

## MEMORANDUM OF UNDERSTANDING

The Department of Public Health / Tewksbury Hospital (Hospital) hereby enters into a Memorandum of Understanding (MOU) with the Bay Circuit Alliance (Alliance) for the purpose to construct and use a trail by granting public access through land owned by the Commonwealth of Massachusetts.

The Alliance is a private non-profit organization dedicated to the establishment of the Bay Circuit, a recreational footpath known as the Bay Circuit Trail and its associated Greenway. The Bay Circuit was established by state legislation in 1956 and includes 50 communities surrounding metropolitan Boston, including Tewksbury. The Alliance is located at 3 Railroad Street, Andover, MA 01810. The authorized trail in question is shown on the map in Exhibit A, attached hereto (the "Premises").

The creation of this trail and the granting of public access have been deemed by the Hospital as being in compliance with the intent of use as passive recreation allowable under (legislation). The Hospital defines passive recreation as non-motorized activities that:

- Offer constructive, restorative, and pleasurable human benefits that foster appreciation and understanding of Open Space and its purposes;
- Are compatible with other passive recreation uses;
- Are compatible with the long-term preservation and restoration of natural, cultural, and agricultural resources;
- Occur in an open space setting, which is an integral part of the experience; and
- Require minimal or no modification to the natural landscape.

This public access is granted with the following conditions:

- The Commonwealth of Massachusetts/Tewksbury Hospital retains full rights of ownership to the property and this access will not interfere with the Hospital's need to maintain or improve access to its property in the future.
- Either party may cancel this MOU within 90 days upon written notice to the other party.
- The Bay Circuit Alliance will be responsible, in working with the local town officials and their conservation committee, assure the hospital and the Commonwealth, that this proposed trail has been properly reviewed and is in compliance with all applicable conservation requirements. Such approval is to be obtained and made part of this agreement.

- The Bay Circuit Alliance shall have the right to permit the public to pass over said trail on foot during daylight hours only and subject to such rules and regulations as the Hospital deems appropriate and necessary, including the following prohibitions:
  - Access by motorized vehicles, including, but not limited to, snowmobiles, dirt bikes, motorcycles and all-terrain vehicles, shall be prohibited; and
  - Littering, removing or injuring plants or trees, injuring or harassing wildlife, building fires, hunting and trapping shall be prohibited;
- The trail shall be located as shown on the map attached as Exhibit A, as may be amended from time to time by mutual consent;
- The Alliance shall, upon approval from the Hospital, post the trail with notices stating the rules and regulations governing its use by the public, and stating further that the property over which it passes is Commonwealth of Massachusetts property and that, in permitting its use by the public, the liability of the landowner is limited by Massachusetts General Laws Chapter 21, Section 17C, as amended, and any other laws relating to liability of the Commonwealth;
- All maintenance and/or improvements needed for this public access will be the responsibility of the Alliance or its designee. Any such improvements must receive prior written approval by the Hospital. The Hospital will not bear the costs of such improvements;
- The Alliance will use reasonable good faith efforts to police, control and otherwise limit use by the public to the extent necessary to avoid material damage to the surrounding property, excessive noise, interference with use of the surrounding property, or disturbance to the Hospital, or any of its tenants and/or licensees;
- The public will enter this property at its own risk; and
- The Bay Circuit Alliance or its designee agent will maintain appropriate trail markings to ensure that the public will utilize the approved access.

This Agreement shall not give rise to any enforceable rights or obligations on the part of the Department of Public Health or the Commonwealth.

This Agreement shall be subject to review every two years and may be amended by the mutual consent of the parties.

  
 John Auerbach  
 Commissioner  
 Massachusetts Department  
 of Public Health

8/1/07  
 Date

  
 Alan French, Representative  
 Bay Circuit Alliance

7/17/07  
 Date