



22 February 2021

Anthony E. Schiavi  
Town Administrator  
Town of Bourne  
24 Perry Avenue  
Buzzards Bay, MA 02532-3441

**THE COMPACT**  
OF CAPE COD CONSERVATION TRUSTS, INC.

BOURNE BO OF SELECTMEN  
RCUD 2021 FEB 24 AM 11:30

Dear Mr. Schiavi,

Please find attached a conservation restriction (CR) for a 2.5-acre parceon South Road. The Compact of Cape Cod Conservation Trusts, Inc. is acquiring the property and the Orenda Wildlife Land Trust, Inc. will hold CR. We are working with the Bourne Conservation Trust, which will end up with the title.

We seek the Selectmen's vote to approve the CR pursuant to M.G.L. 184, ss. 31-33. The CR has been previously reviewed by State EOEEA officials and I will forward it to them for final approval after Selectmen review and approval. Last Thursday, the Town Conservation Commission unanimously voted to support the CR and recommend approval to the Selectmen; I believe you will hear separately from the Conservation Administrator in this regard.

Preserving the property will ensure the protection of many features of conservation value, including that:

- the Property contains Massachusetts Natural Heritage & Endangered Species (NHESP) BioMap2 Critical Natural Landscape – Coastal Analysis and Tern Foraging Components;
- the Property contains BioMap2 Core, Priority and Estimated Habitats of Rare Wildlife;
- the Property falls within the Buzzards Bay National Estuary; and
- it protects salt marsh, and 100-year floodplain.

I would be happy to attend your meeting to answer any questions you may have, if necessary. Please let me know of your scheduling.

Thank you for your consideration of this Conservation Restriction.

Sincerely,

Mark H. Robinson  
Executive Director

cc: Bourne Conservation Trust; Town Conservation Commission



**Grantor: The Compact of Cape Cod Conservation Trusts, Inc.**

**Grantee: Orenda Wildlife Land Trust, Inc.**

**Property Addresses: 0 South Road, Bourne, MA 02559**

**Grantor's Title: Barnstable County Registry of Deeds, Book \_\_\_, Page \_\_\_. (pending)**

**Grantor's Plan: Barnstable County Registry of Deeds, Plan Book \_\_\_, Page \_\_\_. (pending)**

## CONSERVATION RESTRICTION

**THE COMPACT OF CAPE COD CONSERVATION TRUSTS, INC.**, a Massachusetts charitable corporation with an office at 36 Red Top Road, Brewster, Barnstable County, Massachusetts 02630, being the sole owner, for its successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to **ORENDA WILDLIFE LAND TRUST, INC.**, a Massachusetts charitable corporation with an office address at 4011 Main Street, Cummaquid MA 02637 and a mailing address of P.O. Box 669, West Barnstable, MA 02668, its permitted successors and assigns (“Grantee”), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in the Town of Bourne, Barnstable County, Commonwealth of Massachusetts, consisting of one parcel totaling 2.50-acres (“Premises”), which Premises is more particularly described in Exhibit A and shown in the attached sketch plan in Exhibit B, both of which are incorporated herein and attached hereto.

### I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values (“conservation values”).

**Conservation Land Tax Credit: “CLTC” Program.** The Premises was acquired utilizing, in part, the Conservation Land Tax Credit Program authorized under the Chapter 509 Acts of 2008 Sections 1-4 as amended by Chapter 409 Acts of 2010 Sections 4-13 of the Massachusetts General Court.

**The conservation values include the following:**

- Open Space Protection. The Premises contributes to the protection of the scenic and natural character of Wing's Neck on Red Brook Harbor in Bourne, and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises is in the vicinity of over 9 acres of privately-held open space to the northwest, along South and Wing's Neck Roads. Additionally, there are 2.6 acres of conserved open space less than one half mile west along South Road owned by the Bourne Land Trust.
- Flood Plain Protection. The Premises falls within the 100-year floodplain of Buzzards Bay (managed by the Buzzards Bay National Estuary Program, a jointly funded and managed US Environmental Protection Agency and Massachusetts Office of Coastal Zone Management Program), and a FEMA-designated High Risk Coastal Area. The Property also falls 100% within a Marine Recharge Area.
- Protection of Wildlife Habitat. The Premises falls within a Massachusetts Natural Heritage and Endangered Species Program ("NHESP") Estimated Habitat of Rare Wildlife, and includes a Massachusetts Department of Environmental Protection-designated salt marsh wetland that provides foraging and nesting habitat for terns and other seabirds. Also, about 20% of the 2.5 acre Premises falls within a NHESP Priority Habitat of Rare Species. The protection of the Premises aligns with the NHESP's wildlife and habitat protection objectives.
- BioMap2. About one half of the Premises contains NHESP BioMap2 Critical Natural Landscape containing the Coastal Adaptation and Tern Foraging Components. The Premises also falls within a NHESP BioMap2 Core Habitat containing the Species of Conservation Concern Core Component.
- Water Quality Protection. The Premises is located on Red Brook Harbor, and preventing development of this parcel will help to maintain the Premises as naturally functioning open space (upland and saltmarsh), filter runoff, and protect coastal water quality of the adjacent embayment. The Premises is 100% within both a 100-year floodplain and marine recharge area.
- Protection of a Massachusetts Department of Environmental Protection ("Mass DEP") Wetland. The Premises contains a DEP-designated salt marsh wetland area. Ensuring that the Premises remains undeveloped in perpetuity will maintain the integrity of this wetland resource.
- Consistency with Clearly Delineated Barnstable County Conservation Policy. Protection of the Premises will assist in achieving Barnstable County conservation goals. In July 1991, the Barnstable County Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a *Regional Policy Plan* ("RPP"), amended in 1996, 2002, 2009, 2012, and 2018, which provided, *inter alia* (references are to the 2018 RPP):



- “To ... protect, preserve, or restore the ecological integrity of Cape Cod’s fresh and marine surface water resources” (Water Resources Goal, p. 54);
- “To protect, preserve, or restore the quality and natural values and functions of inland and coastal wetlands and their buffers” (Wetland Resources Goal, p. 55);
- “To protect, preserve, or restore wildlife and plant habitat to maintain the region’s natural diversity” (Wildlife and Plant Habitat Goal, p. 55).
  - In reference to this Wildlife and Plant Habitat Goal, the RPP states, “For many years habitat loss due to development has been the primary threat to the region’s habitats” (p. 32);
- “To conserve, preserve, or enhance a network of open space that contributes to the region’s natural and community resources and systems” (Open Space Goal, p. 55).
  - In reference to this Open Space Goal, the RPP states, “[t]he open space of the Cape is critical to the health of the region’s natural systems, economy, and population. Open space provides habitat for the region’s diverse species and protection of the region’s drinking water supply” (p. 30); and,
- “To protect and preserve the significant cultural, historic, and archaeological values and resources of Cape Cod” (Cultural Heritage Goal, p. 58).

The Cape Cod Commission’s Regional Policy Plan of 2018 defines “Cape Cod Placetypes” as unique areas for planning and regulation. “Natural Areas” are a Placetype that includes the “regions least developed and most sensitive areas” identified by mapping BioMap2 Core Habitat and Critical Natural Areas, protected open space, wetlands, and undeveloped areas in FEMA flood zones, as well as other sensitive areas (RPP, 2018, p. 77).

Granting this Conservation Restriction will advance each of these objectives. The Water Resources Goal and the Wildlife and Plant Habitat Goal will be served because the Premises borders Red Brook Harbor and contains a Massachusetts DEP Salt Marsh wetland. The Wildlife and Plant Habitat Goal will be met because the Premises contains NHESP BioMap2 Core Habitat and Critical Natural Landscape, as well as an NHESP Priority Habitat of Rare Species and an Estimated Habitat of Rare Wildlife. The Open Space Goal will be advanced because the Premises is in the vicinity of over 9 acres of open space and approximately 2.6 acres of conservation lands owned by the Bourne Conservation Trust.

- Consistency with Clearly Delineated Town of Bourne Conservation Policy. The Town of Bourne’s *Open Space and Recreation Plan* (“OSRP”) 2018 outlines several goals that would be advanced by the permanent protection of the Premises. It states that:  
“The Cape Cod Commission (CCC) was visionary in the Regional Policy Plan when they stated that one of their goals is to protect one half of the remaining developable land on Cape Cod as permanently protected open space in order to preserve rural character, scenic amenities and ecological integrity of Cape Cod. With so many fragile environmental resources and real water quality and quantity issues, this goal is both logical and necessary. Protecting a large quantity of open space will require local, regional and statewide cooperation and partnerships. The Town of Bourne has already taken a step towards cementing its commitment by making it a personal goal of the community to protect one half of its remaining developable land as

permanently protected open space as detailed in the recently updated Local Comprehensive Plan (2008).” (p. 24).

In the 2018 OSRP, the Town of Bourne set several open space goals that apply to this Conservation Restriction:

- GOAL 3: “Enhance, maintain and preserve passive and active recreational opportunities for Bourne residents and visitors of all ages, abilities and interests. (p. 118);”
- GOAL 4: “Improve public awareness and public access regarding Bourne’s Open Space and Recreation assets (p. 119);”
- GOAL 7: “Consistently collaborate and communicate with other organizations, committees and towns regarding open space and recreation initiatives (p. 120);”  
- Continue to work with Bourne Conservation Trust, Southeastern Wildlands Trust, Recreation Committee the Community Preservation Committee and others on projects whenever possible and to identify, acquire and manage open space to meet projected community needs. Offer support to each other on initiatives that organizations take on separately (p. 120) “; and
- GOAL 10: “Continue to acquire additional open space, and as noted in the local LCP, preserve at least half of the remaining undeveloped land as open space for recreation, resource protection, wildlife habitat and groundwater recharge; to maintain the esthetic beauty and character of the community; and to limit the visual and fiscal impacts of over-development. • Give priority to those open space acquisitions within identified ACEC, Water Resource Districts, NHESP habitat areas and parcels adjacent to existing protected open space. (p. 121).”

“The Town of Bourne has numerous overlay districts and regulatory tools in place to help manage future growth and protect open space and natural resources, they include: • In addition to administering the Massachusetts Wetland Protection Act G.L. Chapter. 131, Section 40, Bourne also has their own local Wetland Protection Bylaw (Article 3.7). • Water Resource Overlay District – The purpose of this district is to protect the public by preventing contamination of the surface water resources and groundwater resources providing water supply for the Town. (OSRP, p. 41).

Each of the goals and methods for protecting open space and coastal wetland areas listed above will be advanced by implementing this Conservation Restriction.

- Town of Bourne, Local Comprehensive Plan. Certified by the Cape Cod Commission in 2007, and subject to revisions that were adopted by Bourne Town Meeting in 2008, and then revised in 2019, the Local Comprehensive Plan (LCP) provides guidance on the Town’s future goals and governance. The structure of the 2019 Plan follows the original 2007 Plan and offers vision on education, energy, climate change, and separates environmental issues into wildlife and plant habitat, and wetland resources. Threats to water quality, coastal and groundwater, and concerns for safe drinking water and managing wastewater are major issues the Town faces, as do other towns on Cape Cod. (p. 11)

“The Growth Policy for the Town of Bourne, expressed throughout this Local Comprehensive Plan, is to guide growth toward areas that are adequately supported by infrastructure and away from areas that must be protected for ecological, historical, or other reasons.” (p. 15)

“The Ocean Resources goal of the Bourne Local Comprehensive Plan is to protect the public interest in the coast as well as rights for fishing, navigation and recreation; to improve, preserve and manage coastal areas in order to safeguard and perpetuate their biological, economic, historic, maritime and aesthetic values; and to preserve, enhance and expand public access to the shoreline.” Also, the LCP states that “wetlands are an essential coastal resource that is important to the town’s economic and environmental health...The Wetland Resources goal of the Bourne Local Comprehensive Plan is to restore and protect the natural state of all wetlands and their buffers to the greatest extent possible.” (pp. 25-27)

“Bourne is committed to protecting key habitat areas that support and maintain a diversity of plants and wildlife.” (p. 30)

In conserving Premises, the goals of the Town of Bourne will be served.

- Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of “conservation purposes” as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: protect the land for outdoor recreation by the general public; reserve the land for education regarding the natural world; protect wildlife and wetland habitats; and it would contribute to the preservation of open space because it will constitute a significant expanse of undisturbed open space and is proximate to several other parcels already conserved.
- Consistency with Clearly Delineated State Conservation Policy. The Premises possesses significant open space, natural, aesthetic, ecological, plant and wildlife habitat, solid and water resource quality, watershed, and scenic values (collectively “conservation values”) of great importance to the Grantee and the people of Truro and the Commonwealth of Massachusetts.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

## **II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES**

### **A. Prohibited Acts and Uses**

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Hunting, trapping, or camping;
- (7) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
- (8) The use of the Premises for business, residential or industrial use, or commercial recreation;
- (9) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
- (10) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

**B. Reserved Rights and Exceptions**

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

- (1) Vegetation Management. The selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the condition of the Premises, as documented in the Baseline Report;
- (2) Non-Native or Nuisance Species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
- (3) Composting. The stockpiling and composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values (including scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season;
- (4) Natural Habitat and Ecosystem Improvement. With the prior written approval of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem and ecological functions, or rare or endangered species including selective planting of native trees, shrubs and plant species;
- (5) Pest Control. With the prior written approval of the Grantee, trapping and removal of animals for pest control purposes;
- (6) Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only (a) after written notification to the Grantee, and (b) in accordance with an archaeological field investigation plan prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) as required by Massachusetts General Laws. A copy of the results of any scientific investigation on the Premises is to be provided to the Grantee.
- (7) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, the Reserved Rights, and the protected conservation values;
- (8) Fences. With the prior written approval of the Grantee, Grantor reserves the right to erect and maintain open-faced (i.e., sight-pervious) fences, such as wooden split rail, for property



boundary delineation, safety reasons, and trail demarcation, so long as the dimensions and design of said fences do not impede free wildlife passage;

- (9) Footpaths. The right to create, maintain and use footpaths, not to exceed four (4) feet in width on the Premises;
- (10) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph II(B) shall seek to minimize disturbance to the conservation values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph II(B), any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
- (11) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph II(B) shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.
- (12) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph II(B) shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

**C. Notice and Approval.**

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of Grantee to respond in writing within sixty (60) days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after sixty (60)

days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction.

### **III. LEGAL REMEDIES OF THE GRANTEE**

#### **A. Legal and Injunctive Relief.**

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction. Prior to resorting to legal means to enforce any violations of this Conservation Restriction, the Grantee shall first notify the Grantor and request the Grantor to remedy the violation; if the violation is not remedied within sixty (60) days, then the parties shall make a good faith effort to mediate the dispute before litigation is commenced, provided the Grantor ceases the violation immediately upon receipt of notice of the violation and makes a good faith effort to remedy the violation.

Grantee shall not, however, have the right to bring an action against Grantor with respect to a violation of this Conservation Restriction by trespassers or other third persons whose entry on the Premises is not authorized or not voluntarily acquiesced in by Grantor; Grantor agrees that Grantor will not voluntarily acquiesce in any violation of this Conservation Restriction by trespassers or such other third persons; and Grantor further agrees that Grantor will make reasonable efforts to deter such activities and to remedy the violation and will cooperate with Grantee to enforce this Conservation Restriction against trespassers and such other third persons.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

#### **B. Non-Waiver.**

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

#### **C. Disclaimer of Liability**

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

**D. Acts Beyond the Grantor's Control**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

**IV. ACCESS**

The Grantor hereby grants to the Grantee, and its duly authorized agents or representatives, the right to enter the Premises (i) after reasonable notice and at reasonable times and in a reasonable manner, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction; and, (ii) after sixty (60) days prior written notice, except in an emergency in which case notice shall be given as soon as is practicable, to take any and all actions with respect to the Premises as may be necessary or appropriate, with or without order of court, to remedy, abate or enforce any violation hereof unless the Grantor has prior to the expiration of said sixty (60) days given written notice to the Grantee reasonably addressing all alleged violations and setting forth a reasonable plan to remedy any such alleged violation and has made reasonable efforts to cease the activity or to begin remediation.

**V. EXTINGUISHMENT**

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V(B), subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a value that is equal to



ten percent (10%) of the fair market value of the unrestricted Premises. For the purposes of this paragraph, said proportionate value shall remain constant.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph V(B), after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

## **VI. DURATION & ASSIGNABILITY**

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the assignee is not an owner of the fee in the Property, and the assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VII. SUBSEQUENT TRANSFERS**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or

enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

#### **VIII. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

#### **IX. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

#### **X. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the Massachusetts General Laws. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Barnstable County Registry of Deeds.

#### **XI. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in a timely manner in the Barnstable County Registry of Deeds.

## **XII. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: The Compact of Cape Cod Conservation Trusts, Inc.  
P.O. Box 443  
Barnstable, MA 02630

To Grantee: Orenda Wildlife Land Trust, Inc.  
P.O. Box 669  
West Barnstable, MA 02668

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

## **XIII. GENERAL PROVISIONS**

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

## **XIV. MISCELLANEOUS**

Ex-SWEENEY CONSERVATION RESTRICTION  
Bourne, MA

A. Pre-Existing Public Rights. Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Subordination. The Grantor shall record at the appropriate Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

C. Prior Encumbrances. This Conservation Restriction shall be in addition to and not in substitution of any other restrictions, easements, or other reserved rights of record affecting the Premises.

D. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor – The Compact of Cape Cod Conservation Trusts, Inc.  
Grantee Acceptance – Orenda Wildlife Land Trust, Inc.  
Certificate of Vote – Grant Wiklund, Clerk, Orenda Wildlife Land Trust, Inc.  
Approval by the Town of Bourne Board of Selectmen  
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Description of Premises  
Exhibit B: Sketch Plan of Premises

Ex-SWEENEY CONSERVATION RESTRICTION  
Bourne, MA

WITNESS our hands and seals this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

\_\_\_\_\_  
Leonard W. Johnson, duly authorized President,  
The Compact of Cape Cod Conservation Trusts, Inc.

\_\_\_\_\_  
Henry Lind, duly authorized Treasurer,  
The Compact of Cape Cod Conservation Trusts, Inc.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned notary public, personally appeared Leonard W. Johnson, President, The Compact of Cape Cod Conservation Trusts, Inc., and Henry Lind, Treasurer, The Compact of Cape Cod Conservation Trusts, Inc., and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that each signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Mark H. Robinson, Notary Public  
My Commission Expires: 8 July 2027

**ACCEPTANCE OF GRANT**

This Conservation Restriction from The Compact of Cape Cod Conservation Trusts, Inc., was accepted by Orenda Wildlife Land Trust, Inc., this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
Daniel Morast

Its: President, duly authorized

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned notary public, personally appeared Daniel Morast, President of Orenda Wildlife Land Trust, Inc., and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**CERTIFICATE OF VOTE**

I, Grant Wiklund, duly elected Clerk of the Orenda Wildlife Land Trust, Inc., hereby certify that at a meeting of the Board of Directors duly called on the \_\_\_\_ day of \_\_\_\_\_, at which meeting, acting throughout upon motion duly made and seconded, a quorum being present, it was unanimously

**VOTED:** that Daniel Morast, President of Orenda Wildlife Land Trust, Inc., be and hereby is authorized in the name of Orenda Wildlife Land Trust, Inc., to accept a conservation restriction from The Compact of Cape Cod Conservation Trusts, Inc. on its property at 0 South Road in Bourne, his execution thereof shall be sufficient evidence of the Board of Directors' approval.

I further certify that Daniel Morast is the duly elected President of Orenda Wildlife Land Trust, Inc., and that I am the duly elected Clerk and that said vote is still in full force and effect.

A true copy.

Attest:

\_\_\_\_\_

Grant Wiklund, Clerk  
Orenda Wildlife Land Trust, Inc.

Date: \_\_\_\_\_, \_\_\_\_\_

**APPROVAL OF BOARD OF SELECTMEN**

We, the undersigned, being a majority of the Board of Selectmen of the Town of Bourne, hereby certify that at a public meeting duly held on \_\_\_\_\_, \_\_\_\_\_, the Board of Selectmen voted to approve the foregoing Conservation Restriction from The Compact of Cape Cod Conservation Trusts, Inc., to Orenda Wildlife Land Trust, Inc., in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

BOARD OF SELECTMEN:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, Chair, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from The Compact of Cape Cod Conservation Trusts, Inc., to Orenda Wildlife Land Trust, Inc., has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
KATHLEEN A. THEOHARIDES  
Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

Ex-SWEENEY CONSERVATION RESTRICTION  
Bourne, MA

**EXHIBIT A**

Description of the Premises

The Premises subject to this Conservation Restriction is located in the Town of Bourne, Barnstable County, Commonwealth of Massachusetts, and comprises 2.50 acres of land, more or less, and is bounded and described as follows:

All of Parcel 87A on a plan entitled [placeholder here until new plan is recorded] as shown in Exhibit B attached hereto.

For Grantor's title, see deed recorded in the Barnstable County Registry of Deeds, Book \_\_\_\_, Page \_\_\_\_ (pending).

Street Address: 0 South Road, Bourne, MA.

Town of Bourne Assessor's Map 42, Parcel 87A.

Ex-SWEENEY CONSERVATION RESTRICTION  
Bourne, MA

EXHIBIT B  
Sketch Plan of Premises

DRAFT Sketch of Premises

BSS Design Engineering & Surveying  
"Plan of Land at South Road, Wings Neck - Bourne, Massachusetts  
Prepared for Tadhg and Edith Sweeney  
May 28, 2019"



