



DESAUTEL LAW

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401.477.0023

October 15, 2021

VIA USPS AND ELECTRONIC MAIL

Ms. Luly Massaro  
Rhode Island Public Utilities Commission  
98 Jefferson Boulevard  
Warwick, RI 02888  
[Luly.massaro@puc.ri.gov](mailto:Luly.massaro@puc.ri.gov)


**RE: Docket No. 5187 – Petition of Solar Breakers, LLC to Establish Private Rail Crossings**

Dear Ms. Massaro:

Enclosed herewith please find an original and nine (9) copies of The Town of Middletown's Motion to Intervene to be filed in the above-entitled matter.

Please be advised that an electronic copy of this document has been sent to the Service List. Thank you for your attention to this matter.

Sincerely,

  
Marisa A. Desautel, Esq. (ms)

Enclosures

cc: Service List

**Docket No. 5187 – Solar Breakers LLC - Petition to Establish Railroad Crossings**  
**Service List updated 10/6/2021**

<b>Name/Address</b>	<b>E-mail</b>	<b>Phone</b>
Thomas Carlotto, Esq. DarrowEverett LLP One Turks Head Place, 12 <sup>th</sup> Floor Providence, RI 02903	<a href="mailto:tcarlotto@darroverett.com">tcarlotto@darroverett.com</a> ;	401-453-1200
	<a href="mailto:ckilloren@darroverett.com">ckilloren@darroverett.com</a> ;	
Margaret L. Hogan Esq. Division of Public Utilities and Carriers	<a href="mailto:Margaret.L.Hogan@dpuc.ri.gov">Margaret.L.Hogan@dpuc.ri.gov</a> ;	401-780-2177
	<a href="mailto:Christy.hetherington@dpuc.ri.gov">Christy.hetherington@dpuc.ri.gov</a> ;	
	<a href="mailto:Robert.Bailey@dpuc.ri.gov">Robert.Bailey@dpuc.ri.gov</a> ;	
<b>File an original &amp; six (6) copies w/:</b> Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	<a href="mailto:Luly.massaro@puc.ri.gov">Luly.massaro@puc.ri.gov</a> ;	401-780-2017
	<a href="mailto:Patricia.lucarelli@puc.ri.gov">Patricia.lucarelli@puc.ri.gov</a> ;	
John J. Iglizzi, Esq. Vera Diluglio, Esq. Dept. of Transportation 2 Capitol Hill Providence, RI 02903	<a href="mailto:John.iglizzi@dot.ri.gov">John.iglizzi@dot.ri.gov</a> ;	401-222-6510 Ext. 4586
	<a href="mailto:Vera.Diluglio@dot.ri.gov">Vera.Diluglio@dot.ri.gov</a> ;	
Kevin Gavin, Town Solicitor Jennifer M. West, Town Clerk Town of Portsmouth	<a href="mailto:KevinGavinLaw@gmail.com">KevinGavinLaw@gmail.com</a> ;	
	<a href="mailto:clerkoffice@portsmouthri.com">clerkoffice@portsmouthri.com</a> ;	
Paul Rodrigues, Town Solicitor Wendy Marshall, Town Clerk Town of Middletown	<a href="mailto:prodrigues@middletownri.com">prodrigues@middletownri.com</a> ;	
	<a href="mailto:wmarshall@middletownri.com">wmarshall@middletownri.com</a> ;	

**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION**

**IN RE:           Petition of Solar Breakers, LLC  
                  to Establish Private Rail Crossings**

**Docket No. 5187**

**THE TOWN OF MIDDLETOWN'S MOTION TO INTERVENE**

NOW COMES the Town of Middletown ("Middletown"), and by and through its undersigned counsel, hereby moves to intervene in the above-captioned proceeding pursuant to Rule 1.14(a) and (b) of the Rhode Island Public Utilities Commission ("PUC") Rules of Practice and Procedure ("Rules"). In support of its Motion, Middletown avers:

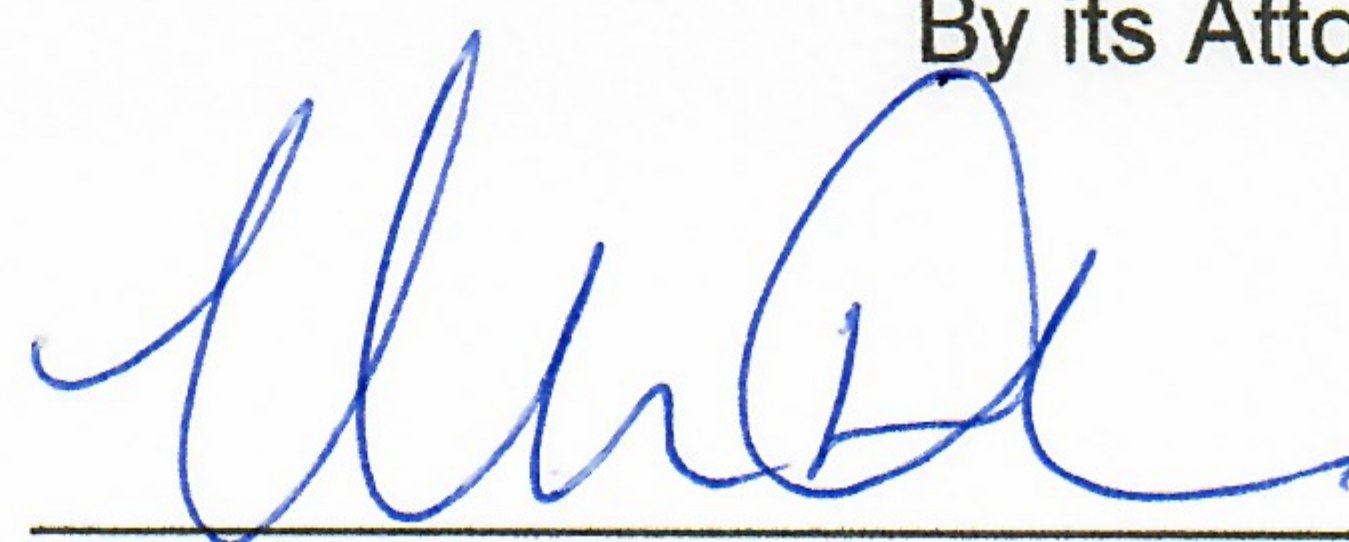
1. Rule 1.14(a) of the PUC Rules states that "[p]articipation in a proceeding as an intervenor may be initiated by order of the Commission upon a motion to intervene."
2. In this docket, the PUC is being asked to render a decision to grant Solar Breakers, LLC's Petition to Establish Railroad Crossings, pursuant to RIGL §39-8-1.3.
3. The grounds for this Motion are that Middletown has a unique and relevant interest in the PUC's decision in this matter. The United States National Park Service approved the Town's application to acquire approximately 15 acres of surplus Federal property ("Federal land") on July 12, 2015, which property is a portion of the subject property. See attached Exhibit A.
4. This interest will be directly affected and is not adequately represented by existing parties to this docket and the Town's interests will be bound by the PUC's action in this proceeding.

The Town anticipates that its position in this proceeding will be counter to the statement made by the applicant in its petition that "...the Town of Middletown [is] aware

of the proposed Crossings and ha[s] no objection thereto..." Petition, p. 3. To the contrary of this statement, the Town is certainly aware of the proposed Crossings, but does have objection to the proposed Crossings. The Town has serious concerns that its interests in the federally-approved transfer of property will be negatively impacted by the PUC's decision in this case. Specifically, the Town requested the transfer of the Federal land for public park and recreational use under federal law. The Town has expended significant resources and time in the transfer of the Federal land and expects that the subject petition will have an adverse impact on its use of the Federal land. To be sure, the National Park Service explicitly stated its opinion that the Town's use of the Federal land for park and recreational purposes constitutes "the highest and best use in the public's interest." There is no other party that can fairly and adequately represent and defend the uses extolled by the federal government besides the Town in this matter.

As a result, the Town respectfully requests that its motion to intervene in this docket be granted.

Respectfully submitted  
Town of Middletown  
By its Attorney,

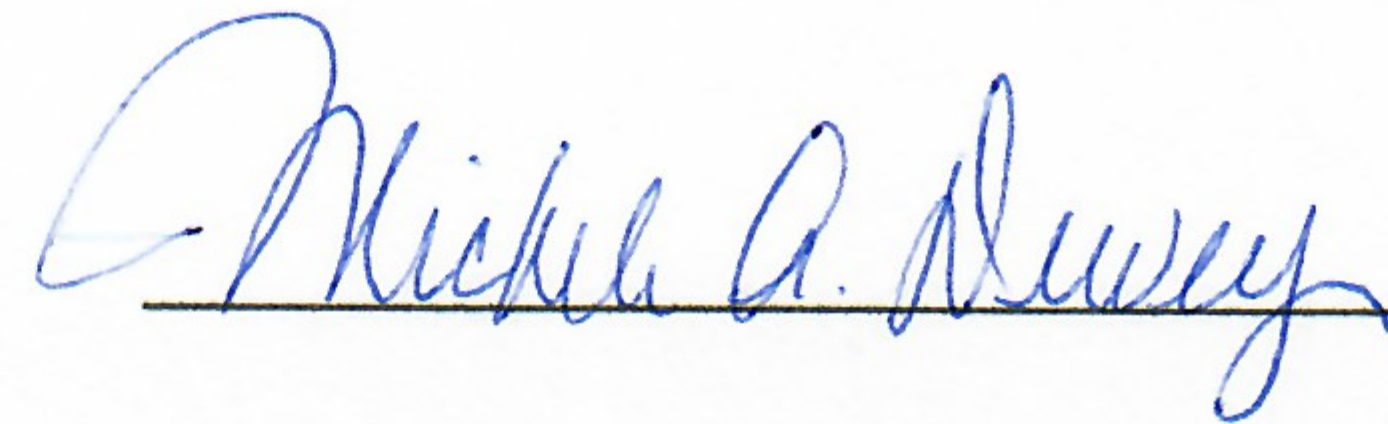


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Marisa Desautel, Esq. (Bar #7556)  
Desautel Law  
38 Bellevue Ave., Unit H  
Newport, RI 02840  
Tel: (401) 477-0023

## CERTIFICATION

I hereby certify that I filed an original of the within Motion with the RIPUC and sent a true copy, via electronic mail, of the within Motion to the parties listed on the distribution list for Docket # 5187 on this 15<sup>th</sup> day of October, 2021.

  
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# EXHIBIT A



# United States Department of the Interior

NATIONAL PARK SERVICE  
Northeast Region  
15 State Street  
Boston, Massachusetts 02109-3572

July 13, 2015

Mr. Gregory C. Preston  
Real Estate Contracting Officer  
Department of the Navy  
Base Realignment and Closure  
Program Management Office, Northeast  
4911 South Broad Street  
Philadelphia, PA 19112-1303

Dear Mr. Preston:

Reference: Midway/Green Lane Parcel, Middletown, RI  
Naval Station Newport BRAC 2005

The National Park Service, acting by delegation of authority from the Secretary of the Interior, has approved the enclosed application from the Town of Middletown, Rhode Island, to acquire approximately 15 acres of surplus Federal property, located in Middletown, RI, known as a portion of Naval Station Newport. The Town of Middletown has requested the transfer of the property for public park and recreational use under the provisions of 40 U.S.C. § 550 (e).

Pursuant to the authority vested in the Secretary of the Interior by the provisions of said Act and in response to the Notice of Surplus Determination issued by the Department of Navy, we hereby request assignment of the "Midway/Green Lane Parcel to the National Park Service for conveyance to the Town of Middletown for public park and recreational use. The Town will develop and use the property as described in the Program of Utilization submitted as part of its application dated April 16, 2015.

Based on our site inspection and evaluation of the application, we have determined that the highest and best use in the public's interest is for park and recreational purposes. The Town's development and use of the site is consistent with the authorities and purposes of the Federal Lands to Parks Program. Accordingly, we will grant a public benefit allowance of 100 percent of the fair market value in conveying the property to the Town of Middletown. Our evaluation is summarized in the enclosed Report and Recommendation.

The National Park Service has determined that the Town of Middletown, an approved applicant for receiving Federal surplus real property, has agreed that it will not discriminate upon the basis of race, color, national origin, sex, age, disability, or religion, in the use, occupancy, or lease of the property for the period during which the real property is used for the purpose under which the Federal financial assistance is extended.

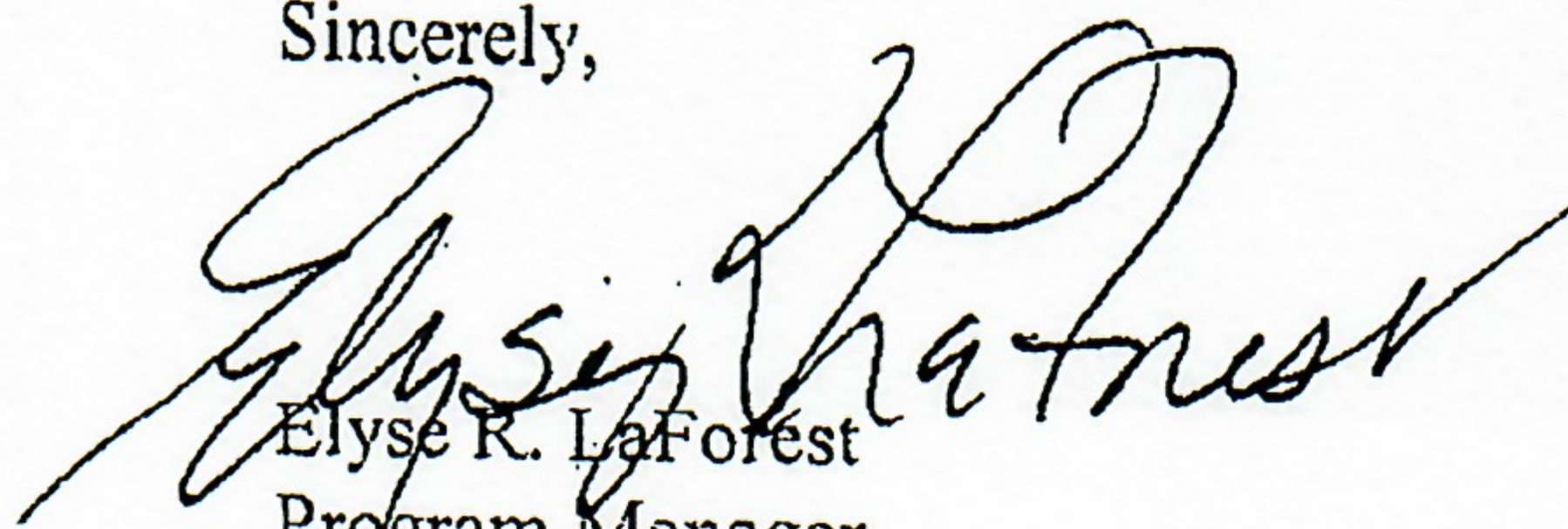
If the Navy does not object to the property transfer, and the U.S. Department of Housing and Urban Development approves the reuse plan for the site, please prepare a letter of assignment to the National Park Service. The following information should also be included with your letter:

1. The estimated fair market value of the subject property.
2. A legal description of the subject property, including a plat map.
3. All easements, including their legal descriptions, and reservations that must be included in the quitclaim deed.
4. All historic preservation, environmental, and other covenants, restrictions, warranties, and notices that must be included in the quitclaim deed.
5. All historic preservation (e.g., National Register determinations, Programmatic Agreements, etc.) and environmental compliance documentation (e.g., Findings of Suitability to Transfer, Environmental Assessments, etc.) necessary to convey the subject property.
6. A determination as to whether all oil, gas, and mineral rights and deposits in the subject property should be reserved for the United States of America.

In addition to your written response, please provide the text for items 2, 3, and 4 in an electronic format by disk or e-mail to: [elyse\\_laforest@nps.gov](mailto:elyse_laforest@nps.gov).

As always, we appreciate the cooperation of the Navy in our efforts to preserve this land for the public's benefit and enjoyment. If you have any questions, please call me at (617) 223-5190.

Sincerely,



Elyse R. LaForest  
Program Manager  
Federal Lands to Parks Program

Enclosures (2)

cc: Shawn J. Brown, Town Administrator  
Town of Middletown  
350 East Main Road  
Middletown, RI 02842

The Honorable Jack Reed  
United States Senate  
Washington, DC 20510



The Honorable Sheldon Whitehouse  
United States Senate  
Washington, DC 20510

The Honorable David Cicilline  
United States House of Representatives  
Washington, DC 20515

## FEDERAL LANDS TO PARKS PROGRAM

### National Park Service Report and Recommendation on the Application of Town of Middletown, Rhode Island to acquire Surplus Federal Property known as a portion of Naval Station Newport

#### I. Legal Name of Applicant

The applicant is the Town of Middletown, acting by and through:

Shawn J. Brown, Town Administrator  
Town of Middletown  
350 East Main Road  
Middletown, RI 02842

#### II. Property Requested

Middletown is requesting approximately 15 acres of surplus Federal property consisting of the Midway/Green Lane Parcel, for public park and recreational use. The Navy has determined the property to be surplus. The site abuts, but does not include, Defense Highway (Burma Road) and includes the shoreline strip of land on the west side of the road extending from the Portsmouth town line south to Greene Lane. The property excludes the Rhode Island Department of Transportation's rail right-of-way. The area includes the former Midway Pier and adjacent land previously occupied by building 70, 71, and 111. The Navy sewer pump station near the intersection of Greene Lane is also excluded from this application.

#### III. Statement of Property Inspection

Elyse LaForest, Program Manager, Federal Lands to Parks Program, National Park Service, Northeast Region, conducted a site inspection of the property.

#### IV. Evaluation of Application

A. Summary of the Program of Utilization: The Town of Middletown will use the property for public park and recreational use in perpetuity. The Town will convert the site for use primarily as a shoreline multi-use path. The Town intends to develop a linear park, running approximately 0.6 miles along the shoreline of Narragansett Bay. The park will include a fishing pier, kayak/canoe launch, trails, picnic areas, parking and restrooms. The fishing pier will be developed in cooperation with Rhode Island Department of Environmental Management (RIDEM) using the remains for the former Midway fueling pier.

B. Suitability of Property for Proposed Use: The property is well suited for the Program of Utilization described in its application. The park will allow the first public access to the shoreline on the west side of Middletown since before World War II. The property is readily converted to the uses described in the Program of Utilization.

C. Ability to Carry Out Proposed Program: The Town of Middletown is a government agency that has assured the National Park Service, by application and resolution of the Council of the Town of Middletown, that it will assume the responsibility for providing park and recreational opportunities to the public on the property in perpetuity. The Town will develop the park with a combination of town, state and grant funding. RIDEM is committed to assist the Town with development of the fishing pier and associated facilities, such as parking and restrooms.

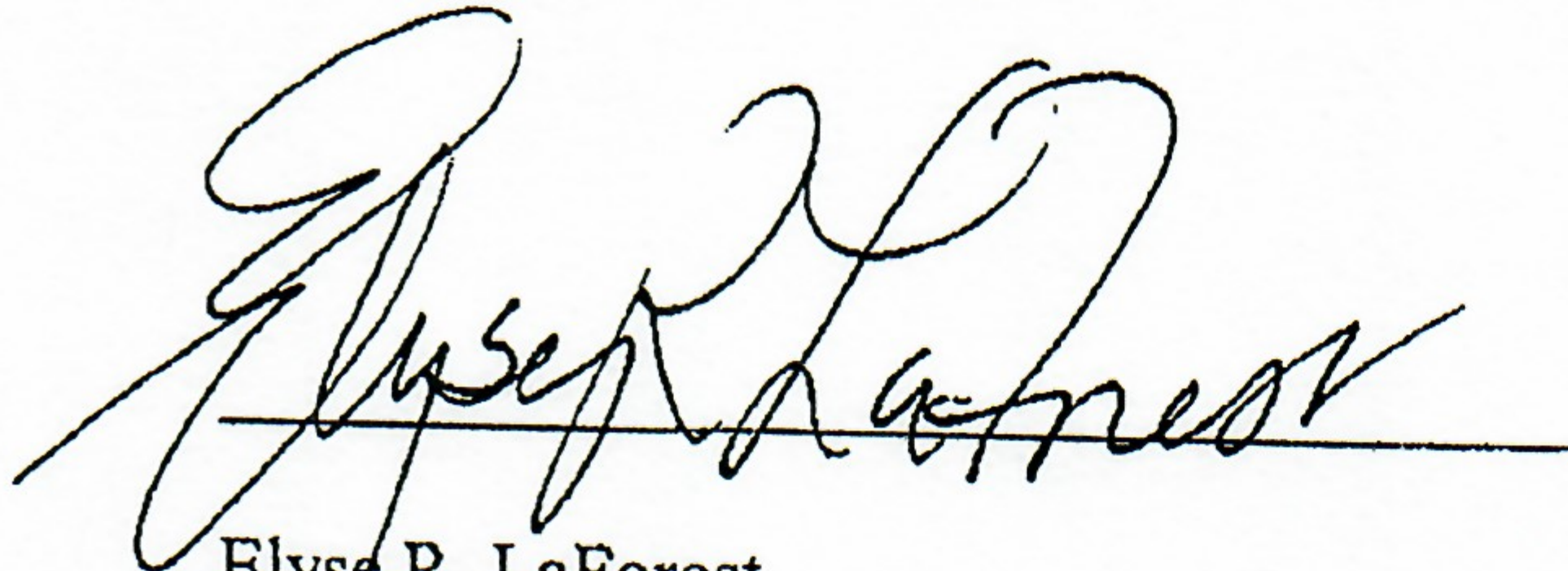
D. Justification of Need: Town's acquisition of the property will satisfy the public's need for open space and access to Narragansett Bay in an area of increasing population and development. This area of Middletown is under served for recreational opportunities and there is currently no shoreline access.

#### V. Public Benefit Allowance

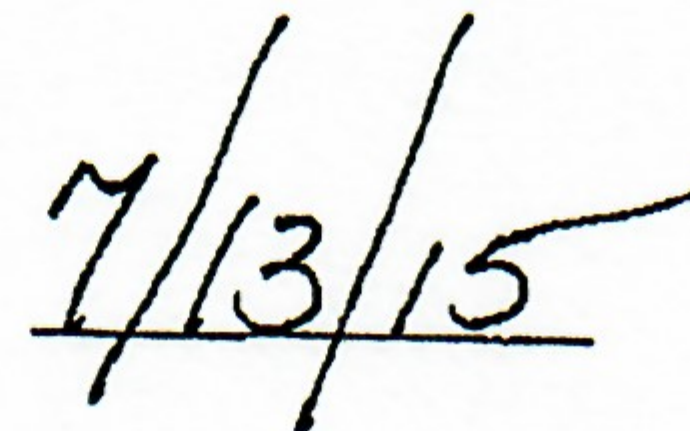
Middletown has satisfactorily completed the Federal Lands to Parks Program application attesting that it will develop and maintain the property for public park and recreational use in perpetuity. Furthermore, the applicant has certified its authority and ability to assume these responsibilities, justified the need for the property, and provided sufficient evidence that the property is suitable for conversion to the proposed uses and readily accessible to the population to be served. The applicant has given assurance that it will comply with all terms and conditions of the conveyance and will develop and manage the property to provide public park and recreation benefits in perpetuity. Therefore, pursuant to 40 U.S.C. § 550 (e), the National Park Service finds that Town of Middletown, Rhode Island, qualifies for a public benefit conveyance of the subject property at 100 percent public benefit discount of its fair market value.

VI. Recommendation

The National Park Service recommends the transfer of the subject property to the Town of Middletown, Rhode Island, for public park and recreational use pursuant to the provisions of 40 U.S.C. § 550 (e), and a public benefit discount of 100 percent of the property's fair market value in conveying the property.



Elyse R. LaForest  
Program Manager  
Federal Lands to Parks Program  
Northeast Region  
National Park Service



Date