards,

Lisa Press  
On Behalf of the Conservation Commission

City Hall  
Nine Dale Avenue  
Gloucester, MA 01930



CITY OF GLOUCESTER

Open Space and Recreation Committee

March 15, 2012

Sandra Dahl Ronan and J. J. Bell, co-chairs  
Community Preservation Committee  
City Hall  
9 Dale Avenue  
Gloucester MA 01930

Dear Sandy and J.J.:

This letter is submitted in support of the application by the Friends of Good Harbor, Inc. to secure funding under the Community Preservation Act for the acquisition of the property at 70-74 Thatcher Road in Gloucester sometimes known as Briarneck Crossing.

At our Jan. 12 meeting, the Open Space and Recreation Committee members were all impressed by the proposal and indicated the acquisition of the marsh and upland adjacent to Good Harbor Beach is consistent with the City's Open Space and Recreation Plan goals to create continuous open spaces. The acquisition will also be an important step in preserving an area of critical environmental concern and could further the creation of a path along Thatcher Road to advance the "Green Path Network" proposed in the OSR Plan.

We wholeheartedly support the application of the Friends of Good Harbor, Inc.

Very truly yours,

To be Endorsed at the March 15, 2012 OSRC

John McElhenny, Chair  
Gloucester Open Space and Recreation  
Committee



FRIENDS OF GOOD HARBOR, INC.

P.O. BOX 3145  
GLOUCESTER, MASSACHUSETTS 01931

[WWW.GOODHARBOR.ORG](http://WWW.GOODHARBOR.ORG)

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March 13, 2012

Sandra Dahl Ronan and J.J. Bell, co-chairs  
Community Preservation Committee  
City Hall  
9 Dale Avenue  
Gloucester, MA 01930

Dear Sandy and J.J.:

This letter accompanies our proposal for Community Preservation Act funding for the *Good Harbor Gateway Project* and conveys the commitment of the Friends of Good Harbor, Inc., to undertake a fund raising program in order to secure \$50,000 in contributions to the project. We also are committed to securing additional funding in the amount of \$75,000 through the preparation and submission of a proposal for a foundation grant. Further, we are offering the Conservation Agent for the Gloucester Conservation Commission our assistance in the preparation of a proposal for funding by the Massachusetts Executive Office of Energy and Environmental Affairs' LAND Grant Program in the amount of \$250,000. With the award of \$250,000 by the City of Gloucester's Community Preservation Act, the total cost of the project can be achieved.

We are further committed to working with the City in order to ensure that the property is conveyed to the City and held for public benefit in perpetuity. And as a community organization committed to the Good Harbor beach, marsh, and wetlands, we intend to work diligently on projects to monitor and enhance this critical and valuable environmental resource.

Sincerely,

Denton Crews  
President of the Board of Directors

LAW DEPARTMENT

MEMORANDUM

TO: Carolyn Kirk, Mayor

FROM: Suzanne P. Egan *SPE*  
General Counsel

RE: Stormwater Regulations

DATE: July 2, 2012

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Please find attached two documents from the Director of the Department of Public Works to be forwarded to the City Council through the Mayor's Report. Both documents pertain to the City of Gloucester's obligations to enact regulations to insure compliance with the Clean Water Act.

The Non-Storm Water Discharge Ordinance is proposed to be enacted as a part of the City's Utilities ordinance. It regulates discharges into the sewer and stormwater collection system.

The Fats, Oil and Grease Regulation is submitted pursuant to Section 7-16 of the City Charter for your review. Please file notice of the proposed regulations with the City Council for approval.

Enclosures

Cc Michael Hale, DPW Director

**CHAPTER 23 – UTILITIES**  
**ARTICLE V**  
**Non-Storm Water Discharges**

**Sec. 23-124. Purpose.**

- A. Increased and contaminated storm water runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.
- B. Regulation of illicit connections and discharges to the municipal storm drainage system is necessary for the protection of the City's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.
- C. The objectives of Section 23-124 are:
  - (1) To prevent pollutants from entering the City's municipal separate storm sewer system (MS4);
  - (2) To prohibit illicit connections and unauthorized discharges to the MS4;
  - (3) To require the removal of all such illicit connections;
  - (4) To comply with state and federal statutes and regulations relating to storm water discharges; and
  - (5) To establish the legal authority to ensure compliance with the provisions of Section 23-124 through inspection, monitoring, and enforcement.

**Sec. 23-125. Definitions.**

**AUTHORIZED ENFORCEMENT AGENCY** – The Director of the Department of Public Works, its employees, officers, or agents are designated to enforce Article V Non-Storm Water Discharges.

**ORDINANCE** – Refers to Chapter V, Storm Water Management Ordinance of the “Ordinances of the City Gloucester”.

**CLEAN WATER ACT** – The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

**DISCHARGE OF POLLUTANTS** – The addition from any source of any pollutant or combination of pollutants into the municipal storm drainage system or into the waters of the United States or Commonwealth of Massachusetts from any source.

**GROUNDWATER** – Water beneath the surface of the ground.

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

**ILLCIT DISCHARGE** — Direct or indirect discharge to the municipal storm drainage system that is not composed entirely of storm water, except as exempted in §23-131. The term does not include a discharge in compliance with a NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to §23-131.

**IMPERVIOUS SURFACE** — Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks and rooftops.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAINAGE SYSTEM** — The system of conveyances designed or used for collecting or conveying storm water, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT** — A permit issued by United States Environmental Protection Agency or jointly with the Commonwealth of Massachusetts that authorizes the discharge of pollutants to waters of the United States.

**NON-STORM WATER DISCHARGE** — Discharge to the municipal storm drainage system not composed entirely of storm water.

**OWNER** — A person with a legal or equitable interest in property.

**PERSON** — An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth of Massachusetts or the federal government, to the extent permitted by law, and any officer, employee or agent of such person.

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

A. Paints, varnishes and solvents;

- B. Oil and other automotive fluids;
- C. Non-hazardous liquid and solid wastes and yard wastes;
- D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- E. Pesticides, herbicides and fertilizers;
- F. Hazardous materials and wastes; sewage, fecal coliform and pathogens;
- G. Dissolved and particulate metals;
- H. Animal wastes;
- I. Rock, sand, salt, soils;
- J. Construction wastes and residues; and
- K. Noxious or offensive matter of any kind.

PROCESS WASTEWATER — Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product or waste product.

STORM WATER — Storm water runoff, snowmelt runoff, and surface water runoff and drainage.

SURFACE WATER DISCHARGE PERMIT — A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

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

WASTEWATER — Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

WATERCOURSE — A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

WATERS OF THE COMMONWEALTH OF MASSACHUSETTS — All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, costal waters, and groundwater.

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

**Sec. 23-126. Applicability.**

Section 23-124 et seq. shall apply to flows entering the municipal storm drainage system.

**Sec. 23-127. Authority.**

Section 23-124 et seq. is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to G.L. c. 83, §§ 1, 10, and 16, as amended by St. 2004, c. 149, §§ 135-140, and the regulations of the federal Clean Water Act found at 40 CFR 122.34

**Sec. 23-128. Responsibility for Administration.**

The Authorized Enforcement Agency shall administer, implement and enforce Section 23-124 et seq., and any rules and regulations adopted thereunder. Any powers granted to or duties imposed upon the Authorized Enforcement Agency may be delegated in writing by the Authorized Enforcement Agency to employees or agents of the Authorized Enforcement Agency.

**Sec. 23-129. Regulations.**

The Authorized Enforcement Agency may promulgate rules and regulations to effectuate the purposes of Section 23-124 et seq. Failure by the Authorized Enforcement Agency to promulgate such rules and regulations shall not have the effect of suspending or invalidating Section 23-124 et seq.

**Sec. 23-130. Prohibited activities.**

- A. Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-storm water discharge into the municipal separate storm sewer system (MS4), into a watercourse, or into the waters of the Commonwealth of Massachusetts.
- B. Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drainage system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- C. Obstruction of Municipal Storm Drainage System. No person shall obstruct or interfere with the normal flow of storm water into or out of the municipal storm

drainage system without prior written approval from the Authorized Enforcement Agency.

**Sec. 23-131. Exemptions.**

- A. Discharge or flow resulting from fire fighting activities.
- B. The following non-storm water discharges or flows are exempt from the prohibition of non-storm waters provided that the source is not a significant contributor of a pollutant to the municipal storm drainage system:
  - (1) Waterline flushing;
  - (2) Flow from potable water sources;
  - (3) Springs;
  - (4) Natural flow from riparian habitats and wetlands;
  - (5) Diverted stream flow;
  - (6) Rising groundwater;
  - (7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
  - (8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
  - (9) Discharge from landscape irrigation or lawn watering;
  - (10) Water from individual residential car washing;
  - (11) Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
  - (12) Discharge from street sweeping;
  - (13) Dye testing, provided verbal notification is given to the Authorized Enforcement Agency prior to the time of the test;
  - (14) Non-storm water discharge permitted under a NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
  - (15) Discharge for which advanced written approval is received from the Authorized Enforcement Agency as necessary to protect public health, safety, welfare or the environment.

**Sec. 23-132. Emergency suspension of municipal storm drainage system access.**

The Authorized Enforcement Agency may suspend municipal storm drainage system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement

Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

**Sec. 23-133. Notification of spills.**

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the Commonwealth of Massachusetts, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Fire and Police Departments, Board of Health, and the Department of Public Works. In the event of a release of non-hazardous material, the reporting person shall notify the Authorized Enforcement Agency no later than the next business day. The reporting person shall provide to the Authorized Enforcement Agency written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

**Sec. 23-134. Enforcement.**

The Director of the Department of Public Works or appointed designee shall enforce Section 23-124 et seq. regulations, orders, violation notices, and enforcement orders and may pursue all civil and criminal remedies for such violations.

- A. Civil Relief. If a person violates the provisions of Section 23-124 et seq. regulations, permit, notice, or order issued there under, the Authorized Enforcement Agency may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- B. Orders.
  - (1) The Authorized Enforcement Agency or an authorized agent of the Authorized Enforcement Agency may issue a written order to enforce the provisions of Section 23-124 et seq. or the regulations there under, which may include:
    - (a) Elimination of illicit connections or discharges to the MS4;
    - (b) Performance of monitoring, analyses, and reporting;
    - (c) That unlawful discharges, practices, or operations shall cease and desist;  
and
    - (d) Remediation of contamination in connection therewith.

- (2) If the Authorized Enforcement Agency determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the City may, at its option, undertake such work, and expenses thereof shall be charged to the violator.
- (3) Within thirty (30) days after completion by the City of all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the City, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Authorized Enforcement Agency within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Authorized Enforcement Agency affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, 57 after the thirty-first day at which the costs first become due.
- C. Criminal Penalty. Any person who violates any provision of Section 23-124 et seq. regulation, order or permit issued there under, shall be punished by a fine of not more than \$200. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- D. Noncriminal Disposition. As an alternative to criminal prosecution or civil action, the City may elect to utilize the noncriminal disposition procedure set forth in G.L. Ch. 40, § 21D and adopted by the City as a general Ordinance in which case the Authorized Enforcement Agency of the City shall be the enforcing person. The penalty for the 1st violation shall be a written warning. The penalty for the 2nd violation shall be \$50. The penalty for the 3rd violation shall be \$100. The penalty for the 4th and subsequent offenses shall be \$200. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- E. Entry to Perform Duties Under Section 23-124 et seq. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Authorized Enforcement Agency, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this Ordinance and regulations and may make or cause to be made such examinations, surveys or sampling as the Authorized Enforcement Agency deems reasonably necessary.

- F. Appeals. The decisions or orders of the Authorized Enforcement Agency shall be final. Further relief shall be to a court of competent jurisdiction.
- G. Remedies Not Exclusive. The remedies listed in Section 23-124 et seq. are not exclusive of any other remedies available under any applicable federal, state or local law.

**Sec. 23-135. Severability.**

The provisions of this Ordinance are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**Sec. 23-136. Transitional provisions.**

Residential property owners shall have 90 days from the effective date of Section 23-124 of this Ordinance to comply with its provisions provided good cause is shown for the failure to comply with Section 23-124 during that period.

LAW DEPARTMENT

MEMORANDUM

TO: Carolyn Kirk, Mayor

FROM: Suzanne P. Egan *SPE*  
General Counsel

RE: Stormwater Regulations

DATE: July 2, 2012

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Please find attached two documents from the Director of the Department of Public Works to be forwarded to the City Council through the Mayor's Report. Both documents pertain to the City of Gloucester's obligations to enact regulations to insure compliance with the Clean Water Act.

The Non-Storm Water Discharge Ordinance is proposed to be enacted as a part of the City's Utilities ordinance. It regulates discharges into the sewer and stormwater collection system.

The Fats, Oil and Grease Regulation is submitted pursuant to Section 7-16 of the City Charter for your review. Please file notice of the proposed regulations with the City Council for approval.

Enclosures

Cc Michael Hale, DPW Director

# REGULATIONS FOR FATS OIL AND GREASE PROGRAM

## INTRODUCTION

### 1.0 AUTHORITY

This regulation establishes the City of Gloucester Fats, Oil and Grease (FOG) Control Program as authorized by M.G.L. chapter 83, sections 10 and 13, City Ordinance sections 23-37 (d)(7) and 23-40 and as required by Massachusetts Department of Environmental Protection. All food-service establishments are required to obtain and maintain a FOG Sewer Discharge Permit from the City of Gloucester Department of Public Works (DPW).

### 2.0 PURPOSE

The purpose of this program is to establish prescribe rules and regulations regarding the use of the city sewer system to prevent the entrance of any substance which may tend to interfere with the flow of sewerage or the proper operation of the sewer system and the treatment and disposal works. The program regulates facilities discharging FOG into the City sewer collection system

### 3.0 DEFINITIONS

Authorized Inspector – A duly authorized agent of the City of Gloucester acting through the Director of the Department of Public Works or the Board of Health who is responsible for inspecting and verifying the proper maintenance of FOG control systems in food-serving establishments and who bears the proper credentials.

Collection System – The City sewer system including all piping and appurtenances associated with sewer tributaries, main interceptor, combined sewer overflows, and pump stations that discharge untreated wastewater to either the Water Pollution Control Facility or ocean outfalls.

Emulsifier – Any added chemicals or solutions to a FOG Control System that promotes FOG particles to dissolve in wastewater and pass through to the sewer collection system.

Fats, Oil, and Grease (FOG) – Fats, oil, and grease of an animal or vegetable origin generated from food preparation, food service, food processing, food cleanup activities or of a petroleum/mineral oil based origin from industrial activities that is discharged in wastewater.

Food-Serving Establishment (FSE) – Any facility that prepares, serves, or processes food on a regular basis for commercial use or sale including but not limited to restaurants, cafeterias, hotels, hospitals, institutional facilities, factories, clubs, bars where food is prepared and served, and all commercial kitchens; food and meat packing and processing establishments; super markets, bakeries and others that generate FOG that may be introduced into the City collection system.

FOG Control Program Coordinator– An authorized agent of the City of Gloucester designated by

the Director of the Department of Public Works as the FOG Control Program Coordinator. The FOG Control Coordinator shall also be a authorized city Inspector.

FOG Control System – A Grease Interceptor or Grease Trap designed according to the Massachusetts State Plumbing Code 248 CMR 1 0.00 to continually remove FOG components from effluent discharge to the City sewer collection system.

FOG Generator – Any commercial establishment, industry, or resident that creates FOG that has the potential to be discharged with wastewater into the sewer collection system or into septic or storage tanks whose contents are delivered or has the potential to be delivered to the Water Pollution Control Facility.

Grease Interceptor – A large, partitioned collection chamber made of various materials that removes FOG by trapping floatable and settleable solids so they can be removed from wastewater streams prior to being discharged to the City collection system whose rated flow exceeds 50 gallons per minute (GPM) and as defined in the state plumbing code.

Grease Trap – A collection chamber installed indoors at a food-service facility to remove undissolved and/or suspended waste FOG from wastewater streams prior to being discharged to the City collection system whose rated flow does not exceed 50 gallons per minute (GPM) and as defined in the state plumbing code.

Newly constructed or expansion of food-serving establishment – Any food-serving establishment or existing food-serving establishment that has undergone significant improvements or expansion after the adoption of the FOG Control Program Regulations, including any food establishment that increases its seating capacity or alters its kitchen facility in any way.

#### 4.0 GENERAL PROVISIONS

- 4.1 This program is administered by the FOG Control Coordinator as designated by the Director of the Department of Public Works (DPW) and their designee, the DPW Environmental Engineer and Manager of the Water Compliance Office. An Authorized Inspector may at any time require the installation, upgrade, and/or relocation of a FOG control system as it may deem necessary to maintain any building sewer pipe, lateral sewer pipe, or main sewer interceptor free from obstruction caused by waste FOG discharged in an effluent wastewater stream from any food-serving establishments.
  - (a) Food-serving establishments shall be responsible for installing and maintaining FOG control systems.
- 4.2 Waste FOG shall not be disposed of into the sanitary sewer. All FOG must be collected in an approved container or FOG control system and stored in an approved location on the premise. FOG waste must be disposed of by an approved licensed hauler.
- 4.3 These regulations may be amended from time to time. Food-serving establishments shall

also comply with all other regulations of the City pertaining to the use, maintenance, design, and installation of FOG control systems. These regulations shall be in addition to other rules and regulations of the City including those of the Board of Health or the Health Department Regulations concerning FOG .

## 5.0 PERMITTING

### 5.1 FOG Sewer Discharge Permit Application

- (a) All food-serving establishments shall obtain a FOG Sewer Discharge Permit.
  - i) This includes all new and existing food-serving establishments
  - ii) Failure to apply for a FOG Sewer Discharge Permit shall result in the initiation of enforcement proceedings by an authorized agent.

### 5.2 Application approval

- (a) A FOG Sewer Discharge Permit shall issue after an agent inspects the establishment's collection system and certifies that it complies with these regulations.
  - i) All applicants have their FOG control system(s) inspected by an authorized agent prior to operating an establishment. For existing establishments, an inspection must occur within 45 days of the enactment of this regulation or 30 days prior to the expiration of an existing permit.
  - ii) Cancellation of an inspection will delay the permit approval process and may result in City action as defined in Section 5 of this document.
- (b) All FOG Sewer Discharge permits will be issued for three years and must be posted visibly onsite at the permitted establishment.
  - i) Permitted establishments must re-apply for a FOG Sewer Discharge Permit at least one-month prior to the expiration of an existing permit.
  - ii) No food-serving establishment may discharge wastewater containing FOG upon expiration of a FOG Sewer Use Discharge Permit
- (c) Variances
  - (i) A Variance to the design and maintenance requirements contained herein may be requested when compliance creates an undue hardship or if an existing grease trap or interceptor is proven sufficient. Hardships caused by space availability, minimal FOG production, may be grounds for a variance. Financial hardship is not proper grounds for a variance request. A variance may be requested by completing the proper application and payment of any necessary fees. Variances may be applied for: (a) adjustment to operational

and maintenance frequencies; (b) the type of pretreatment system required; or (c) a time extension to correct a violation. Documentation such as maintenance logs, receipts for service and repair, and letters from licensed plumbers and contractors may be required for any request to be considered.

- (ii) After review of the documentation, the authorized City inspector will issue to the Food Handling Facility a written decision regarding the Variance request. The inspector may request further study pursuant to or, as a condition of the Variance. Certain conditions may be imposed by the authorized city inspector for facilities that have received a Variance.
- iii) If a Variance is granted and the User subsequently increases anticipated food service production or, the authorized City inspector later determines that the discharge adversely impacts the sanitary sewer collection system or treatment works, the Variance may be revoked.
- (d) Exemptions. The City may evaluate FOG program exemption requests and grant or deny them on the basis of FOG generation potential; however, if conditions change the Facility must notify the City or its Agent of the operational change. The City or Agent has the right to periodically inspect Facilities and assess if operational FOG generation changes have been made independent of any Facility notification. The FOG Control Program Coordinator may also issue an exemption if an establishment can show that it has been incorrectly classified. A written request must be submitted to the FOG Control Coordinator followed by an on-site inspection by the FOG Control Program Coordinator to assess the grounds on which the exemption is requested. The Water Compliance Office and FOG Control Program Coordinator may also issue an exemption if an establishment can show that it has been incorrectly classified. A written request must be submitted to the FOG Control Coordinator followed by an on-site inspection by the FOG Control Program Coordinator to assess the grounds on which the exemption is requested

## 6.0 DESIGN AND INSTALLATION OF FOG CONTROL SYSTEMS

6.1 Required installations. The following facilities with wastewater discharges to the City collection system are required to install FOG control systems.

- (a) All existing food-serving establishments without an installed FOG control system that conforms to these regulations or an establishment that has an existing system which is in compliance with all provisions of 248 CMR 10.00 but no longer sequesters enough FOG to be in compliance with the Gloucester Sewer Use Ordinance Sec. 23-37(d)(7).
- (b) All new food-serving establishments.

- (c) All newly renovated food-serving establishments that remodel or expand the facility greater than 30% of its premises or expends more than \$100,000 on building renovations during a calendar year.

6.2 Design Specifications. The design and installation of all FOG systems with wastewater discharges to the City collection system must conform to the Massachusetts State Plumbing Code (MA SPC), 248 CMR 10.00-10.09.

- (a) Sizing, Testing, and Rating

- i) Grease traps and interceptors shall not be installed unless sized, tested, and certified according to PDI-G101 or ASME A112.14.3 or ASME A112.14.4.
- ii) Grease traps and interceptors must bear the certification seal of the Plumbing and Drainage Institute (P.D.I.) or AMSE. The City may authorize or require the use of alternate design traps and interceptors in accordance with 248 CMR 3.04(2).

- (b) Capacity

- i) Installed grease traps and interceptors shall have a grease retention capacity of not less than two pounds of grease for each GPM of flow.
- ii) The interceptor shall have a rated capacity of no less than 40% of the individual fixture capacity in gallons.

- (c) Flow Control Device

- i) Grease traps and interceptors shall be equipped with flow control devices according to 248 CMR 10.00-10.09. The flow control device is designed to regulate the flow and discharge rate of waste water through the trap or interceptor.
- ii) A flow control device is required for interceptor/separators that are designed to provide a retention capacity of 30 minutes or more.

- (d) Installation of Sample Port(s) located immediately downstream of the FOG control system (interceptor/trap) may be required by an authorized inspector at any time to monitor effluent discharges to ensure compliance with general permit requirements and this regulation.

- (e) Discharge Limitation

- i) Fats, oil and grease concentrations in effluent discharged from grease traps and interceptors to the collection system shall not exceed 100mg/l.

## 7.0 MAINTENANCE AND DOCUMENTATION PROCEDURES

7.1 Grease and accumulated solids shall be removed from traps and interceptors and disposed of in accordance with applicable Federal, State and Local requirements by the owner or his/her agent.

- (a) Grease interceptors must be fully emptied in accordance with general permit requirements.
  - i) Pumping must remove the entire contents of the separation chamber without returning the pumped contents back into the interceptor.
  - ii) Flow control valves must be closed during the cleaning procedure.
- (b) Grease interceptors must be cleaned in accordance with general permit requirements during a scheduled emptying procedure
  - i) All baffles must be removed, cleaned, and rinsed.
  - ii) The entire contents of the interceptor must be cleaned and rinsed.
  - iii) All baffles must be rinsed and replaced back into the interceptor tank.
- (c) Grease interceptors must be fully emptied and cleaned in accordance with general permit requirements.
- (d) Outdoor FOG interceptors and disposal devices/containers must be cleaned and maintained in accordance with general permit requirements as established by the Fog coordinator or authorized city inspector.
- (e) The use of emulsifiers is prohibited
  - i) Emulsifiers are chemicals, liquids or agents of any type used for the primary purpose of emulsification and separation of grease that by formula allow grease to be transferred or conveyed from the trap or interceptor to the drainage system are prohibited.

A laminated sign shall be stenciled on or in the immediate area of the grease trap or interceptor in letters one-inch high in accordance with 248 CMR 10.00. The sign shall state the following in exact language: "IMPORTANT This grease trap/interceptor shall be inspected and thoroughly cleaned on a regular and frequent basis. Failure to do so could result in damage to the piping system, and the municipal or private drainage system(s)."

## 7.2 Sampling

- (a) FOG control devices may be sampled at the discretion of an inspector.

- i) Sampling routines will be coordinated with the FOG control coordinator and are subject to change.
- ii) An inspector may require an establishment to perform self sampling if it is deemed necessary to ensure compliance with general permit requirements and the sewer use ordinance.

### 7.3 Documentation and Recordkeeping

- (a) All grease interceptor and trap cleaning events must be recorded using the “FOG Control System Maintenance Log” and must include the following information:
  - i) Date, time, and type of pumping event.
  - ii) Name of hauling company and driver.
  - iii) Volume of removed material.
  - iv) Destination of removed/hailed material.
  - v) Signature of food-serving establishment authorized representative and employee conducting cleaning event.
  - vi) Receipts from city approved haulers from pumping/cleaning and disposal.
- (b) All pumping and hauling events must be recorded using the “Fog control system maintenance log”.
- (c) All receipts from City-approved haulers from pumping events must be kept onsite for three years from date of issuance.
- (d) Current copies of the FOG Control System Maintenance Log must be kept onsite and readily available to any Authorized City Inspector for up to three years.
- (e) All updated cleaning, pumping, and hauling documentation must be sent to the FOG Program Coordinator in accordance with general permit requirements established by the FOG Program Coordinator.

## 8.0 ENFORCEMENT AND INSPECTION

- 8.1 Under the Authority of Gloucester Code of Ordinances Section 23.40, the Authorized City Inspectors shall have the authority to:
  - (a) Review FOG Control System Maintenance Logs for all FOG control systems at all food-serving establishments as part of their regular inspections procedures.
    - i) Report to the FOG coordinator any incomplete maintenance logs or failure to update logs.
  - (b) Visually inspect all FOG control systems for signs of failure, improper use and improper design or installation.

- (c) Notify the Plumbing Inspector of any observations of or potential for non-compliance with the use, design, and installation requirements defined in this Ordinance.
- (d) Use oil-soluble dyes to identify (by color) the discharge of FOG into the City sewer collection system in order to determine if an establishment is operating a failing or non-compliant FOG control system.
- (e) Order the suspension of a FOG Sewer Discharge Permit or a permit to operate a food-serving establishment or one or more operations within the establishment for any of the following violations:
  - ii) Repeated or serious violations of these regulations.
  - iii) Interference with the duties of an Authorized City Inspector or any other City Official.
  - iv) Failure to maintain required records such as FOG Control System Maintenance Log or the FOG Control system pumping and hauling receipts
  - v) Keeping or providing false or misleading information to Authorized City Inspectors or on required records or documents required by this regulation.
- (f) The effective date and length of all suspensions will be determined by the FOG Control Program Coordinator. Two (2) or more violations of a FOG Sewer Discharge Permit may result in the revocation of the permit and the establishment's permit to operate as a Licensed Food Service Establishment. In order to be deemed back in compliance an inspection of the violating establishment's FOG control system by an authorized city inspector must be conducted and subsequently found to be in-compliance.
- (g) Owners of food-serving establishments shall be given written notice of any violations, suspensions, and revocations of FOG Sewer Discharge Permits which will specify the nature, time, and date of the infraction and required upgrades, maintenance, or preventative measures to attain compliance.
- (h) Owners receiving a violation or suspension may request a hearing before the Board of Health for food service licensing. Requests must be in writing and received at the office of the Health Department within seven (7) days of receiving the notice of the infraction.

9.0 FINES AND PENALTIES

9.1 Violations

- (a) Any violation of any section of this regulation may be punished either criminally

or civilly. The following fines and civil penalties payable to the City of Gloucester shall be imposed pursuant to M.G.L. chapter 83 section 10 as follows:

- i) First offense - \$100
  - ii) Second offense - \$250
  - iii) Third offense - \$1000
- (b) Upon a third violation the FOG discharge permit will be suspended until further notice.
- i) Continued FOG discharge to City sewers after a FOG Sewer Discharge Permit has been suspended will result in fines of \$1000 for every instance.
- (c) Any establishment violating any section of these regulations shall be liable to the City of Gloucester for any loss, expense, or damage, including consequential damage, caused by such violation.
- (d) The City of Gloucester may enforce these regulations by any and all civil and equitable procedures.
- (e) Failure to pay any fines for violations to any section of these regulations 30 days after receiving notice of said violation and fee shall result in immediate suspension of the establishment's FOG Sewer Discharge Permit.
- i) Failure to pay enforced fines beyond this limitation may result in the revocation of the establishment's Food Service License and any permits or rights held by the establishment to operate in the City of Gloucester.

#### 10.0 FEES

10.1 The FOG wastewater discharge permit fee shall be paid by the applicant in an amount of fifty dollars (\$50.00). Payment of permit fees must be received by the city prior to issuance of either a new permit or a renewed permit. A permittee shall also pay any delinquent invoices in full prior to permit renewal.

10.2 A variance fee shall be paid by the applicant in an amount of twenty five dollars (\$25.00). Payment of variance fees must be received by the city prior to issuance of any variance to general permit requirements. A permittee shall also pay any delinquent invoices in full prior to issuance of any variances to general permit requirements. The variance fee covers any costs to the city in the processing and evaluation of variance requests as stated under section 2, subsection C of this ordinance.

- (a) Any variance request requiring the approval of the State Plumbing Board will be exempt from the fee.