

## Memorandum

To: Whiting Reservoir Study Committee, City of Holyoke

From: Corrin Meise-Munns, Pioneer Valley Planning Commission

Re: Local Technical Assistance FY21: Summary of State Restrictions to Access and Recreational Uses of Drinking Water Supply Lands

Date: June 30, 2021

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### Background:

The Whiting Reservoir Study Committee (WRSC), an ad-hoc subcommittee of the Holyoke City Council, hired Pioneer Valley Planning Commission (PVPC) via the Local Technical Assistance program (authorized for six hours of staff time in FY21) to investigate what restrictions to use and access the Commonwealth of Massachusetts places on drinking water supply lands, including those with reservoirs not currently in use but still protected as drinking water supply, in order to maintain water quality.

### Summary:

- The Whiting Reservoir is protected open space under Article 97 of the Amendments of the State Constitution, which ensures its use as open space but does not limit access or recreational activities
- Access to and activity on the Whiting Reservoir parcel is solely controlled by the parcel owners (City of Holyoke and Holyoke Water Works)
- Article 97 protection is not truly permanent, as it can be revoked via a vote of the Holyoke City Council and the State Legislature
- If permanent protection is sought, a conservation restriction would provide protection in perpetuity while still offering some financial benefits to the City
- PVPC recommends locating the parcel deed to understand what, if any, restrictions to development or use are permanently attached to the Whiting Reservoir parcel

### Detailed Narrative:

The Whiting Reservoir parcel is owned by the City of Holyoke in partnership with Holyoke Water Works, and is

managed and operated by Holyoke Water Works. While the reservoir is not actively used for drinking supply at this time, Holyoke Water Works manages the parcel to ensure water quality protection and to preserve the possibility of bringing the reservoir “on-line”, or in to service, in the future.

The parcel has one trail which circumnavigates the reservoir, and can be accessed by trailheads on Easthampton Road (MA Route 141) or by Mountain Park Road off of MA Route 5. The trail around the reservoir was opened in 2017 in partnership with the Appalachian Mountain Club and Holyoke Water Works as a link and side trail in the New England Trail (NET). The Whiting Reservoir trail connects the portion of the NET traversing East Mountain Wildlife Management Area on the western side of Route 141 with the portion of the NET that spans Mt. Tom State Forest. Public activity on the parcel is currently controlled by Holyoke Water Works regulations, which are in place to protect water quality and the health of the forested ecosystem. According to Holyoke Water Works General Manager David Conte, the regulations allow for passive recreational activities such as walking, jogging, hiking, and bicycling. Pets are not allowed on the trail system.

As land set aside for the purpose of drinking water supply and protection, the Whiting Reservoir parcel is protected under Article 97 of Amendments of the State Constitution. According to an interview with Kathleen Romero, a regional planner with the Massachusetts Department of Environmental Protection (DEP) Drinking Water Program, Article 97 does not itself set any limitations on use or restrictions on public access to drinking water supply lands, and any such restrictions are made and enforced by the organization owning or managing the parcel (phone interview, June 17, 2021). Therefore, Holyoke Water Works has the sole ability to revise, amend, and adopt new regulations regarding the parcel’s use and access.

While protection under Article 97 is generally described as "permanent," this protection can be revoked under strict circumstances: a two-thirds vote of Holyoke City Council and a two-thirds vote in both the Massachusetts House and Senate. If more certain protection is sought, a conservation restriction (CR), added to the parcel deed, would protect the parcel from development in perpetuity and permanently protect the Whiting Reservoir as open space. A CR is a legal agreement between a landowner and a government agency or land trust that permanently protects open space by limiting future uses of the land, usually including the amount and type of development that can take place, but continues to leave the land in private ownership. The document conveys to the agency or land trust the right to monitor the property and enforce the terms of the agreement. The CR is recorded with the property deed, and the terms of the agreement remain in place on the land even if the land changes ownership. The value of the property has been reduced by this process (by prohibiting development), which may lead to tax benefits. A state law requires the approval by the Secretary of the Executive Office of Energy and Environmental Affairs (EEA) on CRs if they are to be permanent. This sign-off assures there is a public benefit offered by the CR.

PVPC was unable to find a copy of the Whiting Reservoir parcel deed as the book and page numbers for Hampden County Registry of Deeds were absent in the City parcel records. PVPC contacted several staffers at DEP and the Department of Conservation Services (DCS) who were also unable to locate parcel information. PVPC recommends the WRSC locate the parcel deed in order to understand if there are any restrictions currently in place.