



THE COMPACT
OF CAPE COD CONSERVATION TRUSTS, INC.

On Forbearance: In Praise of the Landowners who Would

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There was a developer in North Truro who lived in the subdivision he built. He alienated everyone in his neighborhood with lawsuits aplenty. Not content with that legacy, he looked about for another prime spot to litigate over. He decided to build a house right on top of the Hopper Landscape, a trophy home with the same spectacular panoramic waterviews that Edward Hopper enjoyed for 30 years. Except now his house was in the middle of it, marring it. He appropriated for his selfish ends what had inspired so many who loved Hopper's lonely windswept landscapes. He twisted the town zoning laws and the lawsuits started up for him again. He is dead now, new owners are installed, but the legal squabbling continues.

At one of the innumerable town permitting board hearings, the developer's son leaned over and said to a neighbor, "My father never understood the difference between Could and Should." Just because he had the means to try to insert himself in the [Hopper Landscape](#) does not mean he should have.

Let's leave this sordid tale of greed and hubris behind, pegging it on the wall, though, as a marker distinct from the people I wish to celebrate: the landowners who Would. Should implies some judgmental admonition; Would suggests an invitation to positive action.

When people used to ask me what is the difference between a conservation commission and a conservation trust, I would say, "The conservation commission tells you what you can't do with your land, that is to build on or near wetlands. The conservation trust tells you what you can. You can preserve it, for psychic and financial benefits." One is Should, the other Would.

We in the practice of protecting open space seem to believe that we are in the land business. But we are not. We are in the people business. And those people are the private landowners we work with. When asked why he robbed banks during the Depression, [Willie Sutton](#) is supposed to have said "Because that's where the money is." That's why we work with landowners: that's who has the land.

These then are my heroes, individuals and whole families who Would, who have voluntarily stayed the hand of development from their property, often at substantial opportunity cost. Those who took a long look at the financial reward of Could and decided against it. Who took action the other way, deciding they Would for conservation. They inspire me with their commitment, they keep me going. How can I ever complain about doing much of their paperwork when they are making such fateful decisions for the betterment of our community?

Sometimes, they have seen their friendly neighbors sell out when times were hard or the siren song of fast cash for land was too hard to ignore. They have seen subdivisions creep up around them and had the will and passion to say, "No. Not here."

Traveling past Boise, Idaho in 1988, I saw a handmade billboard out against the interstate highway. The painted sign was on the last potato field that had not been bought for industrial, commercial or residential development as the city crept outwards. The sign said, "We give up. Land for Sale." The pressures on the farmer must have been enormous, he held out as long as he could, keeping to the old ways. But in the end, perhaps, no one showed him the way to Would.

In 2003, Kathryn Koessel and her brother Martin, lifelong summer residents of Wellfleet, practiced a bit of this forbearance, transferring two waterview lots into conservation status. "Money isn't everything," said Kathryn. "What is really important is knowing that the land where my brother and I spent such happy childhood summers will remain in its natural state for all time. In a fast-changing world, that is something to hold onto and cherish." Kathryn and Martin can still enjoy their youthful haunts in these woods along the marsh, and now so too can the rest of the community.

The old saying goes, "If you love something, set it free. If it returns, it's yours." The Koessels were letting go of the land, but holding onto their memories of it. In conservation, the property has certainly returned to them, by still being there, offering solace and joy in necessary measures. Would they have gained that much with two new homes there instead?

In 1989 Robert Hankey, then president of the Wellfleet Conservation Trust, and I visited New York playwright [Victor Wolfson](#), Wellfleet summer resident. I was amused to see Victor's prosthetic leg propped up against the front porch wall, as if it was ready for "going out" like an umbrella or walking stick. We spent a good hour discussing the ways and means of land conservation and the tax benefits from a land donation. Finally, I said, "Victor, you have three sons. How do they feel about you giving land away?" He leaned back in the sunken couch, gave us an inscrutable smile, and said, "They want what I want." To this day, I am not sure whether he meant they were in agreement with the donation or maybe were not willing to

buck the old man's determination. Either way, we got the land preserved. Victor died in a fire at his Wellfleet home; I have to wonder whether he was trying to get to his leg on the porch.

There are certainly times when the next generation rises up against their elders' wishes to preserve land. I have had one donation go awry this past year, a conservation restriction all ready to go, to be recorded after the first of the year. I got a panicked call from the father the day after Christmas. Apparently, the family's holiday dinner included a separate course of "are you out of your mind?" from a son. We will see how that plays out over time, but Round One to the son. Sometimes, family peace is just more important than a parent's environmental legacy.

Occasionally, youngsters lead the way for their parents. In 1988 [John Carter](#) rallied his four siblings and then they their father to preserve Green Hill Farm in Yarmouthport. It is the oldest family farm on the Cape in the same blood, descending from Anthony Thacher in 1639, just as the town was founded. John persevered over 18 months, crafting the conservation plan with the help of The Nature Conservancy and The Compact. In the end, 32 acres of salt marsh were donated and a similar amount of upland farm fields and forest were placed under conservation restriction. "It's scary to think what would have happened without restrictions because we would have lost it," said John, referring to geometric property taxes placed on salt water frontage. To celebrate the farm's preservation John planted a redwood that is now 40 feet tall on the land.

Usually, the conservation ethic flows downward with grand results. Nina and [Gerry Holton](#) summer in Wellfleet (what is it about Wellfleet here?), relaxing from his long career of teaching physics and the history of science to Harvard students. I was invited to discuss conservation options with them while son Thomas was in from the West Coast on a vacation. We talked about leaving out a few acres from the 10-acre property, in case there was a need to sell a couple of lots to meet later financial needs. Thomas stood while we sat, leaning against the door jamb, arms folded, scowling a little. Uh, oh, I thought, bad karma body language here from the son. Eventually, he interrupted and said, "Wait, let's go back. Why can't we just put the whole thing in conservation?" This became one of our easiest conservation restriction donations ever!

Sometimes, the family's open space legacy spans generations. Charlie and Adeline Moore set the tone early. They lived by Ice House Pond in Orleans on land bought by his father in the 1920s; they donated seven acres in 1973. Their four children donated nine more acres in 1996. Then Jonathan and Katie Moore put a CR on the last of the original 27 acres. [Jonathan Moore](#) said his father and grandfather "loved the wilds of Cape Cod, of which there is precious little left. We hope our gift will give future generations a sense of those wilds, if only in a relatively small degree." As legislative aide to Sen. Leverett Saltonstall, a young Jonathan Moore co-authored the Cape Cod National Seashore Act in 1961. He understood the importance of

preserving the Cape Cod experience, of exuberantly being in the out of doors, even if there is not enough open space left to preserve Cape Cod as an intact landscape.

Other times, the family's wish is to anchor its home in the land as part of the community since colonial times. Marian Thomas lived on the land that had been in her Doane family in Eastham since 1644. She and husband [Fred](#) honeymooned at the place in 1942 when her father was still busy restoring the forest. The couple donated land and conservation restrictions on the property in 1995. Fred said the tax benefits were nice, but "Our purpose is to preserve the land...we don't need any pat on the back. It's nice to know it's going to be here." The Thomases knew that once it's gone, it's gone forever. The Doanes' ties to the land that they farmed and fished from for generations would be lost.

Public pressure can occasionally turn a Could into a Should and then a Would. Sandwich native Gifford Foster owned nine acres of industrially-zone land. Combined with a larger adjoining parcel, in 1994 he placed it under sales agreement for Costco to build a 120,000 square foot space metal building to sell whatever Costco sells out of it. The bitter debate in the community about the project gave Foster a pit in his stomach about what he had done. While he had extended the agreement with Costco several times during the permitting process, he finally refused another routine extension. Without his land, the project collapsed. He donated it to conservation, winning back his community standing. Imagine the look on the Costco lawyer's face when Mr Foster finally said to him about the extension, in a Bartleby-like monotone, "I would prefer not to."

The term Would, however, implies a contingency. It is really a Will wrapped in an If. As in, "We will donate this property for open space, if we can be assured that you, the land trust, will commit to preserve it for us forever." The proper role of the land trust, then, is to consider its fealty to this prime directive: beyond anything else it does, more than community outreach or invasives removal or educating schoolchildren or building endowment, a land trust stands by the land that has been entrusted so lovingly to it.

And, I would argue, here on Cape Cod, we have. Better in fact than anywhere else in the nation. Not one parcel of conservation property has been deleted from the portfolio of local land trusts in their 55 years of operation here. In fact, the Cape Cod land trust community pioneered the [doctrine of overlay legal protection](#), the belt and suspenders approach of using third parties to hold conservation restrictions and arrange charitable trust protections to hold land in "a natural state for conservation purposes forever." I am proud to say that after 15 years of invention, education and implementation, we now have all local land trusts protecting their landholdings with these secure overlays. You should all be proud of these steps you have taken, so that we can all say, "Here on Cape Cod, when we say preserved forever, we mean it."

I'd like to see the spirit of generosity shown by our private landowners who Would extend to the land trust themselves as landowners. We have the opportunity to pioneer another concept with our sister regional land trust, the [Native Land Conservancy](#). As the first nonprofit land trust governed by Native people east of the Mississippi, the NLC has acquired four small parcels of land on the Cape so far. But NLC is eager to partner with willing land trusts on cultural respect agreements. This relationship would ask a land trust to formally open some of its portfolio to enable access for non-intrusive traditional lifeways by the NLC and its guests, such as ceremony and education. The Dennis Conservation Trust has already granted this access to its [205-acre Chase Garden Creek salt marsh](#) and surroundings. The Town of Middleborough has agreed to do likewise on a 20-acre riverbank. I would like to champion this idea and hope you will join me. Over the next 15 years (one year per town), we would see all Cape land trusts having negotiated a cultural respect agreement with the Native Land Conservancy. Be generous and inspiring like the private landowners who trust us. Be the Land Trusts that Would.

I was delighted to spend last week on an organic farm in the Mad River Valley of Vermont in a retreat with 15 other professionals in the environmental and social services fields. We lived in yurts in the woods and ate delicious meals. We were old and young, male and female, white and black and latino. We heard stories of ordeal and abuse that hammered home just what a life of privilege I have lived. I am glad that I have been able to use that privilege as a springboard to do my life's work in land conservation in a very special place in the world. I am honored and humbled each day to work with the best people in the world, the land trust community of Cape Cod. Never, ever, give up.