



April 17, 2020

Lindsey Counsell, Chairman
Community Preservation Committee
Town of Barnstable
367 Main Street
Hyannis, MA 02601

Re: **28 Falcon Road Acquisition Project**
Map 195 Parcel 038

Dear Lindsey:

This application follows up on Mark Wirtanen's Letter of Intent dated December 2019.

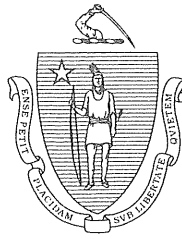
On behalf of the Barnstable Land Trust (BLT), I am submitting the enclosed Community Preservation Act application for funding of \$245,760 for the purchase of the 15.96-acre property located on Falcon Road in West Barnstable. This key parcel of land would expand the existing 142 acres of conservation land owned by the Town and Barnstable Land Trust. The parcel includes a stretch of the Cape Cod Pathways along its southern border, a link that is also an ancient trail used for thousands of years by indigenous peoples.

As you can see from the application enclosed, this land acquisition would satisfy many Town planning and CPC goals related to scenic and natural resource protection as well as passive recreation. The project leverages MA tax credit funding to create an advantageous cost-benefit value for the Town and BLT.

If you have any questions regarding this application, or request additional information, please contact or me at 508-771-2585 x 101.

Sincerely,

Janet Milkman
Executive Director



April 17, 2020

The Commonwealth of Massachusetts

Janet Milkman
Executive Director
Barnstable Land Trust
1540 Main Street
West Barnstable, MA 02668

William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

RE: 28 Falcon Road 15.96-Acre Parcel Conservation Property Acquisition & Conservation Restriction Project,
Barnstable, MA. MHC #RC.67553.

Dear Ms. Milkman:

Thank you for your inquiry to the Massachusetts Historical Commission (MHC) for the project referenced above.

The project location is within the Old King's Highway Regional Historic District (MHC #BRN.O), listed in the State Register of Historic Places. Funding for the project will be sought from the Massachusetts Division of Conservation Services Conservation Partnership Grant and the Conservation Land Tax Credit program. For the state-funded project, on January 27, 2020, the MHC determined that the project will have "no adverse effect" (950 CMR 71.07(2)(b)(2)) on the Old King's Highway Regional Historic District. The project is also seeking local funding through the Barnstable Community Preservation Committee.

The parcel is located in a favorable environmental setting for ancient and historical period land use. Its location amidst several major ponds, associated wetlands, and related natural resources would have been attractive for resource gathering expeditions and other activities. Some of the wetlands were later transformed to cranberry bogs. Along the parcel is a former carpath and road that has been historically remembered as the location of an ancient Native-made trail. Wampanoag cultural educator Ramona Peters provided a narrative summary of Native trail establishment and maintenance, and expectations of the types of cultural resources that are associated with Native travelways. Terrestrial and waterway trails connected important Native places near and far. Ancient and historical period Native sites have been identified nearby the parcel. Importantly, less than a mile from the parcel is Shootflying Hill, an ancient and probably also early historical period Native occupation area that provides expansive views of Wequaquet Lake, the Great Marshes, Sandy Neck, Cape Cod Bay, and Nantucket Sound. The hill was reportedly visited by Bartholomew Gosnold in 1602.

Acquisition of the parcel for conservation has several benefits to preserve significant cultural, historic, and archaeological resources that could be adversely affected if the parcel were to be developed. The addition of the 15.96-acre parcel to the surrounding conservation land parcels held by the town and the Barnstable Land Trust assists to protect and preserve the setting of the historic district.

Should you have any questions or require further information, please feel free to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to be "E. Bell", written over a horizontal line.

Edward L. Bell
Deputy State Historic Preservation Officer
Senior Archaeologist
Massachusetts Historical Commission

xc:
Ramona Peters, Native Land Conservancy
Mark Robinson, The Compact of Cape Cod Conservation Trusts, Inc.
Tom Anderson & Melissa Cryan, EEA/DCS
Old King's Highway Regional Historic District Commission, Barnstable
Barnstable Historical Commission
Barnstable Community Preservation Committee

220 Morrissey Boulevard, Boston, Massachusetts 02125

(617) 727-8470 • Fax: (617) 727-5128

www.sec.state.ma.us/mhc

CPC APPLICATION

Submission Date: 04/21/20

Project Title: 28 Falcon Road Property Acquisition & Conservation Restriction

Project Map / Parcel Number: 195/038

Estimated Start Date: 02/29/2020

Estimated Completion Date: 12/31/20

Purpose (please select all that apply):

Open Space

Community Housing

Historic

Recreation

Town Affiliation**

Public

Private

Non-Profit

Partnership (Describe below #3)

(**Applications must be approved by the Town Manager prior to submission)

Applicant Contact:

Name: Janet Milkman, Executive Director

Organization (if applicable): Barnstable Land Trust, Inc.

Address: 1540 Main Street, West Barnstable, MA 02668

Daytime Phone #: (508) 771-2585 x 101

E-mail address: janet@blt.org

Primary Contact (if different from applicant contact): same

Budget Summary:

Total budget for project: **\$345,760**

CPA funding request: **\$245,760**

Matching funds (committee/under consideration): MA Conservation Partnership Grant - \$85,000 (apply 7.20) and BLT private fundraising - \$15,000

Please address the following questions: (see attached narrative for questions 1-6; Assessors Map together with other attached Maps)

1. Project summary (description and goals):

Barnstable Land Trust is working to protect a 15.96-acre parcel on Falcon Road in West Barnstable. Protection of this buildable parcel would add to 142 acres of neighboring conservation land owned by the Town and BLT. This lot provides vital link in the Cape Cod Pathways trail system; this part of the trail is one of the only remaining unpaved sections of the trail built by the original human inhabitants of Cape Cod, and used for thousands of years by the Wampanoag Tribe and its predecessors.

2. How does this project help preserve Barnstable's character? Property purchase will preserve land adjacent to 142 acres of Town and BLT-owned conservation land, including walking trails used currently and for centuries before by colonists and indigenous people.

3. Partnership(s) Description: Barnstable Land Trust has met with the Assistant Town Manager and staff; there is support for the protection of this parcel. Yet to be determined is whether the Town or BLT will own the land and who will hold the conservation restriction. The Town appears interested in owning the land. BLT is willing to own the land or hold the CR. The Purchase and Sale agreement allows for BLT to assign it to the Town.

4. Provide a detailed project timeline: The project is dependent on timing of Town decision-making at the CPC, and Council, and approval of a MA Conservation Partnership Grant, whose decisions come in the fall. The intent is to close by the end of 2020.

5. How does this project meet the General Criteria and Category Specific Criteria for CPC projects?

General Criteria

- *Consistency with the Local Comprehensive Plan and other planning documents that have received wide scrutiny and input and have been adopted by the town;* Consistent with Goal 1 of Open Space and Recreation Plan to protect and maintain a maximum amount of open space to enhance environmental protection, recreational opportunities and community character.
- *Preservation of the essential character of the town;* Property purchase will preserve land adjacent to 142 acres of Town and BLT-owned conservation land, including walking trails used currently and for centuries before by colonists and indigenous people;
- *Save resources that would otherwise be threatened and/or serve a currently under-served population;* conservation would protect land threatened by development;
- *Demonstrate practicality and feasibility, and demonstrate that they can be implemented expeditiously and within budget;* based on decades of expertise and experience and flexibility at BLT, the project will move forward with town or BLT ownership;
- *Produce an advantageous cost/benefit value;* MA Conservation Partnership Grant and BLT fundraising through private foundations will provide up to \$100,000 for the project, making the property relatively inexpensive for purchase;
- *Leverage additional public and/or private funds; applications that identify commitment from other funding sources will receive a higher priority;* see above, MA Conservation Partnership Grant and private funding;
- *Serves more than one CPA purpose:* property provides conservation, passive recreation and historic preservation opportunities.

Open Space Criteria

- *Protecting land bordering on wetlands in order to assist in minimizing or eliminating eutrophication of habitats:* land includes locally prime wetland soils, freshwater wetlands, and prime forestland as designated by the Commonwealth of Massachusetts; includes former cranberry bogs and proximate to Garretts Pond, No Bottom Pond and Spruce Pond.
- *Permanently protect important wildlife habitat, including areas that are of local significance for biodiversity;* adjacent to BioMap 2 Critical Natural Landscape
- *Contain a variety of habitats, with diversity of geologic features and types of vegetation:* includes both wetland and upland, with varied topography
- *Preserve habitat for threatened or endangered species of wildlife:* contains State Wildlife Action Plan pitch-pine upland forest and freshwater wetlands; adjacent to MA Natural Heritage and Endangered Species Program Critical Natural Landscape
- *Preserve scenic, agricultural, historic, archeological or wooded character;* protects scenic character:
- *Provide opportunities for passive recreation and environmental education;* the property connects with Town land as described above; it provides opportunity for education around the ancient trail, including indigenous people's uses and colonial cartpath use.
- *Protect or enhance wildlife corridors, promote connectivity of habitat or prevent fragmentation of habitats;* connects to 142 acres of conservation land
- *Provide connections with existing trails;* provides access to trails off Falcon Road and Cape Cod Pathways
- *Preserve scenic vistas and qualities of lands bordering a scenic road;* varied topography provides views over Spruce Pond and bog lands to the south and west
- *Provide public access;* provides access to trails off Falcon Rd, with links to the Cape Cod Pathways trail bordering the southern edge of the property

6. Provide a detailed budget, including the following information, as applicable:

28 Falcon Road - Wirtanen		
Project Cost		Estimate
	Land Purchase - CR Purchase	\$ 325,000
	Consultants	
	CR and baseline documentation	\$ 2,500
	Legal & Closing Costs	\$ 2,500
	Record deed and Conservation Restriction	\$ 300
	Title Work	\$ 750
	Title Insurance	\$ 1,200
	Property Tax (1/2 of FY 2019 estimate)	\$ 10
	BLT Land Management Fund	\$ 2,500
	Contingency	\$ 1,000
	Administrative and other costs	\$ 10,000
Total Project Expense and Set Aside		\$ 345,760
Revenue Source Goals		original projection
	BLT Share + Native Land Conservancy	\$ 15,000
	Mass Conservation Partnership	\$ 85,000
	Town CPA Funding	\$ 245,760
Total Revenue		\$ 345,760

7. Assessors office identification map and map and parcel number: see attached map 195 parcel 038



4/17/20

Signature of Applicant

Date

Signature of Applicant Partnership

Date

We, HOWARD W. WOOLLARD and VIRGINIA E. WOOLLARD, husband and wife, both of 196 West Church Street, Barnstable (West), Barnstable County, Massachusetts

being unmarried, for consideration paid, and in full consideration of \$37,500.00

grants to MARK S. WIRTANEN, individual tenant, of Main Street, Barnstable* (West), Barnstable County, Massachusetts, whose mailing address is: P.O. Box 971, Reno, Nevada

with quitclaim covenants

the land is situated in that part of the Town of Barnstable known as West Barnstable, Barnstable County, Massachusetts, bounded and described as follows:
[Description and encumbrances, if any]

NORTHEASTERLY	by Falcon Road, as shown on hereinafter mentioned plan, a total distance of 20 and 17/100 (20.17) feet;
NORTHEASTERLY	by Lot 11, as shown on said plan, thirty (30.00) feet;
NORTHERLY	by Lot 11, as shown on said plan, one hundred eighty-eight and 33/100 (188.33) feet;
EASTERLY	by Lot 10, as shown on said plan, two hundred nine and 64/100 (209.64) feet;
SOUTHEASTERLY	by Lot 9, as shown on said plan, one hundred sixty-two and 24/100 (162.24) feet;
EASTERLY	by Lots 9 and 8, one hundred sixty-eight and no/100 (168.00) feet;
NORTHERLY	by Lot 8, as shown on said plan, one hundred fifty-two and 62/100 (152.62) feet;
EASTERLY	by Lots 6 and 4, as shown on said plan, four hundred seventy and 14/100 (470.14) feet;
SOUTHERLY	by Lot 2, as shown on said plan, ninety (90) feet;
EASTERLY	by said Lot 2, one hundred thirty-eight and 59/100 (138.59) feet;
SOUTHERLY	as shown on said plan, on two courses, measuring ninety-one and 52/100 (91.52) feet, and ninety-six and 68/100 (96.68) feet, respectively;
SOUTHEASTERLY	one hundred forty-six and 01/100 (146.01) feet, as shown on said plan;
SOUTHERLY	by land now or formerly of Frederick Atwood, as shown on said plan, ninety-nine and 05/100 (99.05) feet;
SOUTHWESTERLY	by said land of Atwood, one hundred four and 03/100 (104.03) feet; again
SOUTHWESTERLY	by said land of Atwood, on three courses, there measuring one hundred fifty-eight and 24/100 (158.24) feet, two hundred fifteen and 11/100 (215.11) feet, and one hundred forty-five and 79/100 (145.79) feet, respectively;
NORTHWESTERLY	by Lot 2, as shown on said plan, three hundred sixty-four and no/100 (364.00) feet;
NORTHERLY	by said Lot 2, as shown on said plan, two hundred sixty-two and no/100 (262.00) feet;
NORTHWESTERLY	by said Lot 2, four hundred sixty-nine and 09/100 (469.09) feet;

NORTHWESTERLY

again by said Lot 2, as shown on said plan, two hundred twenty-seven and 75/100 (227.75) feet; and

NORTHWESTERLY

again by said Lot 2, fifty-seven and 43/100 (57.43) feet.

Containing an area of 15.96 acres, more or less, and being shown as LOT 1 on a plan of land entitled: "Plan of Land in (West) Barnstable, Mass. prepared for Howard W. Woolard, being a re-subdivision of a portion of a plan made for "Eagle Realty Trust", recorded in Plan Book 317, Page 34, the portion of said plan within Lots 1, 2 and 3 shown above is hereby rescinded, Scale: 1" = 80', August 13, 1980, Down Cape Engineering, Civil Engineers, Land Surveyors, Route 6A, Yarmouth, Mass." which plan is recorded at the Barnstable County Registry of Deeds, Plan Book 346, Page 95.

Said premises are subject to all rights, rights of way, easements, restrictions, reservations, appurtenances of record, if any, together with rights over the vehicle tracks as shown on said plan, insofar as are in force and effect.

Said premises are conveyed together with a one-third (1/3) interest in the fee in Falcon Road, together with a right of way over Falcon Rd. for all purposes for which ways are commonly used in the Town of Barnstable, together with all others now or hereafter legally entitled thereto; however, reserving to the Grantors, their heirs, and assigns, the right to grant rights of way over said Falcon Road.

Said premises are conveyed subject to the following restriction:

This lot shall not be further subdivided into additional building lots and shall remain as a single lot for building purposes.

For our title, see deed of Ernest Gallis et al, Trustees of Eagle Realty Trust, dated August 5, 1980, and recorded in Barnstable Registry of Deeds in Book 3133, Page 150.

Witness our hands and seals this 26th day of OCTOBER 1980

BARNSTABLE

110703

COMMONWEALTH OF MASSACHUSETTS
DEEDS & EXCISE

OCT 28 '80 85.50

RECORDED

Howard W. Woollard
HOWARD W. WOOLLARD
Virginia E. Woollard
VIRGINIA E. WOOLLARD

The Commonwealth of Massachusetts

Barnstable

ss.

OCTOBER 28, 1980

Then personally appeared the above named Howard W. Woollard

and acknowledged the foregoing instrument to be

his free act and deed, before me

William F. Howell, Jr.
Notary Public - Justice of the Peace

My Commission Expires DEC 31, 1982

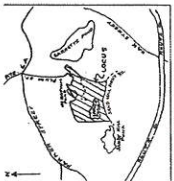
CHAPTER 183 SEC. 6 AS AMENDED BY CHAPTER 497 OF 1969

Every deed presented for record shall contain or have endorsed upon it the full name, residence and post office address of the grantee and a recital of the amount of the full consideration thereof in dollars or the nature of the other consideration therefor, if not delivered for a specific monetary sum. The full consideration shall mean the total price for the conveyance without deduction for any liens or encumbrances assumed by the grantee or remaining thereon. All such endorsements and recitals shall be recorded as part of the deed. Failure to comply with this section shall not affect the validity of any deed. No register of deeds shall accept a deed for recording unless it is in compliance with the requirements of this section.

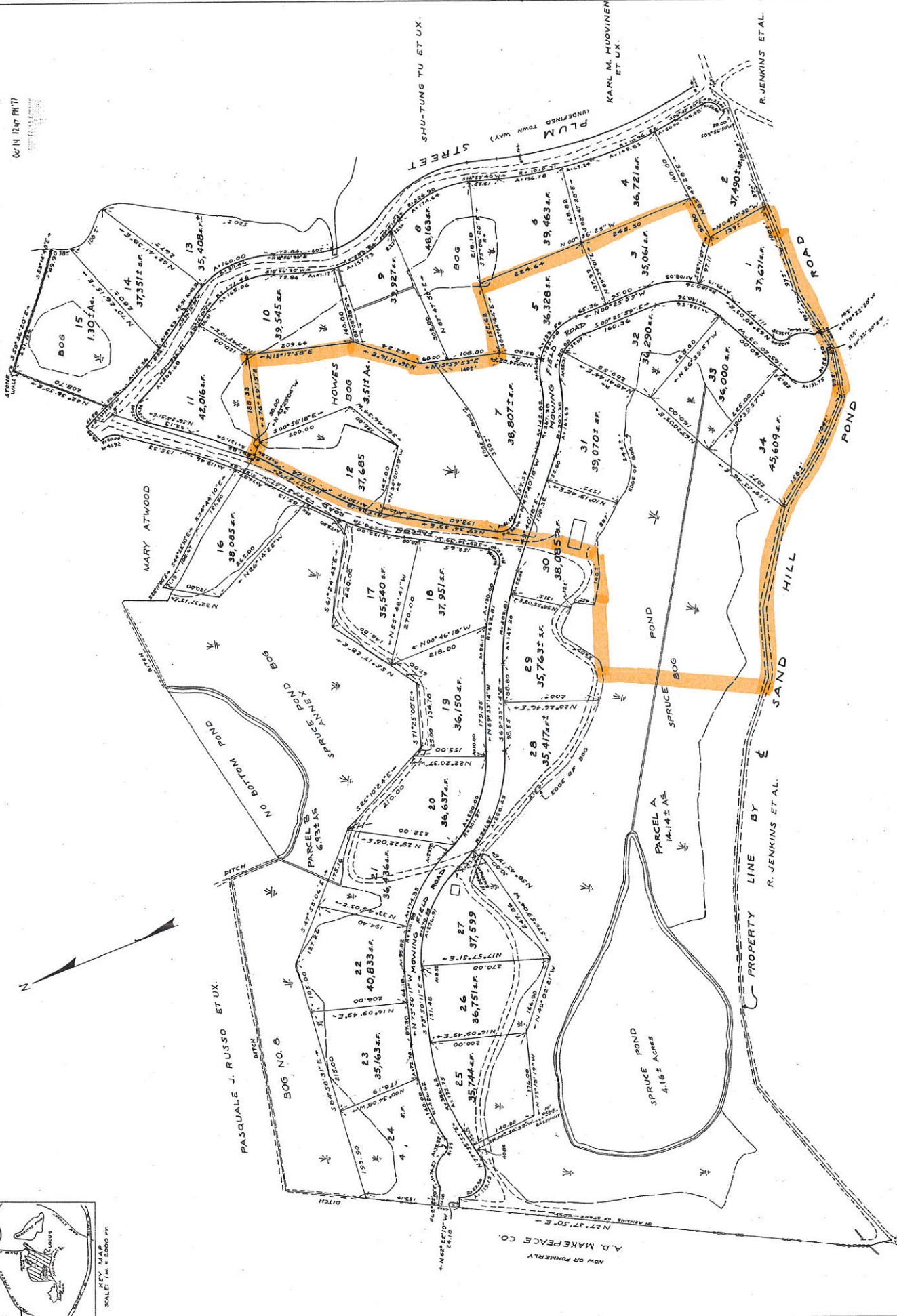
RECORDED OCT 28 80

6/14/12 12:47 PM 17

MARGARET M. JOHNSON



SCALE: 1" = 5000 FT.



RECEIVED AND RECORDED TO THE RECORDS OF THE COUNTY OF ESSEX, MASSACHUSETTS, BY THE REGISTRAR OF DEEDS, APRIL 3, 1972.

Charles F. [Signature]
Wendell [Signature]
Charles N. Savery Inc.

PLAN OF LAND
 IN
 WEST BARNSTABLE MASS.
 FOR
 EAGLE REALTY TRUST

DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 DATE: APRIL 3, 1972
 SCALE: 1" = 80 FT.
 CHARLES N. SAVERY INC.

346-95

PASQUALE J. RUSSO, et ux.
(MARGARET E.)

EUGENE COPP
CONSTANTINE COPP

290

RESEARCH AND
DEVELOPMENT

12

JAMES JENNINGS

Town of Barnstable

~ LOT 2 ~
24.04 Acres
(Total)

— LOT 3 —
11.69 ± Acres
(total)

15.96 ± ACRES
(total)

PLAN OF LAND IN
(WEST) BARNSTABLE, MASS.

HOWARD W. WOOLARD

BOY IS A RE-SUBDIVISION OF A PORTION OF A
PLAN MADE FOR "EAGLE REALTY TRUST"
RECORDED IN PLAN BOOK 317, PAGE 34, THE
PORTION OF SAID PLAN WITHIN LOTS 1, 2 & 3 SHOWN
ABOVE, IS HEREBY RESCINDED.

SCALE 1" = 80'



AUGUST 13, 1980

SCALE IN FEET

CIVIL ENGINEERS
LAND SURVEYORS

R106A - YARMOUTH, MASS.

IN ACCORDANCE WITH REGISTRY OF DEEDS
REGULATIONS EFFECTIVE JANUARY, 1976.

6/13/80

UNIVERSITY OF MARYLAND

DATE _____



DATE: October 14, 1990

ITCINE, CLERK OF THE TOWN OF
MERRIBY CERTIFY, THAT THE NOTICE
THEY GAVE THE ABOVE

THIS PLAN OF THE FURNISHING
WAS APPROVED AND RECORDED AT THIS
OF APPEAL WAS RECEIVED OUR

IS NEXT AFTER SUCH RECEIPT.
SAID NOTICE. **James P. ...**
MY CLERK:

100

APPROVAL OF THIS PLAN DOES NOT
IMPLY THAT THE SAND HILL ROAD ROCK
VEHICLE TRACKS SHOWN WITHIN LOTS
FOR SUBDIVISION PURPOSES.

THIS PLAN IS BASED ON A PLAIN RECORD
BOOK 317, PG. 36 & A PLAIN RECORD
BOOK 231, PG. 155, WITH SUPPLEMENTAL
FIELD SURVEY.

EASEMENT

I, MARK S. WIRTANEN, of Box 971, Reno, Nevada, for consideration of \$1.00 paid grant to RONALD A. MUCCI, having a mailing address of 106 Mill Street, Westwood, Massachusetts, a right of way for all purposes for which public ways are used in the Town of Barnstable over the vehicle tracks situated at the Northwest corner of Lot 1 as shown on a plan of land entitled: "Plan of Land in (West) Barnstable, Mass. prepared for Howard W. Woollard, being a resubdivision of a portion of a plan made for "Eagle Realty Trust" recorded in Plan Book 317 Page 34, the portion of said plan within Lots 1, 2 & 3 shown above, is hereby rescinded, Scale 1" = 80', August 13, 1980, Down Cape Engineering, Civil Engineers, Land Surveyors, Rte 6A, Yarmouth, Mass.," which said plan is duly filed in the Barnstable County Registry of Deeds in Plan Book 346 Page 95.

This right of way is for the benefit of Lot 3 as shown on the above mentioned plan and includes the right to pave said vehicle tracks with gravel.

Said premises are subject to and have the benefit of the matters set forth in deed from Howard W. Woollard et ux to me dated October 28, 1980 and recorded in said Registry in Book 3181 Page 75, to which deed reference is made for title.

Executed as a sealed instrument this 27 day of December 1980.

Mark S. Wirtanen
Mark S. Wirtanen

COMMONWEALTH OF MASSACHUSETTS

Barnstable ss.

November 27, 1980

Then personally appeared the above named Mark S. Wirtanen, and
acknowledged the foregoing instrument to be his free act and deed,
before me

Donald F. Henderson
Notary Public

My Commission expires: May 14, 1982

DONALD F. HENDERSON
My Commission expires
May 14, 1982

RECORDED FEB 12 81

04139

EASEMENT

I, MARK S. WIRTANEN, of Box 971, Reno, Nevada, for consideration of \$1.00 paid grant to JOHN D. NAPOLI, of Muscat, Sultanate of Oman, whose mailing address is c/o Attorney Charles E. McDermott, Route 6A, West Barnstable, Massachusetts, a right of way for all purposes for which public ways are used in the Town of Barnstable over the vehicle tracks situated at the Northwest corner of Lot 1 as shown on a plan of land entitled: "Plan of Land in (West) Barnstable, Mass. prepared for Howard W. Woollard, being a resubdivision of a portion of a plan made for "Eagle Realty Trust" recorded in Plan Book 317 Page 34, the portion of said plan within Lots 1, 2 & 3 shown above, is hereby rescinded, Scale 1" = 80', August 13, 1980, Down Cape Engineering, Civil Engineers, Land Surveyors, Rte 6A, Yarmouth, Mass.," which said plan is duly filed in the Barnstable County Registry of Deeds in Plan Book 346 Page 95.

This right of way is for the benefit of Lot 2 as shown on the above mentioned plan and includes the right to pave said vehicle tracks with gravel.

The grantor recognizes that the grantee may be unable to obtain electric power from the high tension line that crosses the southwesterly corner of Lot 3 as shown on said plan. If the grantee is unable to obtain power from said high tension line, then the grantor will allow the grantee at the grantee's expense to construct a pole line for the transmission of electricity across Lot 1, as shown on said plan, the location of any pole line to be mutually agreed upon by the grantor and grantee.

Said premises are subject to and have the benefit of the matters set forth in deed from Howard W. Woollard et ux to me dated October 28,

1980 and recorded in said Registry in Book 3181 Page 75, to which deed reference is made for title.

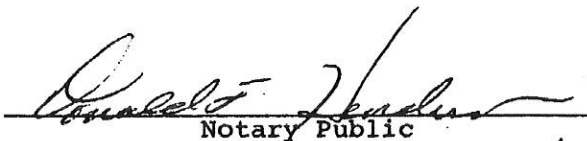
Executed as a sealed instrument this 27th day of December 1980.


Mark S. Wirtanen

COMMONWEALTH OF MASSACHUSETTS

Barnstable ss. December 27, 1980

Then personally appeared the above named Mark S. Wirtanen, and acknowledged the foregoing instrument to be his free act and deed, before me


Notary Public

My Commission expires: May 14, '82

DONALD F. HENDERSON
My Commission expires
May 14, 1982

04140

EASEMENT

I, JOHN D. NAPOLI, of Muscat, Sultanate of Oman, whose mailing address is c/o Attorney Charles E. McDermott, Route 6A, West Barnstable, Massachusetts, for consideration of \$1.00 paid grant to MARK S. WIRTANEN of Box 971, Reno, Nevada, a right of way for all purposes for which public ways are used in the Town of Barnstable over a parcel of land situated in Barnstable (West), Barnstable County, Massachusetts, bounded and described as follows:

NORTHEASTERLY	by	Falcon Road, as shown on a plan hereinafter mentioned, 20.17 feet, more or less;
NORTHWESTERLY	by	Lot 3, as shown on said plan, 289.90 feet, more or less;
NORTHWESTERLY again	by	said Lot 3, as shown on said plan, 424.00 feet, more or less;
SOUTHERLY	by	the remaining portion of Lot 2, as shown on said plan, 40.34 feet, more or less;
SOUTHEASTERLY	by	Lot 1, as shown on said plan;
SOUTHEASTERLY again	by	said Lot 1, as shown on said plan, 227.75 feet, more or less; and
SOUTHEASTERLY again	by	said Lot 1, as shown on said plan, 57.43 feet, more or less.

The above described premises are shown as a portion of Lot 2 on a plan of land entitled: "Plan of Land in (West) Barnstable, Mass., prepared for Howard W. Woolard, being a re-subdivision of a portion of a plan made for "Eagle Realty Trust" recorded in Plan Book 317 Page 34, the portion of said plan within Lots 1, 2 & 3 shown above is hereby rescinded, Scale 1" = 80', August 13, 1980, Down Cape Engineering,

Civil Engineers, Land Surveyors, Route 6A, Yarmouth, Mass.," which said plan is duly filed in the Barnstable County Registry of Deeds in Plan Book 346 Page 95.

This right of way is for the benefit of Lot 1 as shown on the aforementioned plan.

Said premises are subject to and have the benefit of the matters set forth in deed from Howard W. Woollard et ux to me dated October 17, 1980 and recorded in said Registry in Book 3173 Page 107, to which deed reference is made for title.

Executed as a sealed instrument this 17th day of January 1981.

John D. Napoli
John D. Napoli

SULTANATE OF OMAN

17th January 1981.

Then personally appeared the above named, John D. Napoli, and acknowledged the foregoing instrument to be his free act and deed, before me,

John E. Roberts
JOHN E. ROBERTS
Vice Consul United States of America



Page 2

RECORDED FEB 12 81

Parcel Details

I want to...

+

-

Location

Parcel: 195038

Address: 28 FALCON ROAD

Village: WB

Acreage: 15.96

[Full Property Info](#)

Property Photo

No photos found.

Owner & Mailing Address

Owner: WIRTANEN, MARK S

Mail Address: 1894 MAIN ST

WEST BARNSTABLE

MA

02668

Assessed Value (FY20)

Building Value: \$0

Extra Features: \$0

Outbuildings: \$0

Land Value: \$1,600

Total Value: \$1,600

Residential Exemption

No exemption.

Building Details

No records found.

Extra Features

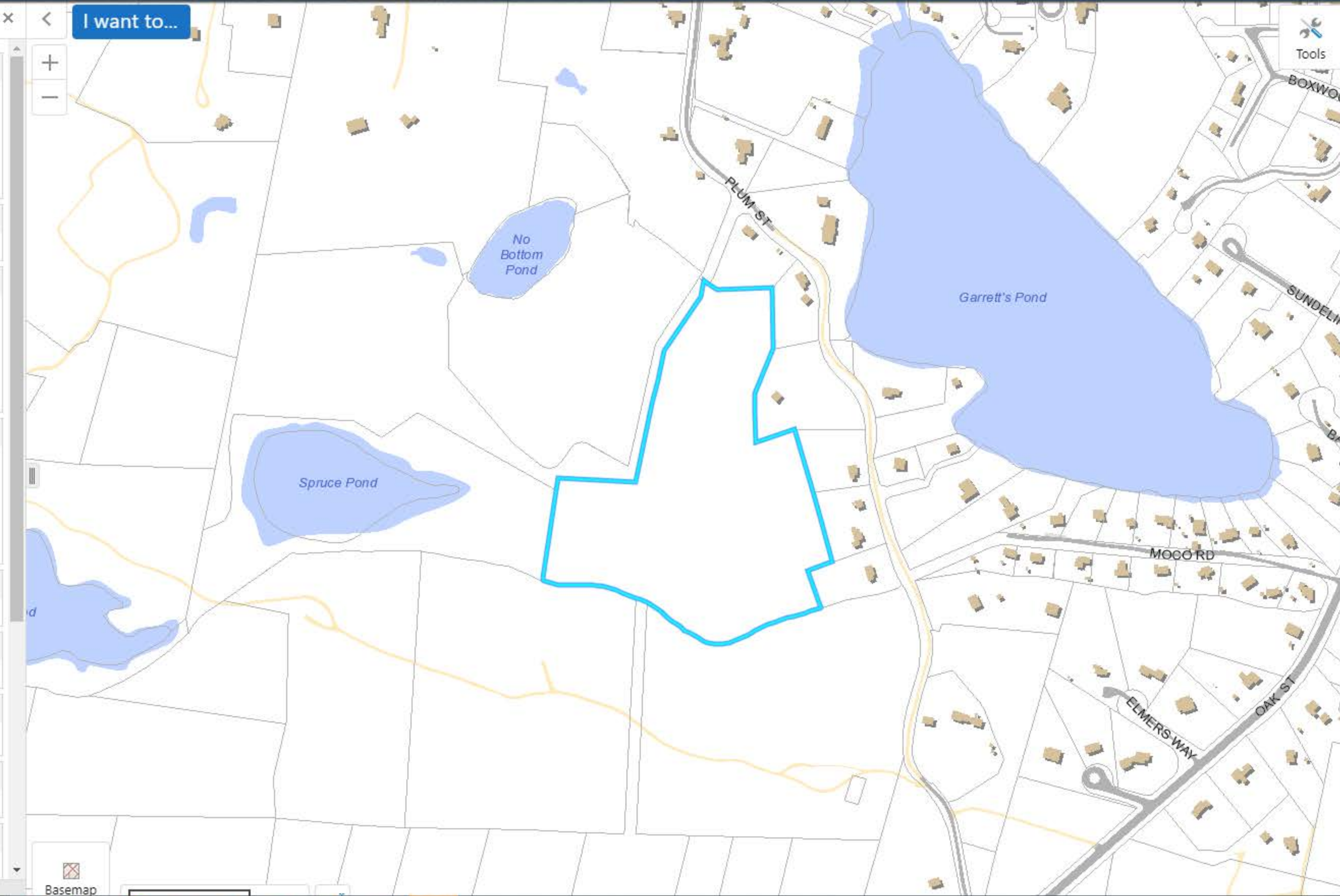
No records found.

Building Sketch

No records found.

Sales History

Sale Date	Sale Price
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LOCATION OF NATIVE INDIAN TRAIL IN WEST BARNSTABLE, MASSACHUSETTS

The West Barnstable map below, supported by these notes and attachments (footnotes), shows the location of the native Indian trail used by the first settlers to and through the village from 1621 to 1685.

Certain organizations are intent on trying to glamorize Route 6A (Main Street) in West Barnstable as part of the original trail that ran from Sandwich through Dennis.

The native Indians did not have ferry service or bridges over marsh creeks in Sandwich and West Barnstable or have any need for tide charts. Their trail in West Barnstable traversed high ground that was usable at any season.

Going east, the Indian trail from the Old County Road in East Sandwich, which runs south of Scorton Creek and the large marsh in Sandwich, entered Great Marsh Road at the Sandwich-Barnstable town line where High Street starts. Then south to Cedar Street extension and Cedar Street itself. Then east, crossing Route 149 at the West Parish Church into Church Street and the Plains Road. There, a section of the trail was taken by the town for the Crocker Park Cemetery around 1950. Another section was taken by the Commonwealth for the Mid Cape Highway around 1949. The trail continued on along Pine Street, passing Jenkins bog after crossing Parker Road.

It then continued east, south of Sand Hill Pond and Spence (Spruce) Pond, along Spruce Pond Road to

Plum Street. It should be noted this is the only section of the trail left in pristine condition. It has never been bulldozed, paved or relocated.

The trail then crossed Plum Street going east, south of Garrett's Pond, to Oak Street (Old Falmouth Road) then along Oak Street where it intersects with Routes 6A (Main Street) and 132. The Indian trail continued east on Route 6A for approximately 150 yards until it curved north toward the Great Marshes by the present railroad track. At that point, it curved to the south and back to Route 6A and continued until the West Barnstable - Barnstable precinct line. It is noted that the curved section of the trail was replaced by what is the present Route 6A after consent was given by Deacon Crocker in 1686 (see footnote 3, page 372, Deyo).

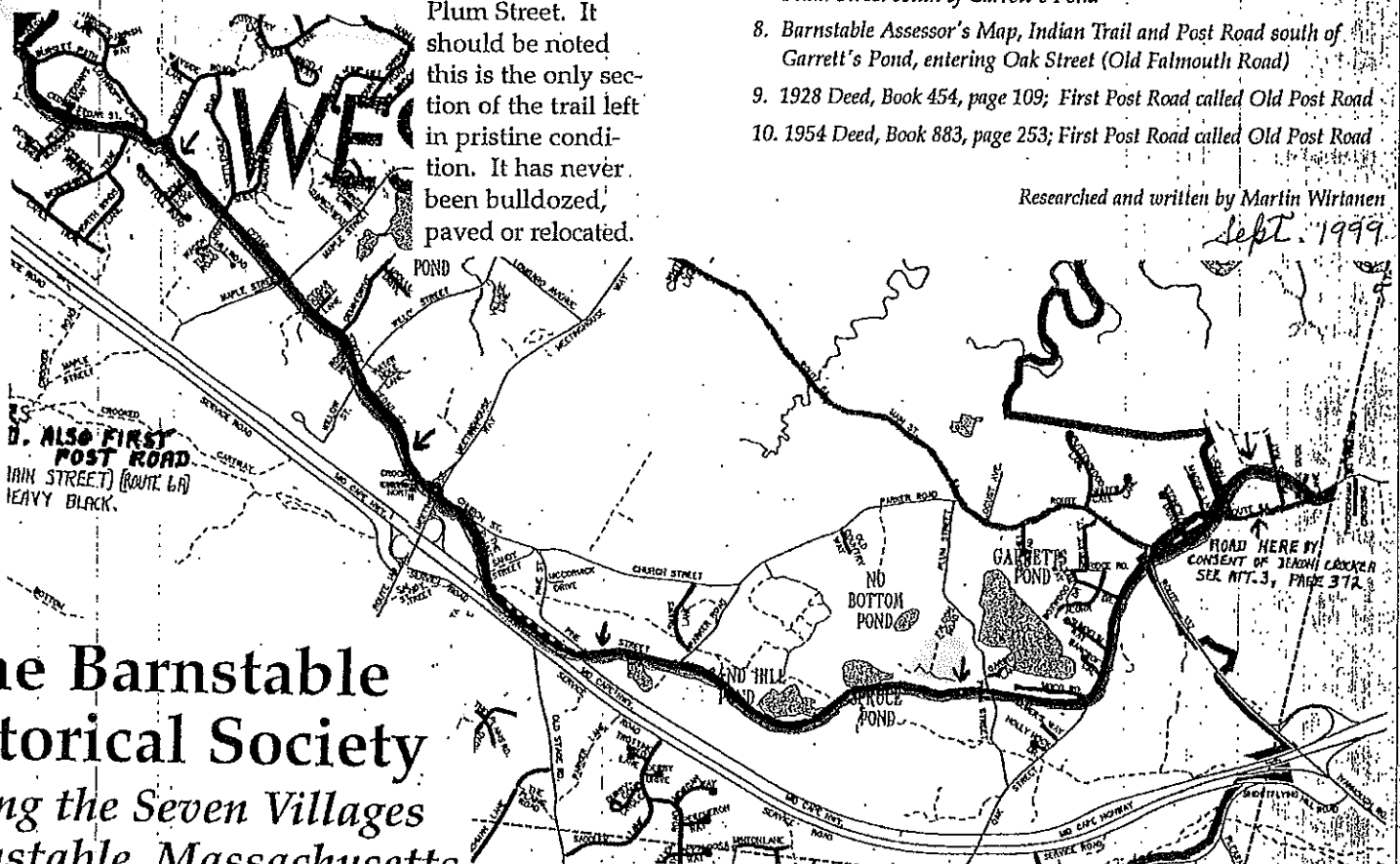
The original Indian trail also served as the Post Road until 1686 after which Route 6A was used for that purpose.

Footnotes and Attachments:

1. Map, Precinct #11, West Barnstable Indian Trail and first Post Road
2. "History of Cape Cod" by Freeman, 1869; pg. 277
3. "History of Barnstable County" by Deyo, 1890; pp. 370, 371, 372, 373
4. "Barnstable, Three Centuries of a Cape Cod Town" by Trayser, 1939; pg. 446
5. Barnstable Assessor's Map, Indian Trail and Post Road south of Sand Hill Pond
6. Barnstable Assessor's Map, Indian Trail and Post Road south of Spruce Road and bog
7. Barnstable Assessor's Map, Indian Trail and Post Road crossing Plum Street south of Garrett's Pond
8. Barnstable Assessor's Map, Indian Trail and Post Road south of Garrett's Pond, entering Oak Street (Old Falmouth Road)
9. 1928 Deed, Book 454, page 109; First Post Road called Old Post Road
10. 1954 Deed, Book 883, page 253; First Post Road called Old Post Road

Researched and written by Martin Wirtanen

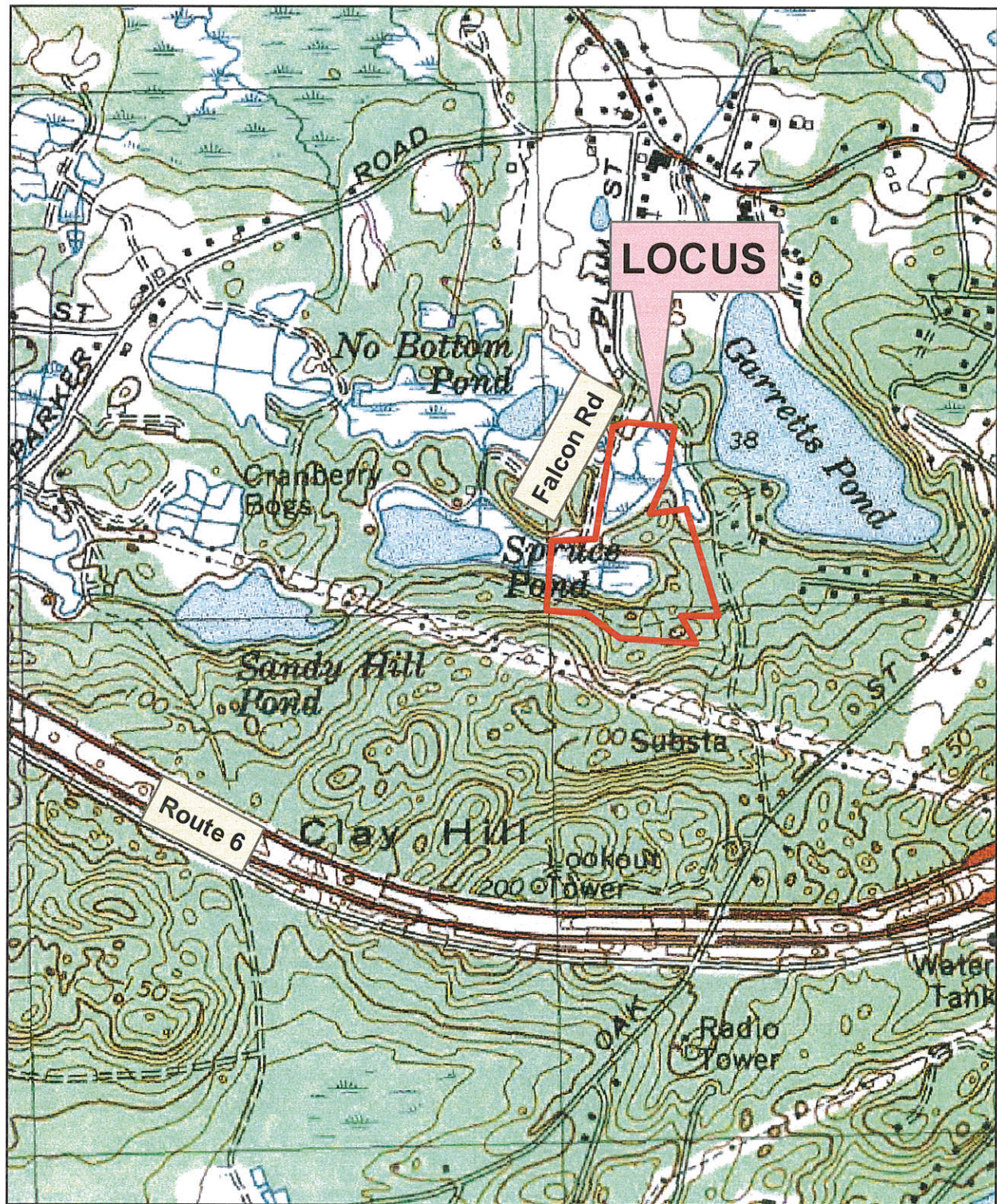
Sept. 1999



**The Barnstable
Historical Society**
Serving the Seven Villages
Barnstable, Massachusetts

January 2000 Newsletter

WIRTANEN PROPERTY
WEST BARNSTABLE, MA
CONSERVATION LAND TAX CREDIT (CLTC) PROGRAM
SURROUNDING PROTECTED OPEN SPACE MAP



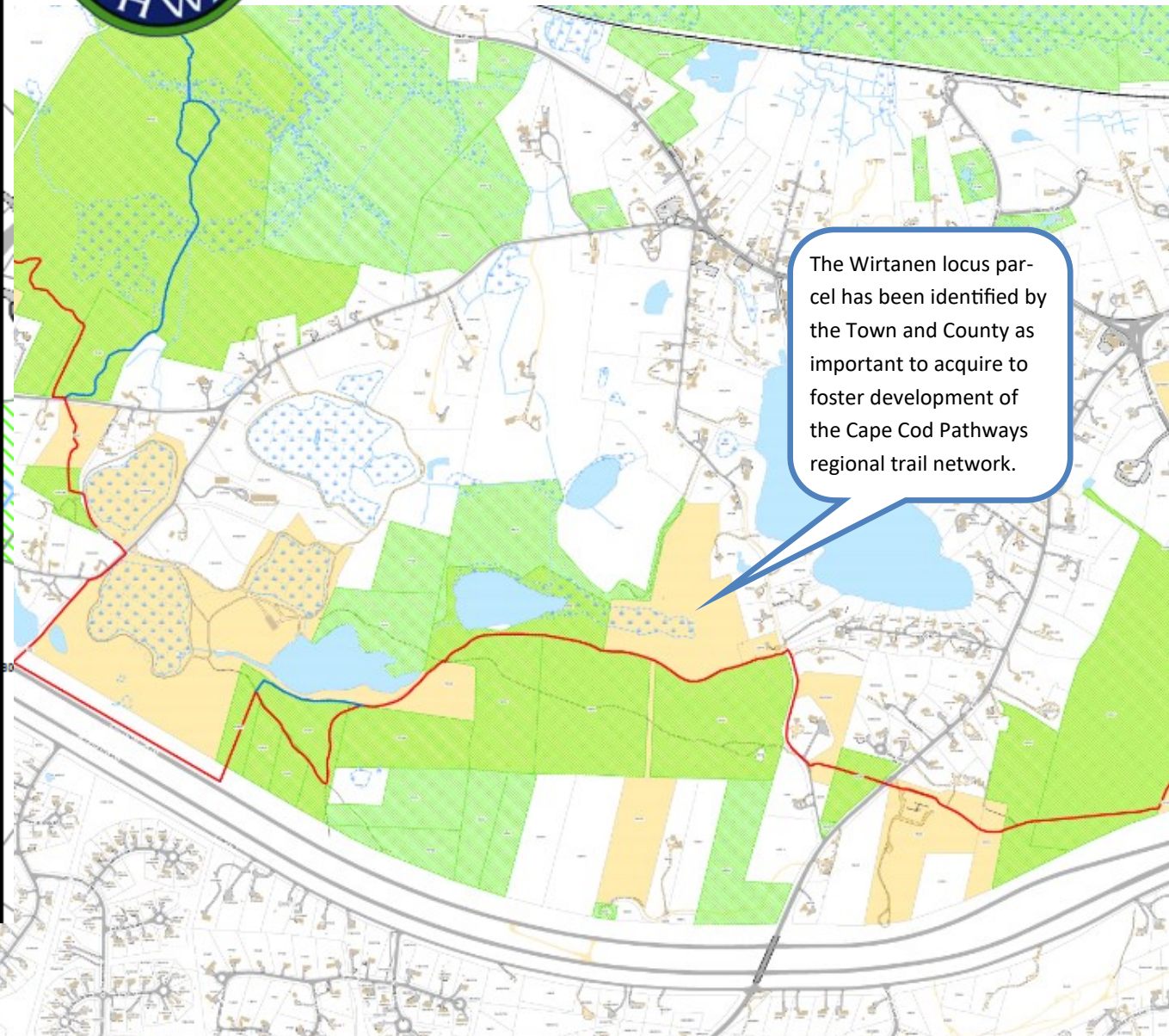
Map prepared December 2019
Data provided by MassGIS
Parcel layers provided by Cape Cod Commission

**WIRTANEN PROJECT, BARNSTABLE MA
CONSERVATION LAND TAX CREDIT APPLICATION**

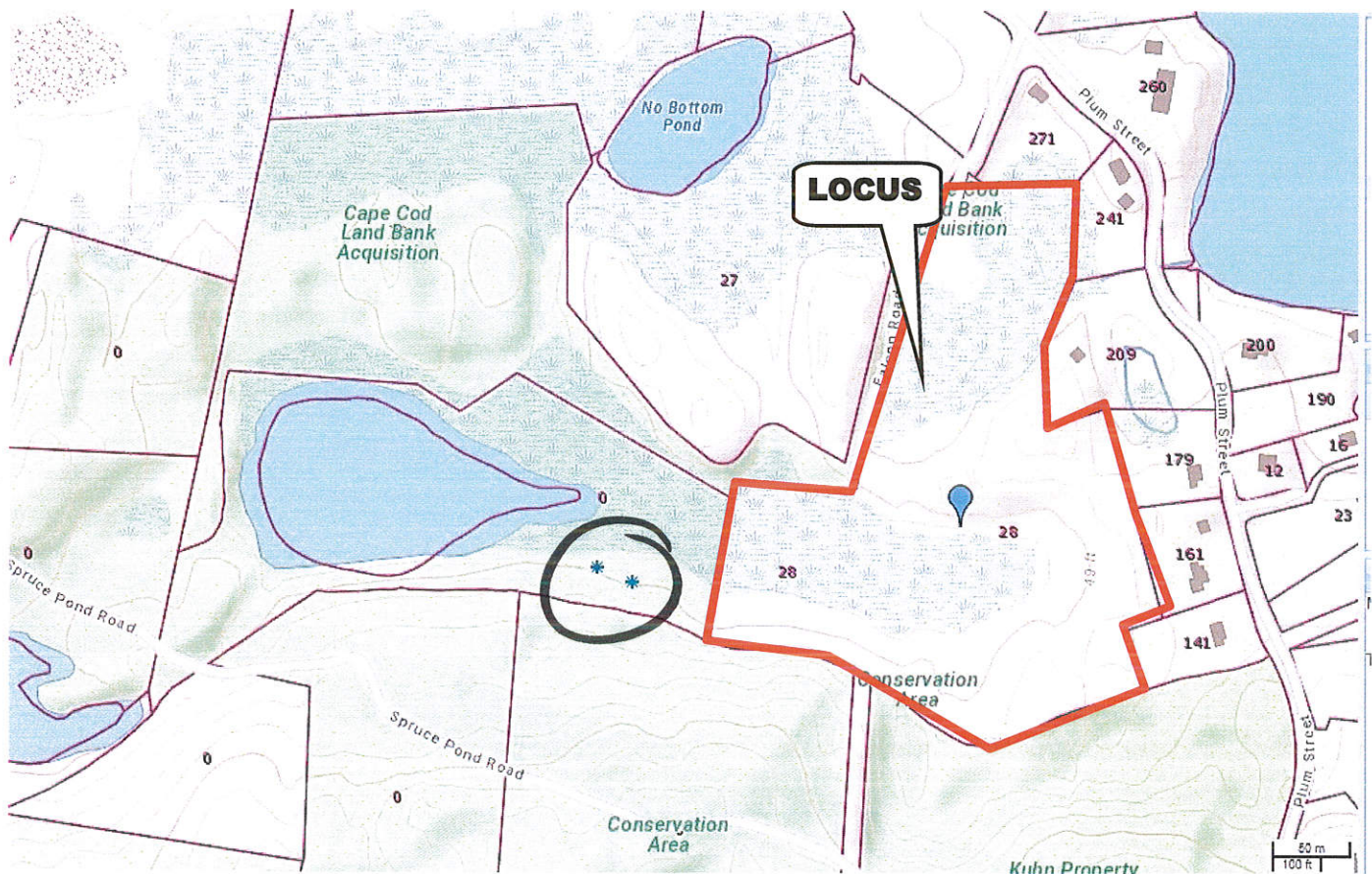
Significance for Cape Cod Pathways Program



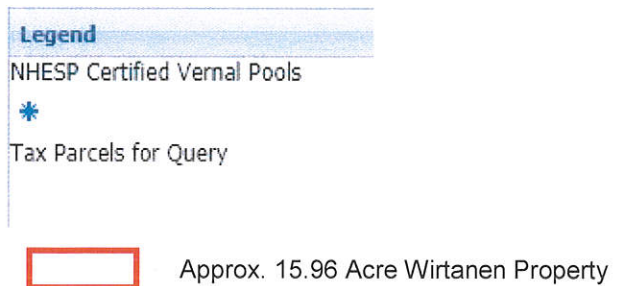
-  Cape Cod Pathways Main Trail
-  Cape Cod Pathways North Loop
-  Cape Cod Pathways South Loop
-  Parcels Crossed by Path
-  Protected Land
-  Parcels (FY2016)
-  Town Boundary
-  Buildings
-  Bridges
-  Paved Roads
-  Unpaved Roads
-  Railroad
-  Paved Driveways
-  Unpaved Driveways
-  Paved Parking Lots
-  Unpaved Parking Lots
-  Walkways Improved
-  Walkways Unimproved
-  Shoreline
-  Streams
-  Drainage Ditches
-  Marine Coastline
-  Marsh Areas
-  Water Bodies



WIRTANEN PROPERTY
BARNSTABLE, MA
CONSERVATION LAND TAX CREDIT (CLTC) APPLICATION
CERTIFIED VERNAL POND MAP



2 certified
vernal pools
within the
same wetland
system as
locus



Map prepared December 2019
Data provided by Town of Barnstable Assessors Office
and The Compact of Cape Cod Conservation Trusts, Inc.

**CONSERVATION RESTRICTION
DRAFT**

Item #

Property location: 28 Falcon Road, West Barnstable

THE INHABITANTS OF THE TOWN OF BARNSTABLE, a Massachusetts municipal corporation with principal offices at Town Hall, 367 Main Street, Hyannis, Barnstable County, Massachusetts 02601-3907, its successors and assigns, ("Grantor"), in consideration of Twenty-Five Thousand and 00/100 (\$25,000.00) Dollars, pursuant to the provisions of the Community Preservation Act, G.L. c 44B § 12 (a), grants to **BARNSTABLE LAND TRUST, INC.** (Federal ID #22-2483963), a Massachusetts charitable corporation with an office at 1540 Main Street, West Barnstable, MA 02668, its successors and permitted assigns ("Grantee"), with quitclaim covenants, IN PERPETUITY and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION (hereinafter referred to as "Restriction"), on a parcel of vacant land totaling 15.96 acres more or less, located in the Village of West Barnstable, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts, said parcel being described in Exhibit A and in Exhibit B, both of which are attached hereto and made a part hereof, (hereinafter referred to the "Premises"). The Grantor and Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Restriction.

Grantor: Town of Barnstable

Grantee: Barnstable Land Trust, Inc.

Property Address: 28 Falcon Road, Barnstable, Massachusetts, Assessor's Map 195-038.

Grantor's Title: Barnstable County Registry of Deeds in Book _____, Page _____ (pending).

The conveyance of this Restriction is made pursuant to the vote of the Barnstable Town Council, at a duly called meeting held on _____, on Agenda Item 2020-_____, to appropriate for the purpose of acquiring the Premises for open space as defined in the aforesaid Community Preservation Act, G.L.44B § 1 et seq. (hereinafter "open space") as applied pursuant to Chapter 149, §298 of the Acts of 204, as amended by Chapter 352, §129-133 of the Acts of 2004 (the so called "Barnstable County Community Preservation Act" or "CPA") and to authorize the Town Manager to convey this Restriction on the Premises on behalf of the Town in compliance with the provisions of section 12(a).

I. PURPOSES: This Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws, and otherwise by law. The purpose of this Restriction is to assure that the Premises, while permitting the acts and uses described in Article III herein, will be retained in perpetuity predominately in its natural, scenic and open condition; to protect and promote the conservation of native vegetation, wetlands, soils, natural watercourses, ponds, water supplies, habitat and wildlife thereon; to protect and enhance the value of the abutting conservation areas; to allow and maintain appropriate public access for enjoyment of the wildlife and open space resources and for passive recreation. The conservation and permanent protection of the Premises will yield a significant public benefit for the following reasons:

- A. The Premises consist of approximately 15.96 acres of Statewide Wildlife Action Plan species of greatest conservation need in pine-oak upland forest, over 75% of which is Prime Forest Land, a defined MassGIS map layer based on NRCS soil data which reflect high potential for white pine and red oak forest development, wetlands and riparian area presence. Fox, coyote, and

deer, eastern box turtle, migratory warblers, bobwhites are among the species that inhabit the forested upland.

- B. The Premises are proximal to 120 acres of Town of Barnstable conservation land, former cranberry bogs and three freshwater kettlehole ponds: Garrets Pond, No Bottom Pond, and Spruce Pond. In addition the Premises is within 500 feet of two certified vernal ponds, a distance deemed critical for salamander migration and breeding patterns.
- C. The Premises is 95% within a Statewide Land Conservation Plan area with is high priority for protection, and is adjacent to Massachusetts Natural Heritage and Endangered Species Program (“NHESP”) BioMap2 designated Critical Natural Landscape, and BioMap2 Core Habitat, the most critical wildlife habitat to protect in the state. BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. BioMap2 is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan. Therefore, the protection of the Premises aligns with the NHESP’s wildlife and habitat protection objectives and would ensure perpetual protection for each of these state-recognized habitats.
- D. The Premises falls within an area identified by the Index of Ecological Integrity measure as important freshwater wetland and aquatic habitat according to the Conservation Assessment and Prioritization System (CAPS) computer program developed by the University of Massachusetts-Amherst.
- E. The preservation of the Premises will further reduce alterations to the natural character thereof, will further protect and enhance the recreational and ecological attributes in an area where any further residential development would immeasurably and unacceptably compromise this parcel and neighboring Town conservation land. By conserving the Premises, locally important wetlands are also protected.
- F. The Premises is located 100% within the Old Kings Highway Regional Historic District which was established on the northern shore of Barnstable County pursuant to 1973 Mass. Acts, Chapter 740. An ancient carpath runs along the southern boundary of the Premises, perhaps originally a Native American regional east-west trail, but certainly a colonial carpath. This carpath has been identified as important to the Cape Cod Pathways regional trail system, as mapped by the Town of Barnstable.
- G. In 1991, the Barnstable Assembly of Delegates, pursuant to the Cape Cod Commission Act, 1988 Massachusetts Acts, Chapter 716, adopted a Regional Policy Plan (as amended in 1996, 2002, 2009 and 2015), which identified a proposed Regional Open Space Greenbelt, including the Scorton Creek Marshes, and which identified Marine Water Recharge Areas that are nitrogen-sensitive, including the Barnstable Harbor/Great Marshes embayment, of which the Premises are a part. The Premises are within this Recharge Area.
- H. The Barnstable Town Council's Strategic Plan FY2015 supports the preservation and protect of significant natural and historical resources for visual quality, outdoor recreation, public access, wildlife habitat and cultural history.

- I. The Premises supports the vision and guidance for the Town of Barnstable's Open Space and Recreation Plan (2018) which states that "1) Preservation of open space for protection of drinking water resources, and for protection of other natural, historic and scenic resources is a community-wide priority; and 2) Protection of open space should continue to be an integral component of the Town's efforts." (p. 6) To achieve this vision, the Plan sets several goals for the town including: 1) To protect and maintain the maximum amount of open space to enhance environmental protection, recreational opportunities and community character, and 2) Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, [and] preserve historic, scenic and cultural resources... (pp. 10-11).
- J. Therefore, preservation of the Premises will advance the open space, resource management and passive recreational goals and objectives of the Town of Barnstable and the Commonwealth of Massachusetts.

The terms of this Restriction are as follows:

II. PROHIBITED ACTIVITIES: In order to carry out the purposes set forth in Article I above, the Grantor covenants for itself and its legal representatives, mortgagees, successors and assigns that the Premises will at all times be held, used and conveyed subject to and not in violation of this Restriction. The Grantor shall refrain from and will not permit any activity which shall be inconsistent with the aforestated purposes of this grant or which is detrimental to water quality, soil conservation, wildlife conservation, scenic landscape protection or which is otherwise wasteful of the natural resources of the Premises.

Subject to the exceptions set forth in Article III, below, prohibited activities shall include, but shall not be limited to, the following:

- A. Construction or placing of any building, residential dwelling, mobile home, tennis court, ball fields, benches, swimming pool, artificial water impoundment, billboard, or other advertising display, landing strip or pad, roadway, asphalt or concrete pavement, antenna, utility pole, tower, wind turbine, solar array, conduit or line, telecommunication tower, or any other temporary or permanent structure or facility on, under or above the Premises.
- B. Placing, storing or dumping of equipment, mobile home, trailer, automotive vehicle or parts, soil, rock, sand, stumps, slash, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive waste, or hazardous waste.
- C. Mining, excavation, dredging or removal of any loam, peat, gravel, soil, sand, rock or other mineral substance, or natural deposit from the Premises or otherwise make topographical changes to the Premises unless approved by the Grantee pursuant to the notice procedure set forth in Article IV, below.
- D. Pollution, alteration, depletion, diversion, channelization, damming, draining, or extraction of surface water, natural water courses, marshes, potential or certified vernal pools, subsurface water, or any other water bodies unless approved by the Grantee pursuant to the notice procedure set forth in Article IV, below.

- E. Removal, destruction or cutting of trees, grasses, shrubs or other natural vegetation, including cutting for firewood or commercial harvesting and lumbering activities, except as provided under Article III, below.
- F. Purposeful introduction of species of animals or plants that are not native to Barnstable County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.
- G. Use of motorized or power-driven vehicles of any kind, including without limitation snowmobiles, motorbikes or all-terrain vehicles, except as necessary for police, firemen, natural resource officers or other governmental agents in carrying out their lawful duties and otherwise provided under Article III, below.
- H. Commercial camping, commercial fishing, commercial hunting or commercial trapping. Any trapping should be disallowed under state law, unless a proven nuisance wildlife.
- I. Commercial recreation or other business or industrial use.
- J. Conveyance of a part or portion of the Premises alone or division or subdivision of the Premises or use or assignment of the dimensions, area or acreage of the Premises for purposes of subdivision or development of unrestricted land whether or not such land is owned by the Grantor, its successors and assigns. (Conveyance of the Premises in its entirety shall be permitted.)
- K. Activities significantly detrimental to drainage, flood control, water conservation, erosion control or soil conservation.
- L. The excavation of landscape features on the Premises with the intent of collecting or otherwise removing archaeological artifacts (prehistoric and/or historic) except by formal approval of the Massachusetts Historic Commission (MHC) through submission, with the concurrence of the Grantees, of a project notification form (PNF) in accordance with G.L. c. 9, §27C, and associated regulations, as amended.
- M. Archaeological investigations, unless under an Archaeological Field Investigation Permit issued by the State Archaeologist in accordance with G.L. c. 9, §26A, and associated regulations.
- N. Any other use of the Premises or activities which would significantly impair the conservation interests protected by this Restriction, or which are prohibited by federal, state or local law or regulation.

III. PERMITTED ACTIVITIES AND RESERVED RIGHTS: The Grantor reserves to itself and to its heirs, devisees, legal representatives, successors and assigns the right to conduct or permit the following activities on the Premises, but only if such uses and activities do not materially impair the purposes of this Restriction

- A. Active measures taken in order to prevent unauthorized vehicle entry and dumping, vandalism or other acts destructive to the premises.

- B. Active measures taken in order to protect landform stability and endangered species natural habitat.
- C. The use of the Premises for passive recreation activity such as sunbathing, swimming, boating, hiking, horseback riding, snowshoeing, cross-country skiing, nature study or research, and other like activities, including access by motorized wheelchairs or other disabled assistance devices, and for hunting and fishing as otherwise allowed by law, including erection of portable and temporary duck blinds or deer stands that conform to applicable Massachusetts fish and wildlife laws.
- D. The maintenance and use of an existing unpaved way, and other footpaths which may exist on the Premises substantially in their present condition or as reasonably necessary for the current and permitted private and public uses thereof and relocation or construction of new footpaths or trails, provided that all applicable federal, state, regional and local approvals are obtained in advance, and the relocation or construction of such ways or trails is consistent with the resource protection goals of the Management Plan; and provided further that the maintenance, use, relocation or construction of the existing footpath or new or relocated footpaths or trails are not significantly detrimental to species habitat, water quality, soil conservation, wildlife conservation and/or management activities permitted herein, or which are otherwise destructive to the natural or archeological resources on the Premises.
- E. The erection and maintenance of signs identifying ownership of the Premises, the property boundaries, the Premises' status as a conservation reservation, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, or for providing other like information. Signage will be subject to any applicable regional or local approvals. Also the erection of signs, fencing or other barriers consistent with endangered species protection as consistent with Habitat Conservation Permits.
- F. Minimal cutting or removal of trees, shrubs and other vegetation and planting of native trees, shrubs and other vegetation to further the conservation interests protected by this Restriction; to prevent threat of injury or damage to persons or property; to prevent or mitigate pest infestation, blight or disease; to control, manage or eradicate non-native or invasive species not native to the pine-oak upland forest, or coastal plain pond ecosystems; or to improve or protect wildlife habitat.
- G. The use of motor vehicles (1) by the Grantor or its employees and agents as reasonably necessary to carry out activities permitted under this Restriction, (2) for access by Grantee for purposes set forth in Article VI, below, (3) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties, and (4) limited to any existing trails or approved trails or ways on the Premises, for access by owners of land or their lessees entitled to use the same in conformance with all applicable federal, state or local laws.
- H. Archaeological investigations consisting of site inspections and subsurface excavations subject to and in accordance with an Archaeological Field Investigation Permit issued by the State Archaeologist under G.L. c. 9, §26A, and associated regulations, and Grantees' written approval in accordance with Article IV, below, none of which shall be unreasonably denied, delayed or withheld.
- I. Any other use not otherwise prohibited by or inconsistent with the purposes of this Restriction, or prohibited by federal, state or local law or regulation.

Notwithstanding the foregoing permitted activities, any proposed modifications to the landscape, including but not limited to the creation of trails, management of vegetation and coastal resources, and installation of signage and educational kiosks, shall not be undertaken if they disturb, remove, damage or destroy archaeological resources or artifacts on the Premises.

The exercise of any right or obligation reserved by the Grantor under this Article III shall be in compliance with the Wetlands Protection Act (Massachusetts General Laws, Chapter 131, Section 40) and all applicable federal, state and local law. The inclusion of any reserved right in this Article III requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position on whether such permit should be issued.

IV. NOTICE AND APPROVAL: Whenever notice to or approval by Grantee is required under the provisions of this Restriction, Grantor shall notify Grantee 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 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 materially impair the purposes of this Restriction.

Failure of Grantee to respond in writing within sixty (60) days shall be deemed to constitute approval by the 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, provided the requested activity is not expressly prohibited hereunder and the activity will not materially impair the purposes of this Restriction.

In the event the activity proposed is necessary to address an emergency situation, either to avert environmental degradation, ecological damage or risk to public health and safety, Grantee shall respond forthwith and with all deliberate speed.

V. LEGAL REMEDIES OF THE GRANTEE; WAIVER:

The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings including obtaining injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of this grant, it being agreed that the Grantee may have no adequate remedy at law, and shall be in addition to and not in limitation of any other rights and remedies available to the Grantee for the enforcement of this Restriction.

- A. Notwithstanding the foregoing, Grantee agrees to provide written notice to Grantor of any violation of this Restriction and to cooperate for a reasonable period of time, not to exceed sixty (60) days, to allow Grantor to remedy the violation, prior to resorting to legal or equitable means in resolving issues concerning alleged violations provided Grantor has ceased objectionable actions and is making a good faith effort to remedy the violation and Grantee reasonably determines there is no ongoing diminution of the conservation values of the Restriction.
- B. The Grantor and its successors and assigns shall each be liable under this section for any such violations of this Restriction as may exist during their respective periods of ownership of the

Premises. Any new owner may be held responsible for any continuing violations existing during his or her period of ownership.

- C. By acceptance of this Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises, including compliance with environmental laws and regulations or acts not caused by the Grantee or its agents.

If Grantee prevails in any action to enforce the terms of this Restriction, the Grantor or Grantor's heirs, successors and assigns, as the case may be, shall reimburse the Grantee for all reasonable costs and expenses, including reasonable attorney's fees, incurred in enforcing this Restriction or in taking reasonable measures to remedy or abate any violation thereof. If Grantor prevails in any action brought by Grantee to enforce the terms of this Restriction, the Grantee or its heirs, successors and assigns, as the case may be, shall, to the extent allowed by law, reimburse the Grantor for all reasonable costs and expenses, including attorney's fees, incurred in defending such action to enforce this Restriction, provided the Grantee's action is deemed by the court or by other competent authority to be unreasonable or arbitrary and capricious.

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

VI. GRANTEE'S RIGHT OF ACCESS; INSPECTION:

The Restriction hereby conveyed does not grant to the Grantee any right to enter upon the Premises except at reasonable times and in a reasonable manner for the following purposes and then only in the presence of an employee or employees of the Grantor except as further provided in Section C of this Article VI:

- A. To perform a survey of boundary lines;
- B. To inspect the Premises to determine compliance within provisions of this Restriction;
- C. To enter the Premises with or without the presence of an employee or employees of the Grantor for the purpose of taking any and all actions with respect to the Premises, at Grantor's cost, as may be necessary or appropriate to remedy or abate or enforce any violation hereof provided that Grantee first give Grantor notice of the violation, and upon failure of the Grantor to cure the violation within sixty (60) days after inspection of the Premises by the Grantee with or without the presence of an employee or employees of Grantor, Grantee then gives Grantor further written notice of its intention to enter the Premises to take such actions at least fifteen (15) days following the date of such further written notice.
- D. The Restriction hereby conveyed includes the grant of the further right to Grantee, its successors and assigns, to permit the public to enter upon the Premises, and to permit members of the public to use the Premises and existing and future ways and trails thereon for the purposes set forth in Article III.A above, but only in circumstances where (1) all or most of the public uses described in Article III.A are threatened with termination and (2) Grantee first follows the approval procedure otherwise applicable to Grantor set forth in Article IV.

VII. ACTS BEYOND GRANTOR'S CONTROL: Nothing contained in this Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood,

storm, natural erosion or from any prudent action taken by the Grantor under emergency conditions to abate, prevent, or mitigate significant injury to or alteration of the Premises resulting from such natural causes. The parties to this Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises, if feasible.

VIII. COSTS AND TAXES; LIABILITY: Grantor agrees to pay and discharge when and if due any and all real property taxes and other assessments levied by competent authority on the Premises.

IX. DURATION, BINDING EFFECT, RELEASE AND RECORDATION: The burdens of this Restriction shall run with the Premises IN PERPETUITY, and shall be enforceable against the Grantor and the Grantor's successors and assigns holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Restriction. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instrument upon reasonable request.

This Restriction may only be released, in whole or in part, by the Grantee pursuant to the procedures established by G. L. c. 184, §32 of the General Laws, in accordance with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

X. ASSIGNMENT: The benefits of this Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, their successors and assigns, except in the following instances from time to time:

- A. The assignee is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, including, without limitation, a government entity, provided that, as a condition of such assignment, the assignee is required to hold this Restriction and enforce its terms for conservation purposes.
- B. In accordance with G.L. c. 184, §32, Grantee shall also have the right to assign the right to enforce this Restriction, so long as the assignee is a governmental body, charitable corporation or trust, or other entity which at the time of such assignment would be qualified to hold this Restriction.
- C. The Grantee complies with the provisions required by Article 97 of the amendments to the State Constitution of the Commonwealth of Massachusetts, if applicable.
- D. The Grantee shall notify the Grantor in writing at least thirty (30) days before assigning this Restriction and the Grantor shall have thirty (30) days from the date of such notice to approve the assignment in writing, which approval shall not be unreasonably withheld. Failure of the Grantor to respond to the notice of assignment within thirty (30) days shall be deemed approval thereof.
- E. Unless expressly stated otherwise in the instrument of assignment, no such assignment of the right to enforce the Restriction shall diminish the rights or benefits held by the Grantee or its successors pursuant to this Restriction, and the Grantee shall retain the equivalent right to enforce this Restriction.

XIII. ESTOPPEL CERTIFICATES: Upon request by the Grantor, the Grantee shall, within twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which

certifies the Grantor's compliance with any obligation of the Grantor contained in this Restriction, and which otherwise evidences the status of this Restriction as may be requested by the Grantor.

XIV. SUBSEQUENT TRANSFERS: The Grantor agrees to incorporate the terms of this Restriction, in full or by reference, in any deed or other legal instrument by which Grantor conveys or transfers any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. The Grantor further agrees to notify the Grantee in writing at least thirty (30) days before conveying or transferring the Premises, or any part thereof or interest therein, including a leasehold interest.

XV. TERMINATION OF RIGHTS AND OBLIGATIONS: Notwithstanding anything to the contrary contained herein, the rights and obligations under this Restriction of any party holding an interest in the Premises, terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to the transfer, and liability for the transfer itself if the transfer is a violation of this Restriction, shall survive the transfer.

XVI. AMENDMENT: If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, the Grantor and the Grantee may by mutual consent amend in writing any term or provision hereof provided that this Restriction as thus amended complies with the then applicable requirements of Massachusetts General Law, Chapter 184, Sections 31-33 as amended, and, if applicable, Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts; and provided that any such amendment, together with any approvals necessary to its effectiveness, including that of the Massachusetts Secretary of Energy and Environmental Affairs and the Town of Barnstable Town Manager after public hearing and two thirds affirmative vote of the Town Council constituting a release of this Restriction in whole or in part, shall be recorded with the Barnstable County Registry of Deeds. Any amendment shall be consistent with the purposes of this Restriction, shall not diminish the conservation values of the Premises, shall not affect its perpetual duration or be inconsistent with the Community Preservation Act.

XVII. EXTINGUISHMENT: If at any time by mutual agreement of the parties to release or extinguish this Conservation Restriction in order to enable the Grantor to dispose of the Premises, or if any occurrence or change in conditions ever gives rise to extinguishment or other release of this Restriction, all proceeds, if any shall be distributed in accordance with Massachusetts General Law 44B, Section 7, (iv) as applicable and otherwise in accordance with other applicable law.

If any agreement, occurrence or change in conditions gives rise to release or extinguishment, whether whole or in part, by a court of competent jurisdiction under applicable law, and shall be subject to prior review and approval through any process established under Article 97 of the Constitution of the Commonwealth of Massachusetts if applicable to such an agreement, occurrence or change in conditions.

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.

XVIII. GRANTOR/GRANTEE COOPERATION REGARDING PUBLIC ACTION: Whenever all or part of the Premises or any interest therein is taken by public authority other than Grantor under power of eminent domain or other act of other public authority, then the Grantor and Grantee shall cooperate in recovering full value or all direct and consequential damages resulting from such action.

All related expenses incurred by the Grantor and Grantee under this section shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed to Grantor in accordance with Massachusetts General Law 44B, §7 (iv).

XIX. NONMERGER: Grantee agrees that it will not take title to any part of the Premises without having first assigned this Restriction to a non-fee holder to ensure that merger does not occur.

XX. SEVERABILITY: If any court of competent jurisdiction shall hold that any section or provision of this Restriction is unenforceable, the remainder of this Restriction shall be construed as though such section had not been included in it. The doctrine of merger shall not apply to this document.

XXI. MISCELLANEOUS PROVISIONS:

- A. Controlling Law: The interpretation and performance of this Restriction shall be governed by the Laws of Massachusetts.
- B. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this Restriction shall be liberally construed in favor of the grant to affect the purposes of this Restriction and the policies and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid
- C. Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the Restriction and super cedes all prior discussions, negotiations, understandings, or agreements related to the Restriction, all of which are merged herein.
- D. Joint Obligation: The obligations imposed by this Restriction upon the parties that together comprise the "Grantor" and "Grantee" shall be joint and several.
- E. 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, reference assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction of interpretation.

XXII. EFFECTIVE DATE: This Restriction shall be recorded in a timely manner. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Restriction is recorded in the official records of the Barnstable County Registry of Deeds, after all signatures required by Massachusetts General Law, Chapter 184, Section 32 have been affixed hereto.

EXECUTED under seal this _____ day of _____, 2020

Mark S. Ells
Town Manager

Paul Hebert
President, Barnstable Town Council

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On this _____ day of _____ 2020, before me, the undersigned notary public, personally appeared Mark S. Ells, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge and identity and who being by me duly sworn, identified as the Town Manager of the Town of Barnstable. The municipal corporation named in the foregoing instrument; and that he is duly authorized to act on behalf of said municipal corporation; that the seal affixed to said instrument is the corporate seal of said municipal corporation; and acknowledged the foregoing instrument to be the free act and deed of said municipal corporation.

Notary Public:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On this _____ day of _____ 2020, before me, the undersigned notary public, personally appeared Paul Hebert, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that she is the President of the Town Council of the Town of Barnstable, the municipal corporation named in the foregoing instrument; that she is duly authorized to act on behalf of said corporation; that the seal affixed to said instrument is the corporate seal of said municipal corporation; and she acknowledged the foregoing instrument to be the free act and deed of said municipal corporation.

Notary Public
My Commission Expires:

ACCEPTANCE OF GRANT

At a meeting held on _____, 2020, Barnstable Land Trust, Inc. voted to authorize the acceptance of the above Conservation Restriction, which is accepted this ____ day of _____, 2020.

Barnstable Land Trust, Inc.

By:

Joseph Hawley, President
Barnstable Land Trust, Inc.

Deborah Reuman, Treasurer
Barnstable Land Trust, Inc.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. _____, 2020

Then personally appeared the above-named Joseph Hawley, President, and Deborah Reuman, Treasurer, Barnstable Land Trust, Inc., the corporation named in the foregoing instrument, 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 document, and each acknowledged he is duly authorized to act on behalf of said corporation, that the seal affixed to said instrument is the corporate seal of said corporation and each further acknowledged the foregoing instrument to be the free act and deed of said corporation, before me.

Notary Public
My commission expires:

APPROVAL OF TOWN COUNCIL

At a public meeting duly held on _____, the Town Council of the Town of Barnstable, Massachusetts, voted to approve the foregoing Conservation Restriction, pursuant to Massachusetts General Laws, Chapter 184, Section 32.

TOWN OF BARNSTABLE

TOWN COUNCIL

PRESIDENT: _____

Paul Hebert

Barnstable, ss COMMONWEALTH OF MASSACHUSETTS

On the _____ day of _____, 2020, before me, the undersigned notary public, personally appeared Paul Hebert, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that she is the President of the Town Council of the Town of Barnstable; that she is duly authorized to act on behalf the Town Council; and she acknowledged the foregoing instrument to be the free act and deed of Town of Barnstable Town Council.

Notary Public
My Commission Expires:

APPROVAL OF TOWN MANAGER

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, hereby approve the foregoing Conservation Restriction to Barnstable Land Trust, Inc. pursuant to Massachusetts General Laws, Chapter 184, Section 32.

TOWN OF BARNSTABLE

TOWN MANAGER: _____
Mark S. Ells

Barnstable, ss

On the _____ day of _____, 2020, before me, the undersigned notary public, personally appeared Mark S. Ells, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the Town Manager of the Town of Barnstable,; that he is duly authorized to act on behalf the Town of Barnstable and she acknowledged the foregoing instrument to be his free act and deed.

Notary Public
My Commission Expires

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

The undersigned, Secretary of the Executive Office of Energy & Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Restriction from the Town of Barnstable to the Barnstable Land Trust, Inc. has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32. Said approval 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 Restriction.

Date: _____, 2020

KATHLEEN A. THEOHARIDES
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. _____, 2020

Then personally appeared the above-named Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the document and acknowledged to me that she signed it voluntarily as Secretary of Energy and Environmental Affairs for the Commonwealth of Massachusetts, for its stated purpose.

Notary Public
My commission expires:

**CONSERVATION RESTRICTION
ON LAND OWNED BY
TOWN OF BARNSTABLE
IN
BARNSTABLE, MASSACHUSETTS

EXHIBIT A**

Description of the Premises:

All of the land "...situated in that part of the Town of Barnstable known as West Barnstable, Barnstable County, Massachusetts, bounded and described as follows:

Northeasterly	by Falcon Road, as shown on hereinafter mentioned plan, a total distance of 20 and 17/100 (20.17) feet;
Northeasterly	by Lot 11, as shown on said plan, thirty (30.00) feet;
Northerly	by Lot 11, as shown on said plan, one hundred eighty-eight and 33/100 (188.33) feet;
Easterly	by Lot 10, as shown on said plan, two hundred nine and 64/100 (209.64) feet;
Southeasterly	by Lot 9, as shown on said plan, one hundred sixty-two and 24/100 (162.24) feet;
Easterly	by Lots 9 and 8, one hundred sixty-eight and no/100 (168.00) feet;
Northerly	by Lot 8, as shown on said plan, one hundred fifty-two and 62/100 (152.62) feet;
Easterly	by Lots 6 and 4, as shown on said plan, four hundred seventy and 14/100 (470.14) feet;
Southerly	by Lot 2, as shown on said plan, ninety (90) feet;
Easterly	by said Lot 2, one hundred thirty-eight and 59/100 (138.59) feet;
Southerly	as shown on said plan, on two courses, measuring ninety-one and 52/100 (91.52) feet, and ninety-six and 68/100 (96.68) feet, respectively;
Southeasterly	one hundred forty-six and 01/100 (146.01) feet, as shown on said plan;

Southerly	by land now or formerly of Frederick Atwood, as shown on said plan, ninety-nine and 05/100 (99.05) feet;
Southwesterly	by said land of Atwood, one hundred four and 03/100 (104.03) feet; again
Southwesterly	by said land of Atwood, on three courses, there measuring one hundred fifty-eight and 24/100 (158.24) feet, two hundred fifteen and 11/100 (215.11) feet, and one hundred forty-five and 79/100 (145.79) feet, respectively;
Northwesterly	by Lot 2, as shown on said plan, three hundred sixty-four and no/100 (364.00) feet;
Northerly	by said Lot 2, as shown on said plan, two hundred sixty-two and no/100 (262.00) feet;
Northwesterly	by said Lot 2, four hundred sixty-nine and 09/100 (469.09) feet;
Northwesterly	again by said Lot 2, as shown on said plan, two hundred twenty-seven and 75/100 (227.75) feet; and
Northwesterly again by said Lot 2, fifty-seven and 43/100 (57.43) feet.	

Containing an area of 15.96 acres, more or less, and being shown as LOT 1 on a plan of land entitled: "Plan of Land in (West) Barnstable, Mass. prepared for Howard W. Woolard, being a re-subdivision of a portion of a plan made for "Eagle Realty Trust", recorded in Plan Book 317, Page 34, the portion of said plan within Lots 1, 2 and 3 shown above is hereby rescinded, Scale: 1" = 80', August 13, 1980, Down Cape Engineering, Civil Engineers, Land Surveyors, Route 6A, Yarmouth, Mass.," which plan is recorded at the Barnstable County Registry of Deeds, Plan Book 346, Page 95.

Said premises are subject to all rights, rights of way, easements, restrictions, reservations, appurtenances of record, if any, together with rights over vehicle tracks as shown on said plan, insofar as are in force and effect.

Said Premises are conveyed together with a one-third (1/3) interest in the fee in Falcon Road, together with a right of way over Falcon Road for all purposes for which ways are commonly used in the Town of Barnstable, together with all others now or hereafter legally entitled thereto; however, reserving to the Grantors, their heirs, and assigns, the right to grant rights of way over said Falcon Road.

Plan of the Premises: Barnstable County Registry of Deeds, Plan Book 346, Page 95





NATIVE LAND CONSERVANCY

P.O. Box 974
Mashpee, MA 02649

LAND RESCUE AND PRESERVATION

Janet Milkman
Barnstable Land Trust
1540 Main Street
West Barnstable, MA 02668

April 20, 2020

RE: 28 Falcon Road, conservation acquisition project

Dear Director Milkman,

On behalf of the Board of Directors of the Native Land Conservancy (NLC), I am pleased to inform you that we voted to assist the Barnstable Land Trust and collaborating partners in its proposal to purchase a perpetual conservation restriction (CR) under M.G.L. Ch. 184, ss. 31-33 on the 15.96-acre parcel at 28 Falcon Drive in West Barnstable.

We are aware of a section of an ancient Wampanoag trail that remains there intact on this parcel. The preservation of this trail is of cultural and historic interest to us. With so much of the Cape being developed its remarkable that this section of trail still exists. We appreciate your shared regard for this rare and precious site.

To that end, our Board of Directors have voted to support with a contribution of \$5,000 toward the purchase. We truly hope your project will be successful. Please let us know if there is anything else, we can do to help.

In Thanksgiving,

President & Founder





NATIVE LAND CONSERVANCY

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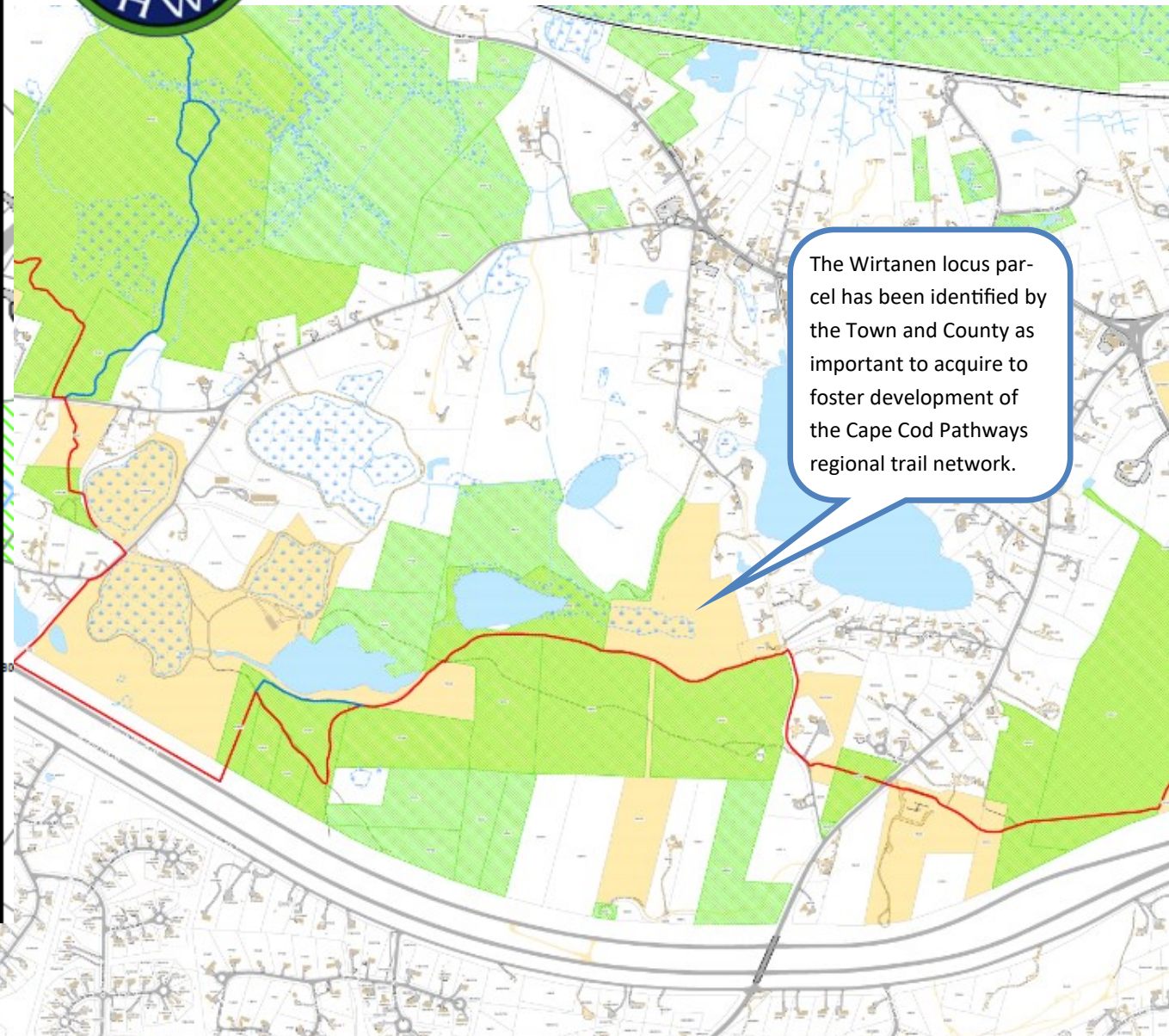


**WIRTANEN PROJECT, BARNSTABLE MA
CONSERVATION LAND TAX CREDIT APPLICATION**

Significance for Cape Cod Pathways Program

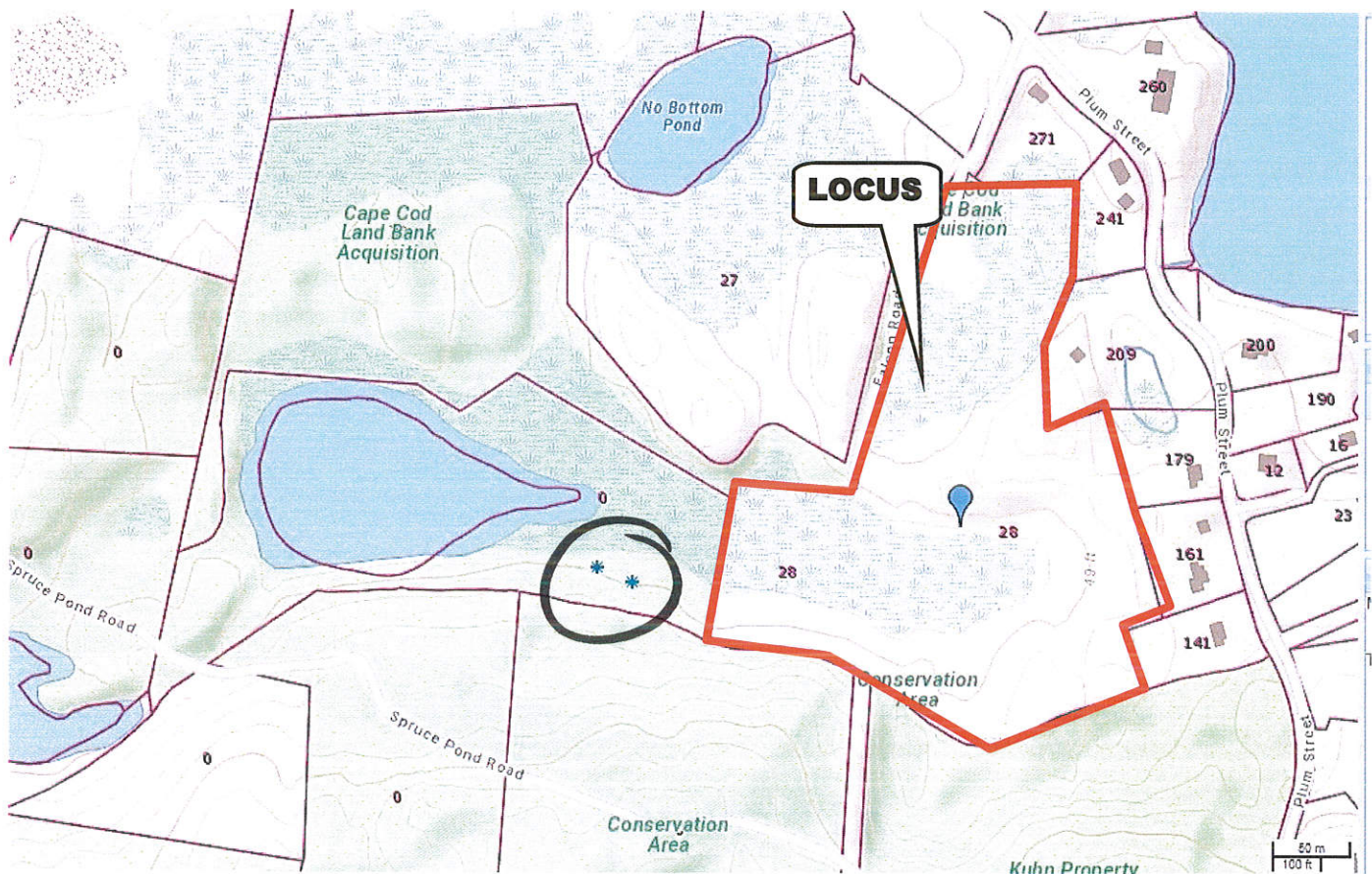


-  Cape Cod Pathways Main Trail
-  Cape Cod Pathways North Loop
-  Cape Cod Pathways South Loop
-  Parcels Crossed by Path
-  Protected Land
-  Parcels (FY2016)
-  Town Boundary
-  Buildings
-  Bridges
-  Paved Roads
-  Unpaved Roads
-  Railroad
-  Paved Driveways
-  Unpaved Driveways
-  Paved Parking Lots
-  Unpaved Parking Lots
-  Walkways Improved
-  Walkways Unimproved
-  Shoreline
-  Streams
-  Drainage Ditches
-  Marine Coastline
-  Marsh Areas
-  Water Bodies

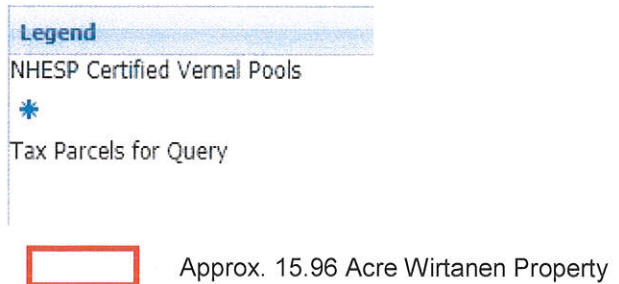


The Wirtanen locus parcel has been identified by the Town and County as important to acquire to foster development of the Cape Cod Pathways regional trail network.

WIRTANEN PROPERTY
BARNSTABLE, MA
CONSERVATION LAND TAX CREDIT (CLTC) APPLICATION
CERTIFIED VERNAL POND MAP



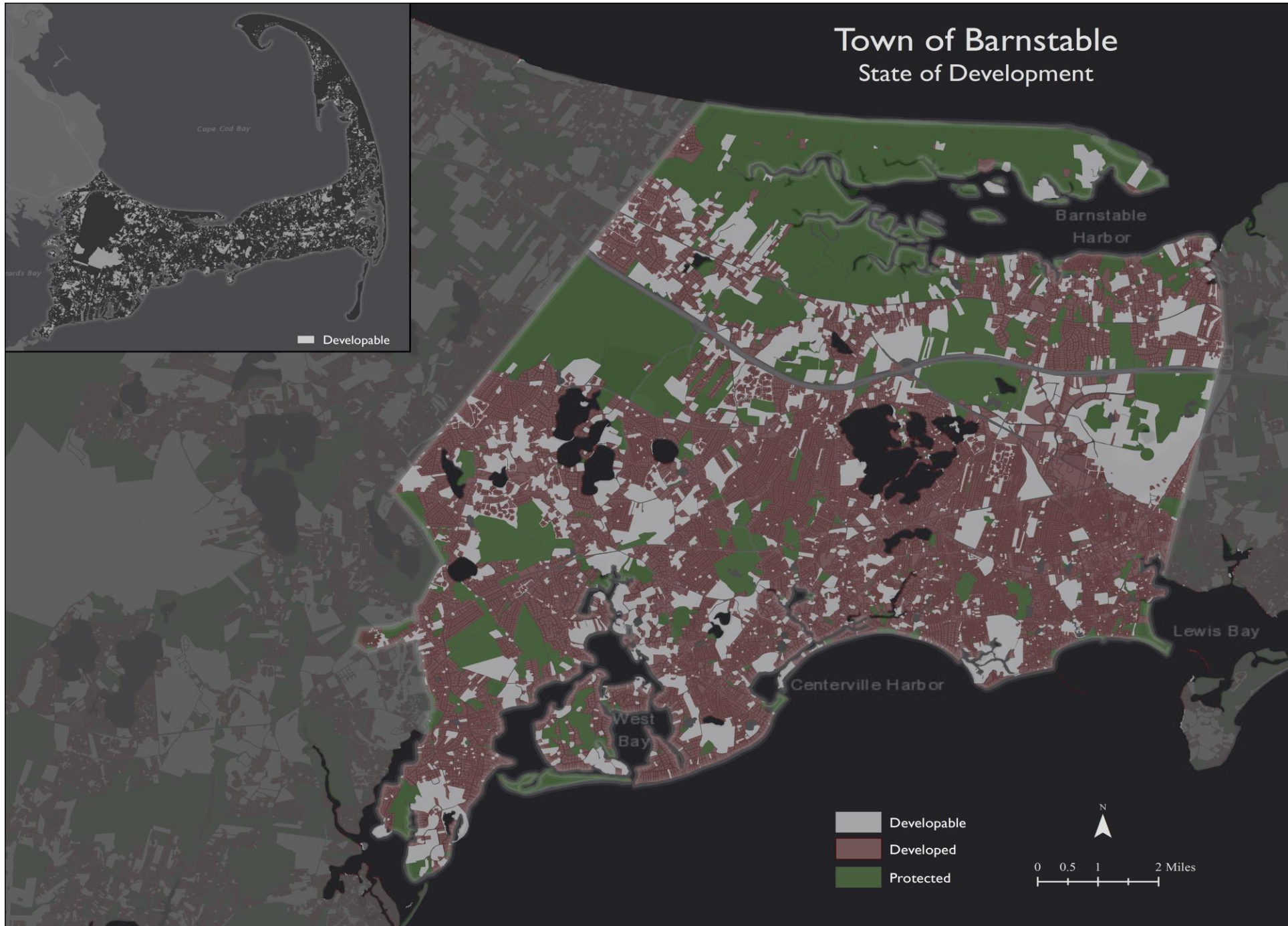
2 certified
vernal pools
within the
same wetland
system as
locus



Map prepared December 2019
Data provided by Town of Barnstable Assessors Office
and The Compact of Cape Cod Conservation Trusts, Inc.

Town of Barnstable

State of Development



Town of Barnstable - Assessing

Barnstable Property Maps

gis.townofbarnstable.us/Html5Viewer/Index.html?viewer=propertymaps&run=FindParcel&propertyID=195038&mapback=195038

☆ | | B |

TOWN OF BARNSTABLE

PROPERTY MAPS

Search...

Parcel Details

I want to...

Location

Parcel: 195038

Address: 28 FALCON ROAD

Village: WB

Acreage: 15.96

[Full Property Info](#)

Property Photo

No photos found.

Owner & Mailing Address

Owner: WIRTANEN, MARK S

Mail Address: 1894 MAIN ST

WEST BARNSTABLE

MA

02668

Assessed Value (FY20)

Building Value: \$0

Extra Features: \$0

Outbuildings: \$0

Land Value: \$1,600

Total Value: \$1,600

Residential Exemption

No exemption.

Building Details

No records found.

Extra Features

No records found.

Building Sketch

No records found.

Sales History

Sale Date	Sale Price
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Basemap

8:48 AM

4/16/20

