

16.6

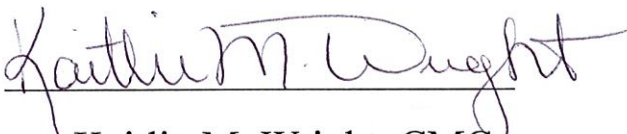
Document # 29-E

Order- that the City Council on behalf of the City votes to authorize the Mayor to acquire, purchase, take by eminent domain or otherwise the land including 41.09 ± acres known as DiBitetto Family Land property off West Hadley Road, Merrimac, MA shown on the plan entitled "Plan of Land Merrimac Assessors Map 80 Lots 1-12, 1-12B, 1-13A, 1-12A, 1-6A Off Hadley Road & Route 108 Merrimac, MA 01860"

IN CITY COUNCIL: December 16, 2025

ORDER APPROVED

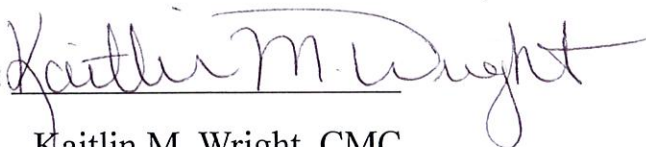
7 YEAS, 0 NAYS, 4 ABSENT

Attest: 
Kaitlin M. Wright, CMC
City Clerk

In City Council: December 16, 2025

Order Approved

**** THIS VOTE REQUIRED A 2/3 MAJORITY AND THUS, WILL NEED TO BE REVOTED ON JANUARY 13, 2026**

Attest: 
Kaitlin M. Wright, CMC
City Clerk

MELINDA E. BARRETT
MAYOR



CITY OF HAVERHILL
MASSACHUSETTS

5.3

CITY HALL, ROOM 100
FOUR SUMMER STREET
HAVERHILL, MA 01830
PHONE 978-374-2300
FAX 978-373-7544
MAYOR@HAVERHILLMA.GOV
WWW.HAVERHILLMA.GOV

December 12, 2025

HAVERHILL CITY CLERK DEC 12/25 9:03

To: City Council President Thomas J. Sullivan and Members of the
Haverhill City Council

From: Mayor Melinda E. Barrett

Re: Order To Appropriate And Authorize Taking

Dear Mr. President and Members of the City Council:

I respectfully submit the attached Order to Appropriate and Authorize Taking for the land acquired from the DiBitetto family for water supply protection and conservation.

I recommend approval

Very truly yours,

Melinda E. Barrett
Mayor



Haverhill

Conservation Department
Phone: 978-374-2334 Fax: 978-374-2366
rmoore@haverhillma.gov

MEMO TO: The Honorable Melinda E. Barrett, Mayor, City of Haverhill

FROM: Robert E. Moore, Jr., Environmental Health Technician

DATE: December 11, 2025

RE: Order of Taking – Crestshire Realty Trust and Yard N' Garden Realty Trust Land off West Hadley Road in Merrimac, MA, Parcels 80-1-12, 80-1-12B, 80-1-13A, 80-1-12A, and 80-1-6A

Attached are the following documents prepared by Mead, Talerman and Costa authorizing the Mayor to acquire, including taking by eminent domain, approximately 41.09 acres of land off West Hadley Road in Merrimac, MA for water supply and land conservation purposes from Crestshire Realty Trust and Yard N' Garden Realty Trust for \$370,000. The seller has agreed to the City taking the property by eminent domain as part of a Drinking Water Supply Protection Grant awarded to the City by the Executive Office of Energy and Environmental Affairs. The City will be reimbursed 60% of its costs to acquire this land, up to \$237,000. The balance will be funded by the Water Department. The subject parcels are further identified on the attached plan prepared by Greenman-Pedersen, Inc.

Documents:

- Council Order: Requires Council authorization with endorsement by the Mayor and City Clerk.
- Order of Taking: Requires Council authorization with endorsement by the Mayor and City Solicitor
- Taking Agreement: Formalizes the seller's agreement not to contest the eminent domain taking. Confirms the City will pay \$370,000 for the taking and conditions the validity of the agreement upon approval of the City Council. The agreement includes standard warranties and liability provisions and requires the City to record the Order of Taking before issuing payment.

If you approve the documents, they should be forwarded to the City Clerk to be placed on the City Council agenda for final authorization. Please review and advise if any modifications are necessary before submission.

Attachments:

- Locus Map
- Plan entitled "Plan of Land", showing subject parcels, by Greenman-Pedersen, Inc., dated 11/18/2025
- City Council Order Authorizing Mayor to Execute the Order of Taking and Taking Agreement
- City Council Order of Taking
- Taking Agreement, copy signed by the owner, John B. DiBitetto

e-COPY TO: Christine Lindberg, Chief of Staff, Mayor Barrett
Lisa L. Mead, Mead, Talerman & Costa, LLC
Joseph Ruotolo, Jr, Mead, Talerman & Costa, LLC
Robert E. Ward, Director of Public Works
Angel Perkins, City Auditor & Chief Financial Officer

	Document CITY OF HAVERHILL In Municipal Council	
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ORDERED:

ORDER TO APPROPRIATE AND AUTHORIZE TAKING

At a regularly convened meeting of the City Council of the City of Haverhill, held on the ____ day of _____, 2025, it was voted as follows:

That the City Council of the City of Haverhill, duly elected, qualified, and acting as such, on behalf of the City votes to authorize the Mayor to acquire, purchase, take by eminent domain or otherwise the land including 41.09± acres known as the DiBitetto Family Land property off West Hadley Road, Merrimac, MA shown on the plan entitled "Plan of Land Merrimac Assessors Map 80 Lots 1-12, 1-12B, 1-13A, 1-12A, 1-6A Off Hadley Road & Route 108 Merrimac, MA 01860" (the "Plan") prepared by Greenman-Pedersen, Inc., dated October 24, 2025 to be recorded in the South Essex Registry of Deeds; and that the Haverhill City Council, acting as the Board of Water Commissioners, under the provision of M.G.L. c.40 §39A, shall be designated to hold and manage the property for the purposes of water supply protection and land conservation under M.G.L. c.40, §39B and 41, and Article 97 of the Amendments to the Massachusetts Constitution; and that in order to pay for said purchase the City Council does appropriate \$395,000 and that to meet this appropriation, the Treasurer is authorized, with the approval of the Mayor, to borrow a total amount of \$395,000 under and pursuant to G.L. c.44, or any other enabling authority, and to issue bonds or notes of the City therefore; and that the Mayor is authorized to acquire said property by purchase, gift, and/or eminent domain on such terms and conditions as the Mayor deems appropriate; and that the City of Haverhill Department of Public Works, Water Division, City Council and the Mayor are authorized to apply for, receive and accept grants, gifts, and/or reimbursements of funds that may be provided by the Commonwealth of other public or private sources to defray all or a portion of the costs of said acquisition, including by not limited to, grants and/or reimbursement from the Commonwealth of Massachusetts under the Drinking Water Supply Protection Grant Program under the provisions of M.G.L. c.132A, §11 and Chapter 312 of the Acts of 2008, §2A, 2200-7017 and Chapter 209 of the Acts of 2018, §2A, 2000-7072, and/or any other federal and state programs in any way connected with the scope of the vote taken hereunder, and to enter into any agreements and execute any and all documents necessary of convenient to effectuate the acquisition hereunder; provided, however, that said appropriation and borrowing shall be contingent upon the City receiving the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs Drinking Water Supply Protection Grant;

And further to authorize the Mayor to execute any document, including but not limited to a Taking Agreement, and to take any other action necessary or convenient to carry out this vote.

YEAS: _____

NAYS: _____

ABSENT: _____

PASSED IN COUNCIL: _____

A True Record, Attest:

Date Approved

Kaitlin M. Wright, City Clerk

Melinda E. Barrett, Mayor

	Document CITY OF HAVERHILL In Municipal Council	
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ORDERED:

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

CITY OF HAVERHILL

ORDER OF TAKING

The Mayor of the the City of Haverhill, duly elected, qualified, and acting as such, on behalf of the City and by virtue of and in accordance with the authority provisions of Massachusetts General Laws Chapter 79 and 4, Section 14, and every other power and authority which is hereunto in any way enabling, does hereby take, on behalf of the City of Haverhill, for the purposes of drinking water supply protection and land conservation, pursuant to Massachusetts General Laws Chapter 40, Sections 38, 39B, and 41, and Article 97 of the Amendments to the Massachusetts Constitution, to held under the control and management of the Haverhill City Council, acting as the Board of Water Commissioners, under the provision of M.G.L. c. 40 sec. 39A the fee ownership in the land with the buildings thereon, if any, of certain parcels located off Hadley Road in the Town of Merrimac, Massachusetts known as "Map 80 Lot 1-12, Map 80 Lot 1-12B, Map 80 Lot 1-13A, Map 80 Lot 1-12A and Map 80 Lot 1-6A" shown on the plan entitled "Plan of Land Merrimac Assessors Map 80 Lots 1-12, 1-12B, 1-13A, 1-12A, 1-6A Off Hadley Road & Route 108 Merrimac, MA 01860" (the "Plan") prepared by Greenman-Pedersen, Inc., dated November 18, 2025 and recorded herewith.

All of said land identified above is owned or supposed to be owned by Crestshire Realty Trust and Yard N' Garden Realty Trust by deeds recorded in the Essex South Registry of Deeds in Book 6751, Page 270, Book 6712, Page 591, and Book 9333, Page 277.

Said land is benefitted by an access easement from Rt. 108 in Newton, New Hampshire as described in an Easement recorded in the Essex South County Registry of Deeds in Book 43110, Page 176.

Any and all trees and structures located upon the easement taken are included in this taking, except as may be specifically excluded herein.

Excepted from the rights herein taken by the City are all easements of record for wires, pipes, conduits, poles, access to the property, and other appurtenances for the conveyance of water, sewage, gas, oil, electricity, cable television transmission, and telephone communications lawfully in or upon said land. Except as noted herein, this taking includes any and all interest in the lands described above, as may be currently held by the owners of the abutting lots.

MassDEP approval is required, pursuant to Massachusetts General Laws Chapter 40, Section 15B, before any portion of this property can be transferred to a different ownership control, or before the property can be changed to a different use.

Except as noted herein, this taking includes any and all interest in the lands described above, as the City Council voted to award damages sustained by the owner of said property, to Crestshire Realty Trust and Yard N' Garden Realty Trust in accordance with the provisions of G. L. c. 79, Section 6, as amended in the amount of \$370,000.00, net any real estate taxes due and recording fees, the current record owner of the property that is the subject of this taking.

End of Text

Signature Page Follows

Approved as to form.

Grantor: City of Haverhill

City Solicitor

By: _____
Name: Melinda E. Barrett, Mayor
City of Haverhill

Essex, ss

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 2025 before me, the undersigned notary public, personally appeared Melinda E. Barrett, as Mayor of the City of Haverhill Massachusetts, to this notary personally known to be the person whose names is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in the capacity indicated, and has the authority to sign in that capacity.

Notary Public:
My Commission Expires:

TAKING AGREEMENT

This Taking Agreement (this "Agreement") is made as of the 25th day of November, 2025, by and between **John B. DiBitetto as Trustee of Yard 'N Garden Realty Trust**, under Declaration of Trust dated June 10, 1981 and recorded in the Essex County Registry of Deeds at Book 6829, Page 140, and as **Trustee of Crestshire Realty Trust**, under Declaration of Trust dated June 19, 1981 and recorded in the Essex County Registry of Deeds at Book 6712, Page 587, both with a mailing address of 14 Ruby Circle, Bradford, Massachusetts 01835-3419 (collectively, the "Seller") and the **City of Haverhill**, a municipal corporation, with a mailing address of 4 Summer Street Haverhill, Massachusetts 01830 ("Buyer").

In consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Agreement to Transfer Title; Premises. On the terms and conditions set forth herein, Buyer agrees to take title by means of eminent domain and Seller agrees not to challenge the eminent domain proceeding with respect to the following items of Real Property:
 - (a) Certain parcels of land located in Merrimac, Massachusetts, off Hadley Road being known as parcels 80-1-12, 80-1-13.A, 80-1-12.A, and 80-1-6.A on the Town of Merrimac Assessor's Map, owned by Crestshire Realty Trust, as more particularly described in deeds recorded in the Essex South Registry of Deeds at Book 6712, Page 591, and Book 6751, Page 270; and parcel 80-1-12.B on the Town of Merrimac Assessor's Map, owned by Yard 'N Garden Realty Trust, as more particularly described in deed recorded in the Essex South Registry of Deeds at 9333, Page 277 (collectively, the "Premises").
2. Title; Deed. The Premises are to be conveyed by virtue of an Order of Taking by Eminent Domain running to Buyer.
3. Eminent Domain Award Amount. The amount to be awarded to the Seller for the taking of Premises (the "Award Amount") is **Three Hundred Seventy Thousand and 00/100 Dollars (\$370,000.00)**.
4. Closing Date. The Order of Taking by Eminent Domain shall be recorded by Buyer within the statutory period once approved by the City of Haverhill and the Award Amount shall be available to the Seller (the "Closing") within ten (10) days after the recording of the Order of Taking by Eminent Domain.
5. Condition of Premises; As Is. Full possession of the Premises, free of all tenants and occupants is to be delivered on the Closing Date, the Premises to be then (a) substantially in the same condition as they were at the time of execution of this Agreement, with all personal property removed, and (b) in compliance with the provisions of any instrument referred to in Section 2 hereof. Buyer shall be entitled to inspect the Premises at a mutually agreeable time within three (3) business days prior to the Closing Date in order to determine whether the

condition thereof complies with the terms of this Section 5.

6. Extension to Perfect Title or Make Premises Conform; Election to Accept Title.
INTENTIONALLY OMITTED.

7. Due Diligence. INTENTIONALLY OMITTED.

8. Title Review. At the time of Closing, Seller shall have good and clear record and marketable title to the Premises, insurable by a nationally recognized title insurance company.

9. Seller's Representations and Warranties. As an inducement to Buyer to enter into this Agreement and recognizing that all such warranties and representations are material, Seller represents, warrants, and agrees that:

(a) To the best of Seller's actual knowledge, there are no unrecorded leases, subleases, licenses or other rental or occupancy agreements (written or oral) in force or effect which grant any possessory interest in or to the Real Property.

(b) There is no litigation, arbitration, or other legal proceedings pending or administrative proceedings pending, or, to the best of Seller's actual knowledge, threatened in writing, against Seller, which will have a material adverse effect on the Premises. Seller is not in default in any respect of any order, decree or rule of any court or governmental authority which will materially and adversely affect the transaction contemplated hereby.

(c) Seller has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law relating to bankruptcy or insolvency, nor to the best of Seller's actual knowledge, has any such petition been filed against Seller. Seller is not insolvent, and the consummation of the transactions contemplated by this Agreement shall not render Seller insolvent.

(d) To the best of Seller's actual knowledge, Seller has not received any written notice of any special taxes or assessments for roadway, sewer or water improvements or other public improvements pending or threatened in writing with respect to the Real Property.

(e) Seller is not a "foreign person," as defined under Internal Revenue Code Section 1445.

(f) The Seller has no knowledge of any buried oil tanks or hazardous material as defined under Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c.21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c.21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sec. 9601 et seq. and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec 6901 et seq. that has been released, disposed of

or otherwise deposited on the Premises.

10. Additional Covenants of Seller. Seller covenants and agrees that from and after the date hereof until the Closing, Seller shall:

- (a) not accept an offer to purchase or any other agreement to dispose of the Premises, or any portion thereof, and not list for sale or offer for sale or disposition, or permit any broker or other person to offer for sale or disposition the Premises, or any portion thereof;
- (b) not lease, license, or enter into any other occupancy agreement with respect to the Premises or any portion thereof, and not grant any easement, covenant, restriction or other interest in the Real Property or any portion thereof;
- (c) inform Buyer of any written notice of a taking or other action of any governmental agency or authority or any other party affecting the Premises;
- (d) maintain property insurance with respect to the Real Property in the same amount as is maintained on the date hereof and provide evidence of such insurance to Buyer upon request;
- (e) maintain the Real Property in the same condition as it is on the date hereof, reasonable wear and tear and damage by casualty excepted;
- (f) perform all material obligations with respect to the Real Property under all easements, covenants, restrictions, and contracts of record;
- (g) promptly give notice to Buyer of actual litigation commenced against Seller and relating to the Premises (including, without limitation, the sale thereof to Buyer), or any portion thereof, between the date of this Agreement and the Closing, whether or not covered by insurance; and
- (h) not, without the prior written consent of Buyer, apply for, consent to, or process any applications for zoning, re-zoning, variances, site plan approvals, subdivision approvals or development with respect to the Premises or any portion thereof.

11. Adjustments. Real estate taxes for the then current fiscal year shall be apportioned as of the Closing Date and the net amount thereof shall be added to or deducted from, as the case may be, the Award amount. In the event that the Real Property shall be affected by any betterment or assessment made after the date of this Agreement, if Seller has elected to pay such betterment or assessment in annual installments, Seller, at the Closing, shall be responsible for all installments due prior to the Closing and Buyer shall be solely responsible for any such assessments and/or installments due on or after the Closing

12. Closing Deliveries. On the Closing Date, Seller shall deliver or cause to be delivered to or at the direction of Buyer, the following documents, duly and validly executed, attested, notarized, and acknowledged, as appropriate:

- (a) Application for Eminent Domain Damages Payment; and
- (b) Owner Release and waiver of damages by Seller.

13. Brokers. Seller and Buyer each warrant and represent that it has not dealt with any real estate broker or agent in connection with the transactions contemplated hereby. Each party shall indemnify and hold harmless the other from any cost, expense, or liability (including costs of suit and reasonable attorney's fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this transaction.

14. Default.

- (a) Buyer's Default; Damages. INTENTIONALLY OMITTED.
- (b) Seller's Default, Buyer's Remedies. If Seller shall fail to fulfill the Seller's agreements herein, other than by reason of Buyer's fault or other reasons beyond Seller's control (a "Seller Default"), then, as Buyer's sole and exclusive remedy in such event, Buyer shall have the right to (i) to terminate this Agreement by written notice to Seller, or (ii) commence proceedings to take the Premises by eminent domain.

15. Conditions to Closing. Buyer's obligation to take the Premises by eminent domain and consummate the transaction contemplated by this Agreement shall be contingent upon:

- (a) City Council Approval. Should the City of Haverhill not approve the taking this Agreement shall terminate and shall have not further force and effect;
- (b) The Buyer has secured a Drinking Water Supply Protection "DWSP" grant for no less than \$237,000.00;
- (c) The Buyer undertaking a survey of the Premises and obtaining a Plan in recordable form to be recorded in the appropriate Registry of Deeds

16. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be effective when actually received if delivered by hand between the regular business hours of the City as disclosed on the City's website, or sent by reputable overnight courier, or when confirmed by receipt, or upon refusal to accept delivery, if sent by certified mail, postage prepaid, the certification receipt therefore being deemed the date of such receipt, or by confirmed email transmission and addressed to the parties as follows:

To Buyer:	City of Haverhill
	4 Summer Street
	Haverhill, MA 01830
	Attn: Mayor's Office

With a copy to: Lisa L. Mead, Esq.
Joseph Ruotolo Jr., Esq.
Mead, Talerman & Costa, LLC
30 Green Street
Newburyport, Massachusetts 01950
joe@mtclawyers.com

To Seller: John B. DiBitetto, Trustee of Yard 'N Garden Realty Trust
and as Trustee of the Crestshire Realty Trust
14 Ruby Circle, Bradford, Massachusetts 01835-3419

With a copy to: Timothy E. Britain, Esq.
Cleveland, Waters and Bass, P.A.
Two Capital Plaza
Concord, NH 03301
britaint@cwbp.com

17. Amendments; Construction of Agreement. This Agreement, executed in multiple counterparts, shall be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both Seller and Buyer. This Agreement has been negotiated by the parties and any ambiguity in any provision shall not be construed against either party as drafter. This Agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof. Facsimile and pdf (portable document format) signatures shall be deemed originals for all purposes. The attorneys for the parties shall be deemed duly authorized to execute on behalf of their respective client all extensions, if any. No person or entity other than a party to this Agreement shall be entitled to rely on this Agreement, and this Agreement is not made for the benefit of any person or entity not a party hereto. Buyer shall have the right to waive any condition to its obligation to Close. No such waiver shall be binding upon Buyer unless in writing and signed by Buyer's duly authorized representative. The captions of the various Sections in this Agreement are for convenience only and do not, and shall not be deemed to, define, limit, or construe the contents of such Sections.

18. Reclamation. Seller agrees to promptly refund any overpayments in accordance with M.G.L. Ch.79 Sec 7G.

19. This Agreement shall serve as the Seller's waiver of right to an appraisal under MGL Ch 79 Sec 7A.

20. Saturdays, Sundays, and Holidays. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed or by which the Closing must be held expires on a Saturday, Sunday, federal holiday or legal bank holiday in the Commonwealth of Massachusetts, then such

time period shall be automatically extended to the close of business on the next business day.

21. No Personal Liability. In no event shall any officer, director, trustee, manager, shareholder, member, employee, elected official or agent of Seller or Buyer have any personal liability hereunder.

22. Waiver. Except as expressly provided herein, no waiver by any party of any failure or refusal of the other party to comply with its obligations under this Agreement shall be deemed a waiver of any other subsequent failure or refusal to so comply by such other party of the same or any other provision of this Agreement. No waiver shall be valid unless in writing signed by the party to be charged and then only to the extent specifically stated therein.

23. Severability. If any term or provision of this Agreement or application thereof to any person or circumstance shall, to any extent, be found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

24. Legal Representation. The Parties hereunder understand that this is a legal document and that they have both had an opportunity to engage legal counsel in review of same.

[Signature Page Follows]

[Signature Page to Purchase and Sale Agreement]

EXECUTED as a sealed instrument as of the date and year first written above.

SELLER:



Witness



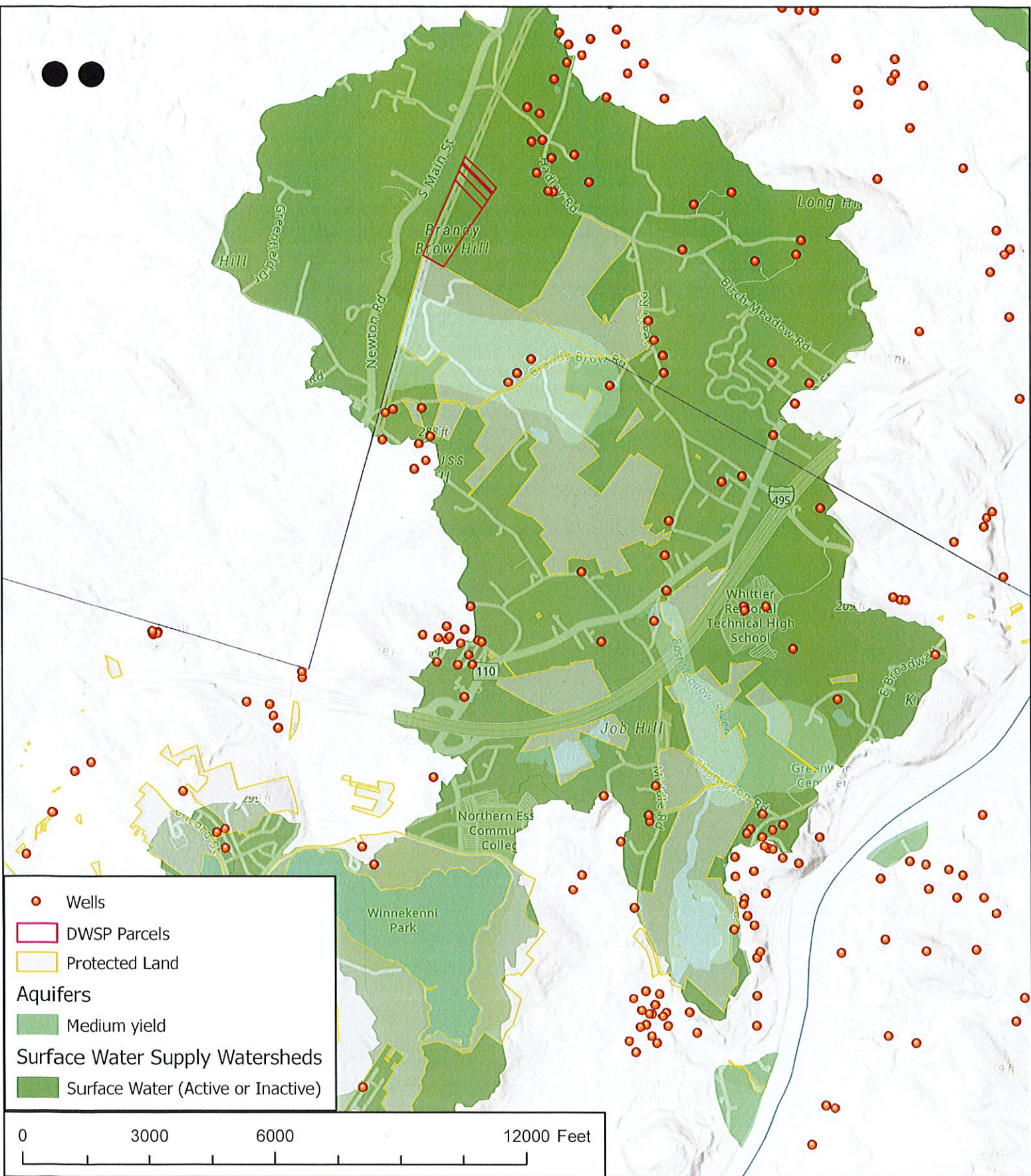
John B. DiBitetto, as Trustee of Yard 'N Garden
Realty Trust and as Trustee of Crestshire Realty
Trust

BUYER:

CITY OF HAVERHILL,
a municipal corporation

Witness

By: _____
Name: Melinda E. Barrett
Title: Mayor



Aquifers & Watershed
Drinking Water Supply Protection Grant Program
March 2025

Kaitlin Wright

From: Christine Lindberg
Sent: Tuesday, December 16, 2025 3:07 PM
To: Thomas J Sullivan Esq.; Thomas J. Sullivan; Kaitlin Wright; Lori Robertson
Cc: Mayor
Subject: Agenda item 5.3 - DiBitetto land

All:

I just wanted to provide more information on this agenda item in case there are questions.

You will see that there are two Orders. The first is the City Council Order (or vote) which is the vote to appropriate and to authorize Taking. The second is the Order of Taking that conveys the property to the City.

So, one vote, but two documents or Orders, both of which will be recorded.

The Taking Agreement does not need to be notarized and it will not be recorded.

Please let me know if you have any questions.

Thanks,

Christine Lindberg, MPA, MCPPO
Chief of Staff
Office of Mayor Melinda E. Barrett
4 Summer Street, Suite 100
Haverhill, MA 01830
Phone: (978) 420-3613