

## ***Blankets and Belts and Suspenders***

*Using protective overlays to ensure permanent conservation of land trust properties*

Mark H. Robinson, Exec. Dir.  
The Compact of Cape Cod Conservation Trusts, Inc.  
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### **Overview**

- A Land Trust property is not preserved simply by the fact of it being owned by a Land Trust.
- Most Land Trusts are in the business of simply promoting conservation in their community.
- No Land Trust has a specific organizational duty to keep its landholdings in permanent conservation status.
- All Land Trusts have the power to “sell and exchange any real or personal property for such consideration as the board deems advisable.”

### **Conversion Threats to Land Trust Properties**

#### Internal

- Rogue board
- Fundraising needs
- Management headaches
- Swap for “better” land

#### External

- Donor’s heirs
- Lawsuit
- Eminent Domain

### **Issues to Consider about Conversion**

#### Political

- Public relations, community perception

#### Legal

- AG Public Charities Division
- IRS Form 8282
- IRS charitable deduction Rules  
Rev. Rule. 85-99 (1985)

“... the amount of the taxpayer donor's charitable contribution deduction is the fair market value of the property at the time of the contribution determined ***in the light of the restriction placed by the donor on the use*** of the property.”

#### Moral

- Duty to Donors (past and future)
- Duty to Members
- Duty to Public

### **Solutions**

#### Pre-acquisition

1. Donor gives CR to one land trust and fee simple to another land trust

#### Post-acquisition

2. Donor gives fee simple to land trust and land trust later grants CR to another land trust
3. Donor gives fee simple to land trust, then land trust later creates charitable trust with another land trust

*Sample Deed A: to Create a Charitable Trust*

QUITCLAIM DEED

**The Compact of Cape Cod Conservation Trusts, Inc.**, a Massachusetts non-profit corporation having an address at 3239 Main Street, P.O. Box 443, Barnstable, Massachusetts 02630, for consideration of ONE DOLLAR (\$1.00), hereby grants, with quitclaim covenants, to Elliott G. Carr, Elizabeth W. Finch, Peter Herrmann, Debra L. Johnson, Peter Johnson, Robert Lindgren, James W. Maddocks, Roger V. O'Day, Keith Rupert, Peter W. Soule, and Robert M. Williams, as Trustees of **Brewster Conservation Trust**, under a Declaration of Trust dated June 22, 1983 and recorded with Barnstable Registry of Deeds in Book 3791, Page 25, and in the Barnstable Registry District of the Land Court as Document No. 325,521 on Certificate #94635, having an address at P.O. Box 268, Brewster, Massachusetts 02631 ("BCT"), those certain parcels of land located in Brewster, MA and more particularly described in Exhibit A attached hereto.

This conveyance is made subject to the express condition and limitation that the premises to be conveyed shall be held in an open and natural condition exclusively for conservation purposes forever. It is the Grantor's intention that the foregoing shall create an obligation in the nature of a charitable trust.

Executed under seal as of \_\_\_\_\_, 2005.

THE COMPACT OF CAPE COD  
CONSERVATION TRUSTS, INC.

By: \_\_\_\_\_  
Richard A. Johnston, President

By: \_\_\_\_\_  
Stephen H. Anthony, Treasurer

Sample Deed B: to Create a Charitable Trust

**QUITCLAIM DEED**

**Orenda Wildlife Land Trust, Inc.**, a Massachusetts charitable corporation with an office at 1000 Main Street, West Barnstable, Massachusetts, and a mailing address at P.O. Box 669, West Barnstable, Massachusetts, 02668 (“Grantor”), for consideration of ONE DOLLAR (\$1.00), hereby grants, with quitclaim covenants, to **Stephen H. Anthony, Richard Ciotti, Herbert E. Daitch, Virginia G. Page, Robert G. Hankey, Gary J. Joseph, R. Dennis O’Connell, Alan Platt, James Quigley, Edward Simon, Marcia Seeler, and Peter R. Hall**, as TRUSTEES of the **WELLFLEET CONSERVATION TRUST** under a Declaration of Trust dated September 5, 1984 and recorded with the Barnstable County Registry of Deeds in Book 4811, Page 281, as amended, with an address at P.O. Box 84, Wellfleet MA 02667 (“Grantee”), those certain parcels of land located in Wellfleet, MA and more particularly described in Exhibit A attached hereto.

This conveyance is made subject to the express conditions and limitations that (1) the premises to be conveyed shall be held in an open and natural condition exclusively for conservation purposes forever, (2) wildlife habitat protection and enhancement on such premises specifically shall be promoted, and (3) hunting, the discharge of firearms and trapping on such premises shall be and are prohibited.

Grantor and Grantee agree that for the purposes of this paragraph, walking trails may be created, maintained and used and the Grantee is not obligated to post the premises in conjunction with limitation (3) above.

It is the Grantor’s intention that the foregoing shall create an obligation in the nature of a charitable trust.

The premises are conveyed subject to and with the benefit of all matters of record insofar as in force and applicable. For Grantor’s title, see deed from the Trustees of the Wellfleet Conservation Trust recorded in Barnstable County Registry of Deeds in Book \_\_\_\_\_Page\_ herewith.

Executed under seal as of \_\_\_\_\_, 2005. **ORENDA WILDLIFE LAND TRUST, INC.**

By: \_\_\_\_\_  
Ralph Herbst, President

By: \_\_\_\_\_  
Kenneth Burnes, Treasurer

*Sample Blanket Conservation Restriction (Excerpt)*

**NOW, THEREFORE,** the terms of this Conservation Restriction are as follows:

- A. Uses: The Grantor covenants for itself and its legal representatives, mortgages, successors and assigns that the Premises will at all times be held, used and conveyed subject to and not in violation of this Conservation Restriction. The Grantor shall refrain from and will not permit any activity that shall be inconsistent with the aforesated purposes of this grant. Grantor may develop, manage, lease and use the Premises only for purposes consistent with conservation values and passive recreation. For clarification of management objectives, the Grantee should review any pertinent baseline information or land management plans on file with the Grantor. For the purposes of this Conservation Restriction, “conservation values” shall mean all those natural, scenic, aesthetic, open space, ecological, plant and wildlife habitat, soil and water resource quality, watershed, floodplain, wetland, and similar features and values which characterize or are associated with the Premises. For the purposes of this Conservation Restriction, “passive recreation” shall mean any non-commercial activity of quiet enjoyment that can be casually performed outdoors with limited facilities and minimum disturbance of an area’s natural condition. Passive recreation may include, but is not strictly limited to, hiking, picnicking, canoeing, ice skating, nature study, horseback riding, kayaking, cross country skiing, swimming, jogging or walking. Development of facilities on the Premises shall be limited to such items necessary for designated passive recreation, such as trails, fencing, limited parking areas, informational kiosks, boardwalks over wet areas, or wildlife habitat enhancement.
- Grantor agrees that all future residential or commercial development rights in the Premises are terminated and extinguished by this Conservation Restriction and that the Premises may not be used for the purpose of calculating the amount of Grantor’s land available for subdivision or calculating the number of dwelling units permitted on other land owned by the Grantor or by any other person.