

To Live Lightly on the Land

A guide to private land protection in the Cape Cod National Seashore



THE COMPACT OF CAPE COD CONSERVATION TRUSTS, INC.

The Compact of Cape Cod Conservation Trusts, Inc. was formed in 1986 as a non-profit service center assisting six local land trusts on the Lower Cape. The Compact now works with 23 local and regional land trust and watershed associations on their projects to acquire and manage important natural areas as protected open space. The Compact also advises its members on non-profit administration, tax, and legal questions. Because most local trusts are managed by volunteers, they find the full-time staff support provided by The Compact crucial to fulfilling their land conservation goals. As a regional organization, The Compact also conducts research and promotes land projects that foster a regional approach to open space protection. The Compact is supported by dues from member land trusts, donations, and grants from private foundations.

For more information, visit: www.thecompact.net



Fort Hill, Eastham

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Dedication



Jonathan Moore has devoted more than fifty years to humanitarian action, public service, and education. His many accomplishments include serving as Alternate U.S. Ambassador to the United Nations and Representative to its Economic and Social Council; U.S. Coordinator and Ambassador-at-Large for Refugees, U.S. Department of State; Counselor to the Department of Health, Education and Welfare; and Associate Attorney General, U.S. Department of Justice. He is currently an Associate at the Joan Shorenstein Center for the Press, Politics and Public Policy at the Kennedy School of Government at Harvard University.

Ambassador Moore is a Fellow at the Center for Naval Analyses in Alexandria, VA; Chairman of the Board of Collaborative Development Associates, Cambridge, MA; and serves on advisory boards of the Institute for Global Leadership at Tufts University, and at the Dickey Center for International Understanding at Dartmouth College. He is also editor and author of several publications. He served on the board of the Association to Preserve Cape Cod and the Cape Cod National Seashore Advisory Commission.

From 1959 to 1961, as a young attorney serving on the staff of U.S. Senator Leverett Saltonstall (R-MA), Mr. Moore helped to draft much of the legislation needed to add the Cape Cod National Seashore as a part of the National Park system. Along with colleague David B. H. Martin, Moore is credited with the idea of allowing pre-existing private residences and businesses to be retained within the Seashore.

This booklet is dedicated to Jonathan Moore and all the Cape Codders, by birth and in spirit, who worked against strong odds to make the Cape Cod National Seashore a reality more than 50 years ago.

Foreword

Growing up summers in the Tonset area of Orleans during the 1940s, we had the run of the place. My siblings and cousins and I beat a path along the roads and through the large woods between our cottage on Town Cove and our grandparents' home next to Ice House Pond. That path connected our two Cape Cod worlds: the saltwater shore for tides, clamming and boating, and the quiet freshwater pond for frogs, fishing and birdwatching. We lived the Cape's beauty and bounty firsthand and treasured its magic in these realms. And the gorgeous outer beach at Nauset nurtured our souls.

As an adult, I began to understand the Cape with a more expansive attitude. Not only was overdevelopment after World War II crowding my own enjoyment, but the Cape as a whole was being threatened for all our citizens – whether tourists or wash-ashores or natives. Our connecting path now had houses lining much of it. And the Lower Cape shores had small-lot subdivisions lining the beaches, limiting public access and marring the beauty.

I had the unique opportunity, as a young legislative assistant to Massachusetts Senator Leverett Saltonstall, to help draft the legislation that became the Cape Cod National Seashore Act. We worked to fight it through Congress to President Kennedy for signing. It was not easy. The politics were complicated, the competing interests intense. The Feds, the Commonwealth and the Lower Cape towns came together. Many, many people played crucial roles in this success.

After a career in public service, much of it overseas, I consider that early work one of my very most valuable experiences. I remain so grateful for having had the privilege to contribute to this early and huge effort to conserve and protect the Cape.

But a single act of Congress is of course insufficient to preserve the Cape's beauty and heritage. We can and must all do our parts, continuously. My grandfather assembled much of our precious woods as family land, including a cranberry bog and a turnip field. My parents had the foresight to give much of it away – as forever-protected open space, a gift to the Orleans Conservation Trust.



Ice House Pond in Orleans preserved by the Moore family via land donation and conservation restrictions.

Later, my siblings and I gave more of the land at the pond. And my wife Katie and I protected what was left through a conservation restriction, ably guided by Mark Robinson of The Compact of Cape Cod Conservation Trusts. Neither of these non-profit groups was around when the Seashore was founded. But the land trusts on the Cape have done a tremendous job since then, working with private landowners to design gift and tax strategies to foster more land preserved as open space.

If you are one of the persons privileged to live in the Cape Cod National Seashore, or anywhere on our Cape, please think about what you can do. If you have a little extra land around your house, keep some of it in a natural condition. Keep your home in a way that reduces its footprint on the land. Donate some land or conservation restrictions (with tax rewards). Think of selling to a conservation group before offering the land on the market. The collective impact of these many small decisions will influence whether the Cape's integrity is intact as a national resource when we are gone.

Jonathan Moore
Weston (and Orleans) MA
February 2013

"A single act of Congress is insufficient to preserve the Cape's beauty and heritage."

Introduction



The Cape Cod National Seashore (CCNS) is unique in many ways. Congress added the 44,000-acre tract to be the newest unit of the National Park Service system in 1961, thanks to the bipartisan efforts of Massachusetts Senator Leverett Saltonstall and Cape Cod Congressman Hastings Keith, both Republicans, and former Senator and incoming President John F. Kennedy, a Massachusetts Democrat. The Seashore was forged by a political partnership. It has been implemented, administratively, as a partnership too.

What was unique about this National Seashore – beyond the staggering beauty of the blend of ocean, dunes, forests, ponds and marshes – was that the CCNS was brilliantly conceived from the outset as a partnership among the federal government, the six towns sharing the Seashore, and the 600 families that were allowed to remain as private homeowners within the Park. It was an innovative “work-around,” an idea new and unprecedented in the national park system: to maintain, in a sense, existing private residential and commercial property within a federal wilderness. Senator Saltonstall’s staffers, including the late David B.H. Martin of Barnstable and Jonathan Moore of Orleans, conceived this strategy and wrote the legislation to implement it.

Until that time, national parks had been carved out of large open spaces or from family-donated property. Says Moore, “We knew we had a tricky assignment — instituting a federal park in and amongst one of the oldest settlements in America, that of Cape Cod. The post-war building boom on the Cape, to which the Seashore was a response, also set the stage for conflict between development and residential interests and the proposed park.”

The Seashore bill-drafters crafted an elegant solution: to buy out willing land sellers; to encourage the Towns to adopt 3-acre zoning districts in the Park; and to exempt residents who owned land with homes as of 1959 from eminent domain takings. For this unique park to work, all three groups needed to cooperate.

The Cape Cod National Seashore’s boundary (green area) encompasses 44,000 acres in six towns. But 17,000 of those acres are not owned by the National Park Service.



The Cape Cod National Seashore turned 50 years old in 2011 and its Friends group turned 25 in 2012.



The National Park Service respects the 600 private property owners within the Cape Cod National Seashore and asks visitors to do the same.

Each partner was given a responsibility.

The six Seashore towns (Provincetown, Truro, Wellfleet, Eastham, Orleans and Chatham) adopted 3-acre zoning districts and still administer building and subdivision regulations in the Park.

The National Park Service manages federal lands for resource protection and compatible recreation, and respects private properties within the Park.

And it is hoped that the 600 or so private households within the Park boundary will “live lightly on the land.” This means, in exchange for the privilege of enjoying part of a nationally-treasured landscape as their own, landowners agree not to endanger Seashore resources by overdeveloping their private homes, commercial businesses and natural lands. The yardstick of compatible Cape Cod development has been the simplicity of human occupation amidst a

sweeping grandeur of landscape. Keeping that simplicity – in our structures and relationship to the land – is the key to making the unique Seashore experiment work.

For its first 35 years or so, this unique partnership held up. The federal government purchased about 27,000 acres in 2,000 separate land transactions. The Towns generally adopted the special zoning requested by the Park Service and kept Town-owned land in the Seashore free from development. And families living in the Park kept a lid on expansion, undoubtedly recognizing that they were leading by example.

In the past 15 years, however, there are new and emerging threats to the partnership. The Park Service has had little and sporadic access to capital to buy new properties from willing sellers. Some Towns have not yet amended building regulations to address large new residential structures in the Park. Some Towns have also proposed a variety of municipal uses on Town land in the Park, from wellfields to golf courses to wind turbines to senior centers to new beach development, and some of these facilities have been built.

Fortunately, there are excellent examples of good and positive reactions to offset this “death by a thousand cuts” to the Cape Cod National Seashore. We will examine those efforts in the next section.





In the past, families were willing to nestle their houses within the landscapes of the Lower Cape, like those shown here in the Pamet Valley of Truro.

Local Bylaws

Early on, Eastham adopted the 50 percent expansion guideline as a true building regulation for homes in the Park, and that town has not witnessed the “trophy home” trend of other towns.

In 2008 Wellfleet adopted a new standard that relates home size to lot coverage. Some towns have adopted Local Comprehensive Plans to relate zoning and building to planning and community character.

The Rise of Land Trusts

Non-profit land trusts are in active operation now in all six Seashore communities, though none existed locally in 1961. (See list at right.) They have provided an engine of focus, diligence and creativity in working to promote open space protection in and around the Park. By working quietly and confidentially, local land trusts can design conservation plans and financial benefits for families interested in preserving some or all of their private properties.

Local land trusts on the Cape receive technical services from The Compact of Cape Cod Conservation Trusts, itself a partner of NPS, having signed a cooperative agreement with the Park Service on land protection in 2010. The Trust for Public Land, a national land trust, has allied itself actively with the Park Service on major new land purchases in the Park such as the Baker-Biddle property in Wellfleet and a conservation easement on the 57-acre North of Highland Camping Area in Truro. The Nature Conservancy, the largest conservation trust in the nation, and Friends of Herring River have recently helped on the 1,000-acre Herring River marsh restoration effort in the National Seashore.

Non-Profit Land Trusts and other non-governmental organizations supporting the land protection work of the Cape Cod National Seashore:

Association to Preserve Cape Cod, Inc.
Chatham Conservation Foundation, Inc.
The Compact of Cape Cod Conservation Trusts, Inc.
Eastham Conservation Foundation, Inc.
Friends of the Cape Cod National Seashore
Friends of Herring River
Friends of Pleasant Bay
MassAudubon
The Nature Conservancy (MA Chapter)
Orenda Wildlife Land Trust, Inc.
Orleans Conservation Trust
Provincetown Conservation Trust
Truro Conservation Trust
The Trust for Public Land
The Trustees of Reservations
Wellfleet Conservation Trust



Access to Capital

The Park Service has been successful in securing Congressional appropriations for recent major acquisitions: purchasing a conservation easement to preserve the 57-acre North of Highland Camping Area in Truro (\$6 million) and buying outright the 10-acre Baker/Biddle compound in Wellfleet (\$2.15 million). Special appropriations may not be renewed anytime soon, given federal deficit issues.

Each of the six Cape towns in the Seashore adopted the Land Bank (1998) and its successor, the Community Preservation Act (2007), to provide off-budget funds to buy open space in their communities. About \$2 million per year is generated in these towns from this three percent property tax surcharge, matched by annual grants from the state.¹

Cape towns and land trusts of the Lower/Outer Cape have also had success in tapping other state open space funding programs. Wellfleet, for example, secured 14 grants totaling almost \$3 million from the state between 1994 - 2010 to supplement its local revenues for open space. While none of the six towns has yet purchased open space in the Park, any one of them could.

¹ As of 2013, Provincetown has access to funding through both the Land Bank and the Community Preservation Act. State matching funds to the towns' CPA revenues will average around 30-40% for the near future. CPA funds open space, affordable housing, recreation and historic preservation projects.

Non-profit land trusts have demonstrated an increasing ability to raise private funds to buy open space. The Wellfleet Conservation Trust, for instance, purchased six acres next to the Seashore boundary in 2012 for \$270,000, with the help of a \$100,000 grant from the Town. The Provincetown Conservation Trust coordinated a \$2.7 million project to preserve 29 acres around Shank Painter Pond abutting CCNS in 2000. The Truro Conservation Trust raised \$500,000 to offset the Town's Land Bank purchase of 4-acre Poor Hill near Pamet Harbor for \$2 million in 2005.



Provincelands dunes

Private Landowners' Conservation Actions

There is just not enough public and private money available to buy all of the 220 additional acres of private land deemed critical to enhance resource areas in the Cape Cod National Seashore. There are also thousands of acres of private property adjoining the boundary outside the Park. We must rely on the sensitivity and generosity of the families who live in and next to the Park. “Doing the right thing” by their land, however, does not mean that they cannot be compensated financially for their gestures. There are powerful tax advantages available for making decisions to preserve private land.

We will now examine the ways and means of preserving family lands in and around the Seashore without the necessity of an outright purchase by the Park Service at market value. The unique partnership of the CCNS extends to citizens leading by example in private land conservation. A mix of the right conservation technique, cash, and tax benefits can be applied to fit most family situations, both in and out of the Park.



The Lewis Marsh adjacent to the National Seashore is known as the “Oriental Carpet” in the autumn. It has been preserved by the Truro Conservation Trust, thanks to the generosity of local families.

***We must rely on the sensitivity and generosity of the families who live in and next to the Park.
There are powerful tax advantages to preserve private land.***

Land Conservation Techniques

These techniques are discussed generally. Landowners should confer with legal or tax advisors to determine suitability for their situations.

Fee simple conveyance

An outright transfer of title (fee simple) is the easiest way to preserve land. (See Coast Guard Beach and Goldstein examples on pages 13 and 15.) It is only necessary to secure the acceptance of the land trust, town or government agency (i.e., National Park Service) before the transfer. Often, the local land trust can arrange a fee simple donation without much cost to the donor. Donors can retain some simple rights in the land donated, such as a view, well or driveway easement. The full appreciated value of the land can be used as a federal charitable deduction. Half of the value of the land (up to \$50,000) may be claimed as a Massachusetts tax refund/ credit.

Bequest

A gift of land made through a will entitles the donor to retain full use of the land during his or her lifetime(s) and assures that it will be cared for in the future by the conservation entity receiving it upon death. The donor is responsible for real estate taxes and insurance for the property before it is given and no income tax deductions accrues. But removing the land from an estate may help to reduce estate taxes. Conservation restrictions left in a will or chosen by the heirs can generate a bonus 40% reduction in inheritance taxes due on the land.

Charitable sale or bargain sale

A landowner who agrees to sell his or her land for conservation for less than appraised value can claim the difference as a charitable deduction for federal income tax and Massachusetts tax credit purposes. Savings on state and federal capital gains taxes also accrue. This technique is a good way for landowners to realize significant cash, while enabling the conservation entity to get a price reduction. (See Biddle example on page 23.)



The blueberry picking is legendary in North Truro, but we won't tell you where!

Conservation restriction

A conservation restriction (CR) is a voluntary agreement that enables the owner to retain privacy and title to the land, while extinguishing certain development rights in the property. CRs typically allow for continued family use, such as gardening, trails, wood-cutting, views, etc. The restricted land can be sold, but the CR runs with the land to the new owner.

The Park Service, conservation commissions, or land trusts can hold CRs. Property tax is typically reduced by 75-90% on the restricted vacant portion of the land. Federal tax deductions can be taken for the difference in value between the property before and after the restriction. Half of the value of the CR (up to \$50,000) can be claimed as a Massachusetts tax refund/credit. (See Watts, Hurwitz, and Payson examples on pages 17, 21 and 22.)

Reserved life estate

A transfer of title to a conservation entity during the lifetime(s) of the landowner(s), while allowing life-time occupancy and exclusive use of the property by the owner, is called a reserved life estate technique. Actuarial tables and appraised value of the property determine the charitable deduction and state tax credit values. Property taxes must still be paid. (See Falk example on pages 18-19.)

Option or right of first refusal

A landowner may desire to sell his or her land to a conservation group that is not in a position to purchase it immediately. The landowner can grant the conservation group an option that guarantees the opportunity but not the obligation to purchase the land in the future. An option establishes a price at which the entity can purchase the land during a specified period of time. A right of first refusal is less specific; it simply enables the conservation entity to be notified of the owner's intent to sell. The terms are all still negotiable, but it gives the conservation group a jump on the open market.



Land swap

The National Park Service has discretion to engage in an exchange of property if there is demonstrable benefit to the Seashore. The lands must be equivalent in value otherwise cash must be used to equalize the exchange, based on appraisals. The Park Service has most often conducted land swaps with town governments that own land inside the Seashore. For instance, the Park Service exchanged a small piece of land with the Town of Wellfleet so that the Town beach parking area at Long Pond could be moved across the street from the pond itself. The Herring River restoration project may involve some minor land swaps with affected private landowners as well.

Longnook Beach, Truro

Tax Benefits²

Property tax relief

Parcels given outright to conservation entities – whether to the Park Service or Town or land trust – become tax exempt in the following town fiscal year.³ (See Coast Guard Beach and Goldstein examples on pages 13-15.) All Cape towns in the Park have adopted generous schedules for lowering taxes on land placed under conservation restriction, as much as 75 – 90% reductions in property tax. (See Watts and Hurwitz examples on pages 17 and 21.)

State tax credit

A new rule in 2011 enables any Massachusetts landowner with conservation-worthy land (almost any parcel in the CCNS would qualify) to claim up to \$50,000 in a tax credit/refund for conservation planning. (See Watts example on pages 14 and 17.)

Federal income tax deduction

The Internal Revenue Service recognizes the appreciated market value voluntarily extinguished in a conservation transaction as a charitable deduction. This pertains whether the gift of value is generated from a fee simple, conservation restriction, bargain sale, or reserved life estate transaction. Taxpayers have up to six years over which to spread their deductions.

Estate tax reduction

Any property moved from a person's estate (at or before the time of death) to a conservation entity exempts the value of that property from state and federal estate taxes. Qualifying land gifts can be made in a person's will, or, in the case of conservation restrictions, after-death (post-mortem) by the heirs. By reducing an estate's value, lower taxes can be paid, perhaps enabling other property to be kept by the family instead of being sold to pay estate taxes.



The shoreline of Ryder Pond in South Truro is part private, part federal, and all agree it is beautiful.

² With all of these techniques, landowners must be guided by their tax advisors familiar with their own particular set of financial circumstances.

³ The National Park Service makes "payments in lieu of taxes" (PILOT) to the towns for properties it owns.

Case Studies

Donations of unbuildable land

Chaya Hurwitz, daughter of Quincy Adams Shaw, Jr. and his wife Marjorie, inherited a 4.5-acre parcel of dunes, marsh and beach on Coast Guard Beach in Eastham. Her father had run a hunting camp on the property overlooking Nauset Marsh for the first half of the 20th century. She offered the unbuildable parcel, vacant since World War II, to the Park Service in 2006. (See full story in Addendum.)



Quincy Adams Shaw, Jr.
(1896-1987)

Similarly, in 2009, Carol Reed, daughter of Stanley and Grace Macomber, wished to donate her family's 3-acre parcel on Coast Guard Beach to the Park Service. It had been the site of the last remaining dune shack on Coast Guard Beach, demolished in 1993.

In both instances, the donors found it much easier to donate their parcels to the local land trust, the Eastham Conservation Foundation. The Park Service saved about \$10,000 in due diligence costs in each transaction. George Price, CCNS Superintendent, said, "We don't care who acquires the land, so long as it is protected."



A painting by Aiden Lassell Ripley of the Shaws' hunting cabin on Nauset Spit c. 1937. The shack was removed from the beach after World War II and the land donated to the Eastham land trust in 2006.

Photo of painting contributed by Lawrence Perera Jr.



Macomber-Reed cottage
on Coast Guard Beach, c. 1965.

Photo contributed by
Carol Macomber Reed

Fee simple buildable land donation

Leonard and Diana Goldstein bought a summer home with an extra five acres of heathland and old railroad bed in South Truro in 1983. This important habitat abuts the Seashore boundary at the head of Bound Brook Swamp, headwaters of the major Herring River estuary, emptying into Wellfleet Harbor. “Living in this special place, it’s magic. Our kids and grandchildren love it as much as we do,” Diana says. “By donating land to the Truro Conservation Trust, we can all continue to enjoy it, and now others can too.” The Goldsteins saved about \$1800 annually in property tax and generated a major federal income tax deduction for the land they donated. The Trust installed a bench for walkers to admire the sunset over Cape Cod Bay and named the path to it “Diana’s Trail.” (See story highlight on page 15.)

Conservation restriction and fee simple

Artists Peter and Gloria Watts moved into their snug, antique home in the Wellfleet woods in 1970. Pamet Point Road runs east and west along the valley floor between two steep ridges arched by tall oak trees. Across from their home was a 2-acre forest parcel. Because the lot’s creation in 1949 pre-dated the Seashore zoning law, it was a separate building lot. But the Watts chose never to put a house on it.

“We consider it a privilege to live in the Park,” says Peter Watts, “And with the privilege comes a responsibility to maintain, not to over-develop.”

In 2007 the Watts approached the Wellfleet Conservation Trust with an idea to protect the vacant lot and its steep wooded slope with a conservation restriction. The Watts received a federal income tax deduction equal to the difference between the lot’s value as a house lot and its value as a conservation lot, about a 90 percent reduction. The Town lowered the property tax by 90 percent.



Wispy hair-grass carpets the pitch pine woods on the forest parcel donated by the Watts family.



In 2006 Leonard and Diana Goldstein (pictured here with their dog, Maggie) donated five acres of coastal heathland overlooking the head of Bound Brook to the Truro Conservation Trust. The property includes about one-quarter mile of old railroad bed stretching south from Ryder Beach Road, now known affectionately as Diana's Trail and open to the public for walking. The trail leads up to a southern overlook of the broad Bound Brook Valley, part of a State-designated Area of Critical Environmental Concern and an important wetland system of the National Seashore draining to the Herring River. The Goldsteins have lived in Truro since 1983 and received a major federal income tax deduction for this land gift.



"Living here in this special place, it's magic. I think our kids and grandchildren love it as much as we do, and they will be able to enjoy the land just like it is. That's why we gave it to conservation. We hope others might consider it."

-Leonard and Diana Goldstein



Pamet Point Road, Wellfleet


After donating the conservation restriction, the Watts still owned the land but never used it. So, they decided to receive a third tax benefit in 2011. They became one of the first landowners on Cape Cod to receive a state tax credit. They donated the land outright to the Wellfleet Conservation Trust.

And the conservation restriction is now held by The Compact of Cape Cod Conservation Trusts. “We are happy to see the land protected in two different ways,” says Peter Watts, “We still enjoy it every day as we have for 40 years – by seeing the tall trees shade our driveway and our lovely rural road.” The land is now exempt from property tax too. (See story highlight on page 17.)

CONSERVATION RESTRICTION & FEE SIMPLE DONATION

Cape Cod National Seashore

The Compact of
Cape Cod Conservation Trusts, Inc.



Peter and Gloria Watts have lived in the National Seashore for 40 years. In 2007 they donated a conservation restriction on 1.69 acres of rare box turtle habitat in Wellfleet, receiving a major federal charitable deduction. Preservation of this buildable lot across from their home protects wellwater and the scenic view along Pamet Point Road, overarched by tall oaks. The small delicate starflower blossoms on the steep slope each spring. In 2011, the Watts donated title to the lot to the Wellfleet Conservation Trust, receiving a further state tax credit.

"It is a privilege to live in the park.
And with the privilege comes
responsibility...and the responsibility
is to maintain, not to overdevelop."
-Peter Watts



Sale with reserved life estate

Lee Falk was a major figure in the American theater in the 20th century, but is best known as the creator of the long-lived comic strips, *The Phantom* and *Mandrake the Magician*. By mid-century, he was bringing his family from New York to Truro each summer. He installed them in the South Pamet woods, in a simple rambling home on top of a hill. He called it “Xanadu.”

“I cannot tell you how special Xanadu was and is to our family,” says daughter Valerie Falk. “When father died in 1999, we couldn’t hang on, but neither could we bear to leave.”

Valerie contacted a friend on the Truro Conservation Trust board who advised her to contact National Seashore staff. “They were wonderful – respectful, understanding and always positive,” says Valerie, as the family and the federal staff negotiated a strategy to apply limited federal funds. The Park Service agreed to buy the 7-acre property. The family was granted exclusive occupancy of the house through the life-times of Valerie and her step-mother Elizabeth Moxley Falk. This private use is called a reserved life estate. The Park Service holds title, but cannot take full control of the property while the life estate endures.

Valerie Falk says, “The cash from the Park enabled us to keep living here. We did not want to sell out to another family who might not respect the property. We don’t know how the Seashore will use the property when we are gone. But we do know that our extended family, as members of the public, will be able to wander the woods of Xanadu and admire the ocean view forever.” (See story highlight on page 19.)



Valerie Falk provided leadership within her family to explore options to keep their home in the National Seashore through a reserved life estate, while generating enough cash through the sale to satisfy the family’s needs.

“We couldn’t hang on, but neither could we bear to leave. Selling the property to the National Seashore enabled us to keep living here, while providing the peace of mind in knowing the family and others can always enjoy Xanadu.”

- - Valerie Falk

Cape Cod National Seashore

The Compact of
Cape Cod Conservation Trusts, Inc.



From left to right:
Falk family
members
Gwendolyn,
Elizabeth, and
Valerie Falk

Lee Falk (1911 - 1999) was an American writer, theater director/producer, best known as the creator of the popular comic strips, *The Phantom* and *Mandrake the Magician*. He brought his family to Truro each summer to a rambling home called Xanadu, set in the woods atop the Pamet River valley. After his death, the extended Falk family needed to sell the 6.4-acre property, but hated the idea of leaving the treasured family gathering place. In 2004, they sold it to the National Park Service, but reserved an exclusive right to use the house during the lifetimes of daughter Valerie Falk and her step-mother Elizabeth Falk.



"The National Seashore staff was wonderful. They were very respectful, understanding, did not make any promises that they could not fulfill, but they were always positive. As was the Truro Conservation Trust—they were very kind, and very helpful!"
-Valerie Falk

View from Xanadu

Conservation restriction

Penelope Jencks Hurwitz has summered every year on Bound Brook Island in Wellfleet since her parents bought the place in the 1930s. “I was appalled by the trophy homes replacing some of the cottages in the National Seashore,” says Penelope. “I worked to get Wellfleet to change its zoning, but I figured we should do our own part too.” Penelope and her husband Sidney Hurwitz, asked the Wellfleet Conservation Trust (WCT) to hold a conservation restriction on their 8-acre property.

The conservation restriction was crafted to keep the special coastal heathland habitat open and to prevent the footprint of the small Cape house and several small outbuildings from growing out. In a sense, Penelope and Sidney codified the Seashore building expansion guidelines into a contract, as expressed in the voluntary restriction held by the WCT. “We hope to keep the land in the family for many generations, but we have the peace of mind of knowing that whoever the owner is, the land will not be taken over by large buildings,” says Penelope. “I think more people should explore this option.” The family still owns all of their eight acres and saves about \$2000 annually in property tax, due to the restriction. (See story highlight on page 21.)



Bargain sale with buildings

“Bound Brook Island in Wellfleet [is] the most contained, remote, and charming spot on Cape Cod,” wrote Francis Biddle in 1962 as the Seashore was being established. The Biddles had already summered on their 10-acre property for 20 years before then. Judge Biddle served as U.S. Attorney General during World War II and Wellfleet was the perfect place to relax. Biddle children and grandchildren continued to use the antique house and quaint outbuildings in season, exploring the maze of foot trails out to the beach on Cape Cod Bay.

By 2011, though, the family was ready to move on. Rather than put the place up for private sale, the Biddles, with the help of the Trust for Public Land, negotiated with the Park Service. The Service could only offer the sum remaining in its land purchase account. The Biddles accepted it, acknowledging the discount, and generating a charitable deduction for the difference between fair market value and the sales price. (See story highlight on page 23.)

The Jencks-Hurwitz property on Bound Brook Island is a slice of heaven on a warm summer day.



Penelope Jencks Hurwitz and her husband, Sidney Hurwitz donated a conservation restriction on their 8 acres on Bound Brook Island in Wellfleet in 2007. Half of their land is comprised of open heathland. Less than one-half of one percent of Cape Cod is coastal heathland, about 800 acres, so even this small patch of rare habitat is important. Sun-loving heath plants include beach heather, bearberry, broom crowberry and beach plum. The Jencks-Hurwitz family has agreed to keep the habitat open by actively suppressing trees and woody growth, with assistance from their partner, the Wellfleet Conservation Trust.

"I have suggested to various people that they should preserve their land too. I don't think there's any reason not to do it!"
-Penelope Jencks Hurwitz

CONSERVATION RESTRICTION TO NATIONAL PARK SERVICE

Cape Cod National Seashore

The Compact of
Cape Cod Conservation Trusts, Inc.



William L. Payson (left) negotiated the family's 300-acre conservation restriction (CR) around Pochet, Sampsons and Hog Islands in Pleasant Bay with the National Park Service in 1975. It is the largest CR donated on private property on Cape Cod. The family continues to welcome the public to the islands. (b/w photos from E. Parra.)

"The Old House" was built in South Orleans in the early-1700s and floated up to Pochet Island in the mid-1700s. Gilbert R. Payson bought the island in 1885. At right are some of the Payson Family enjoying a perch in 1888. Below is "The Old House" in 2013.



Project summary provided courtesy of the National Park Service.

Cape Cod National Seashore

National Park Service
U.S. Department of the Interior

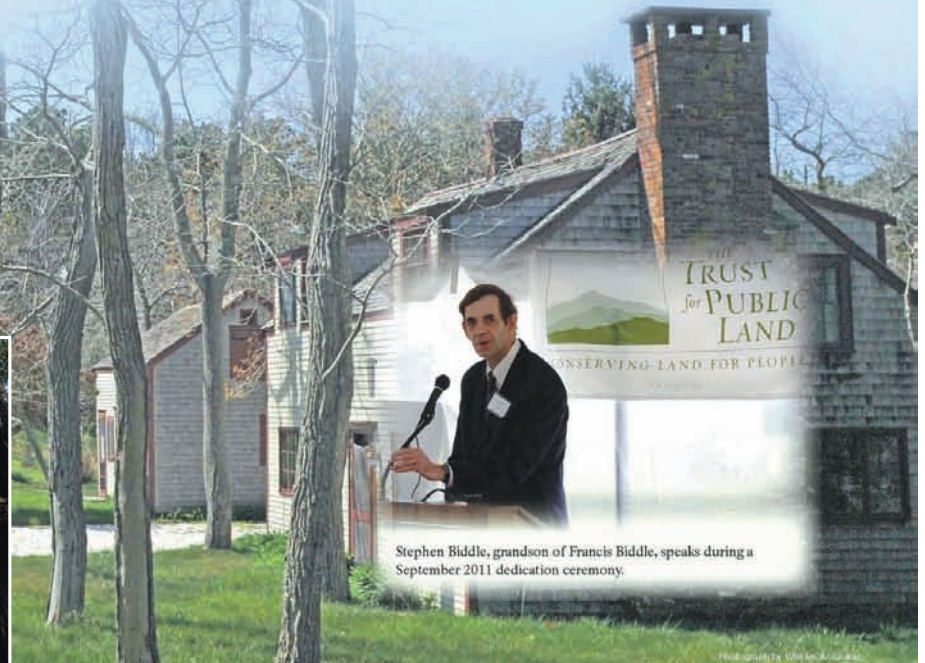


Land and History Preserved

This idyllic homestead nestled among ten acres of coastal woodland has a rich and storied past. Previous owners include Lorenzo Dow Baker, founder of the United Fruit Company (now Chiquita Brands International), and author John Dos Passos. It was later occupied by Judge Francis Biddle, United States Attorney General from 1941 to 1945. With over six acres of undeveloped land, the Biddle Family could have sold this unique property to be subdivided for large vacation homes. Luckily, the Biddles worked with the Trust for Public Land (TPL) to purchase and convey the land to Cape Cod National Seashore using funds secured by the Massachusetts Congressional Delegation. Now this tranquil and historic site is preserved for future generations.

We spend long summers on Bound Brook Island in Wellfleet, the most contained, remote, and charming spot on Cape Cod. . . The law creating a park on the lower Cape was adopted a year ago, and our house is included. Perhaps the dunes with their delicate lines and tracery can be preserved. . .

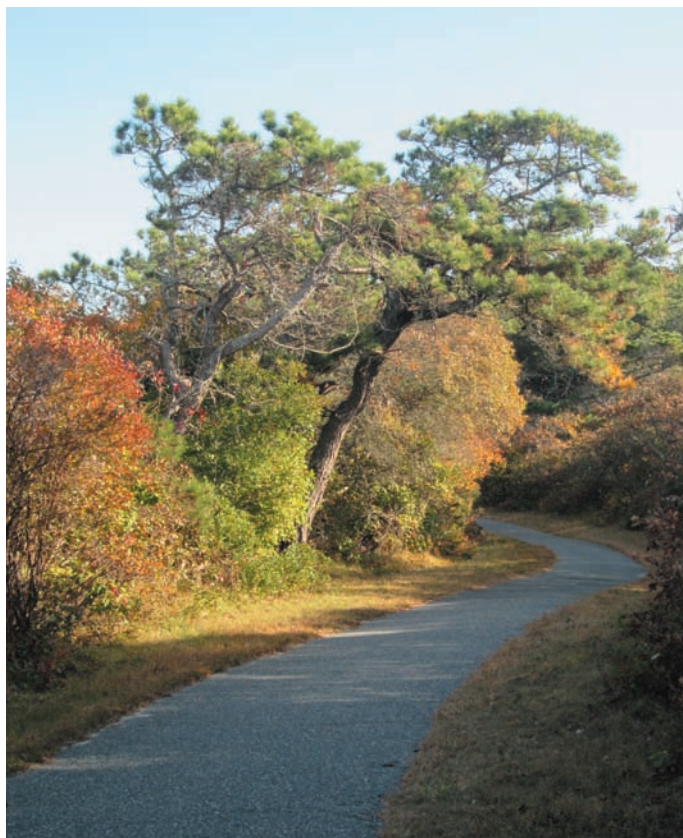
– Francis Biddle, *In Brief Authority*, 1962



Stephen Biddle, grandson of Francis Biddle, speaks during a September 2011 dedication ceremony.

Sale of conservation restriction, continued commercial use

In 2010, the Park Service completed a 6-year effort to preserve the 57-acre North of Highland Campground in Truro, the largest remaining private parcel in the Seashore. In one of his last Cape appearances, the late Senator Ted Kennedy arrived with his two Portuguese water dogs, Sunny and Splash, to celebrate the purchase of the campground's development rights by the Park Service. Kennedy had fought to secure \$6 million from Congress for the purchase. The Park Service holds a perpetual conservation easement on the facility which ensures that it will be preserved from use as a 15 to 20-lot residential subdivision. (See story highlight on page 25.)



Footpaths from the Campground connect to Head of the Meadow Beach and Bike Trail (shown here).



"It was my father's vision, to keep as many trees as possible," said Stephen Currier. The National Park Service wanted to continue to allow younger families to camp on Cape Cod, and we've been real big on that."

"We're ecstatic," said Lauren McKean, planner at the National Seashore. "This is the largest land conservation purchase in over 20 years."

"What the North of Highland property gives us is a two-fer," Seashore Supt. George Price said. "It basically keeps land — open space — in conservation, and it provides primitive campsites."

-- Provincetown Banner, April 9, 2010

Project summary provided courtesy of the National Park Service.

Cape Cod National Seashore

National Park Service
U.S. Department of the Interior



The Dream Lives On

Summer after summer I camp in the peace and quiet of North of Highland. What's left behind is the work, the duties and responsibilities, the commitments, the stress of daily living in the twenty-first century. We have spent many long summer afternoons, sitting in a lounge chair, with our toes in the warm sand and a favorite book in our hands. Mind, body, and soul are replenished by spending even a little time alone with nature.

– Victoria Carter, camper

This campground is the largest piece of private property within Cape Cod National Seashore. The Currier Family opened it in 1954 as an affordable place for families to enjoy the beauty of the rural Outer Cape. Today it remains rustic and undeveloped, but it could look very different. Nineteen private, single-family homes could have been built on this land. Through a unique collaboration between a private citizen, a non-profit organization, elected officials, and a federal agency, a conservation easement was secured in 2010 to restrict real estate development. Now, the land and the dream upon which the campground was established will be preserved in perpetuity.

NORTH OF HIGHLAND
CAMPING AREA
ENTRANCE

Late Senator Edward M. Kennedy, Congressman William Delahunt, Cape Cod National Seashore Superintendent George Price, and North of Highlands Camping Area owner Stephen Currier celebrate the collaborative efforts to preserve this site.

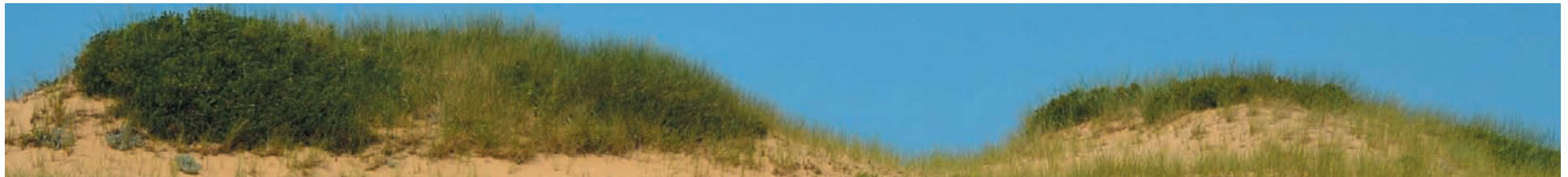
Conclusion

As you can see, there are common threads running through these success stories of private land conservation:

- A family's love of the place. A desire to see the land and memories of it preserved, even if continued private control is not possible.
- An outreach to people knowledgeable about options other than throwing property onto the market. A wealth of knowledge and sympathetic understanding by federal and non-profit personnel to advise families.
- A conservation technique, alone or in combination, to fit the circumstances of each unique situation. A mix of cash and tax benefits to compensate the family, while achieving conservation objectives.
- A satisfaction in adding elements of preservation to enhance the posterity of the National Seashore for others. A commitment to live lightly on the land while we are here and provide for its protection when we are gone.

There's an old saying that to whom much is given, much is expected. The Cape Cod National Seashore gives so much to the private landowners who are fortunate to live in it – beauty, tranquility and history. It asks so little of them in return: simply to respect the conservation ethic envisioned in the Park's charter (“to preserve the Park's unique natural, historic and scientific features”) and to be a faithful partner in upholding those values.

The Cape Cod National Seashore experience was different from the start for the National Park Service, accustomed to managing wilderness out West, and for the Cape towns and landowners within. We are all responsible for its continued success.



Acknowledgments

We would like to express our appreciation to all of the landowners who agreed to be interviewed for both this booklet and the 11-minute video that accompanies the booklet:

Peter and Gloria Watts
Leonard and Diana Goldstein
Penelope Jencks Hurwitz and Sidney Hurwitz
Valerie Falk, Elizabeth Moxley Falk and Gwendolyn Falk
Erica and Alex Parra

We thank Jonathan Moore for his contribution of the Foreword and his encouragement to relay this message to landowners, both in and out of the Seashore.

The National Park Service staff at the Cape Cod National Seashore was very supportive, including Superintendent George Price, Lauren McKean, and Sue Moynihan.

Leaders of the local land conservation trusts, especially Dennis O'Connell of the Wellfleet Conservation Trust and Henry Lind of the Eastham Conservation Foundation, provided good teaching examples of successful land protection projects. Fred Gaechter of the Truro Conservation Trust provided valuable critique.

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The Horizon Foundation
Wellfleet Conservation Trust
Truro Conservation Trust
Friends of Herring River
Friends of Pleasant Bay

Disclaimer: The views and opinions expressed in this booklet, unless directly attributed to others, are those of the author and do not necessarily reflect those of the National Park Service or any other organization.

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The Compact is available to provide free, private consultations with any landowner who owns land on Cape Cod and wishes to learn more about the process and tax benefits of preserving their land as protected open space. The Compact conducts its work on behalf of the local land trusts in each community.

The Compact is a 501c3 non-profit organization. All contributions made to The Compact are fully deductible.

The Compact's 11-minute video entitled "Cape Cod National Seashore: A Land of Beauty at Risk" is available at:
www.thecompact.net/regional_projects.

Prepared 2012-13 by
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THE COMPACT
OF CAPE COD CONSERVATION TRUSTS, INC.

Addendum

SHAW FAMILY DONATES COAST GUARD BEACH PARCEL FOR CONSERVATION February 5, 2007 • Coast Guard Beach, Eastham

At the end of December 2006, Chaya Hurwitz of Brooklyn, NY donated a 4.5 acre parcel of beach, dune and marsh to the Eastham Conservation Foundation, Inc. (ECF), the non-profit local land trust. The gift of land is significant in itself, given its prominent location about a half-mile south of the Coast Guard Station on the Atlantic shore of the Cape Cod National Seashore. But the gift also completes a cycle of generosity of the family of the late Quincy Adams Shaw, Jr. and his wife Marjory Bacon Cheney Shaw.

A century ago, Eastham's famed duck hunting spots (centered around not only Nauset Marsh, but also its inland ponds and Bay shore) began to attract old Boston Yankee families such as the Luce, Hemenway, Richardson and Mixer clans. One of the leading spirits among them was Quincy Adams Shaw, Sr. (1869-1960) and later his son Quincy ("Quinny") Adams Shaw, Jr. (1897-1987). The Shaws bought the old Braley Creamery dairy farm south of Nauset Road and built a hunting lodge called Cedar Bank on the bluff looking out over Nauset Marsh. On the grounds, Quincy, Sr. built a 9-hole rough golf links in 1926 which lasted until World War II. The Shaws hosted the legendary Bobby Jones on their course. But the main pursuit was waterfowl that congregated in the marsh in huge flocks of black ducks, whistlers, bufflehead, teal, brant and geese. Until the early decades of the 20th century, professional gunners shot game for commercial sale in large numbers. When this practice was banned, they hired out to "sports" from away, leading them to favored shooting spots. Shaw and his hardy troupe needed no guiding.

Family friend Lawrence Perera recently remarked, "The Shaws felt the need to escape from the formalities of Boston society from time to time. They came to

Eastham looking for something quite different, a more honest and down to earth lifestyle. Their Cedar Bank lodge was a very straightforward but cozy structure. They fished and hunted in and over the waters of Nauset Marsh and ate what they caught." Perera's father Guido R. Perera of Yarmouthport was a Shaw intimate. In his 1978 memoirs, Guido Perera wrote extensively of his exploits with Quinny on Nauset Marsh:

"It so happened that a Boston automobile dealer by the name of Noyes who had built a snug cabin on the outer dunes [on Coast Guard Beach] decided to dispose of it. Quinny heard about it and...formed a syndicate [of friends] under the name and style of "Nauset House" [to buy and use it as an auxiliary hunting camp]."

There were several dune shacks out on the Coast Guard Beach at the time, the most famous of which, of course, was Henry Beston's The Outermost House where he penned the seminal naturalist essay of the same name. Beston's literary bloodlines extend now to John Hay, Nan Turner Waldron, and Robert Finch, revered Cape Cod essayists. The Outermost House, located about a mile south of Shaw's Nauset House camp, washed away in the 1978 Blizzard.

The much larger Nauset House camp was located on the 4.5-acre parcel recently donated to ECF. No trace of it remains today. Guido Perera writes, "In the post-war (WWII) years...Nauset House had been abandoned because of erosion of the surrounding dunes." Lawrence Perera recalls that Quinny "wanted the beach left pristine when they were through using it. He made sure that the camp was torn down and carted away rather than allow storms to scatter the pieces around the marsh which he so loved."



Coast Guard Beach, Eastham

SHAW FAMILY DONATES COAST GUARD BEACH PARCEL FOR CONSERVATION (continued)

Both Quincy Sr. and his son Quinny had been Harvard-educated mining engineers. Senior was known as the Boston Copper Tycoon and Quinny served in both WWI and WWII as an Army Engineer. "It was Quinny Shaw whose engineering background produced the authoritative duck hunter's map of Nauset Marsh and whose scientifically oriented mind drew statistical conclusions as to the best spots to choose under varying conditions of wind and tide," writes Guido Perera. "It was Shaw who converted the Eastham ducking fleet from unwieldy and oversize wooden boats to low freeboard canoe types and then to aluminum and fiberglass construction in order to reduce weight and save on upkeep...The blinds (long mats of resilient marsh grass which can be rolled up and stowed away when not in use and which can be tied on the boat so that at high tide, when all is afloat, the appearance is that of an island in the marsh) are perhaps Shaw's greatest contribution to Eastham wildfowling. To my knowledge, they are unique."

Marjory Shaw knew how to keep her sporting guests well fed and entertained back at the lodge. Guido Perera relates, "Cedar Bank set a special pattern for the social side of Eastham duck shooting. The wind might bluster, it might rain or snow, but in the long main room, lit only by kerosene lamps (no electricity there!) the logs would be burning in the large fireplace, the long refectory table would be set and, in the southeast corner where stood the bottles of good cheer, the tinkle of ice in the martini shaker could be heard amid the conversation and laughter."

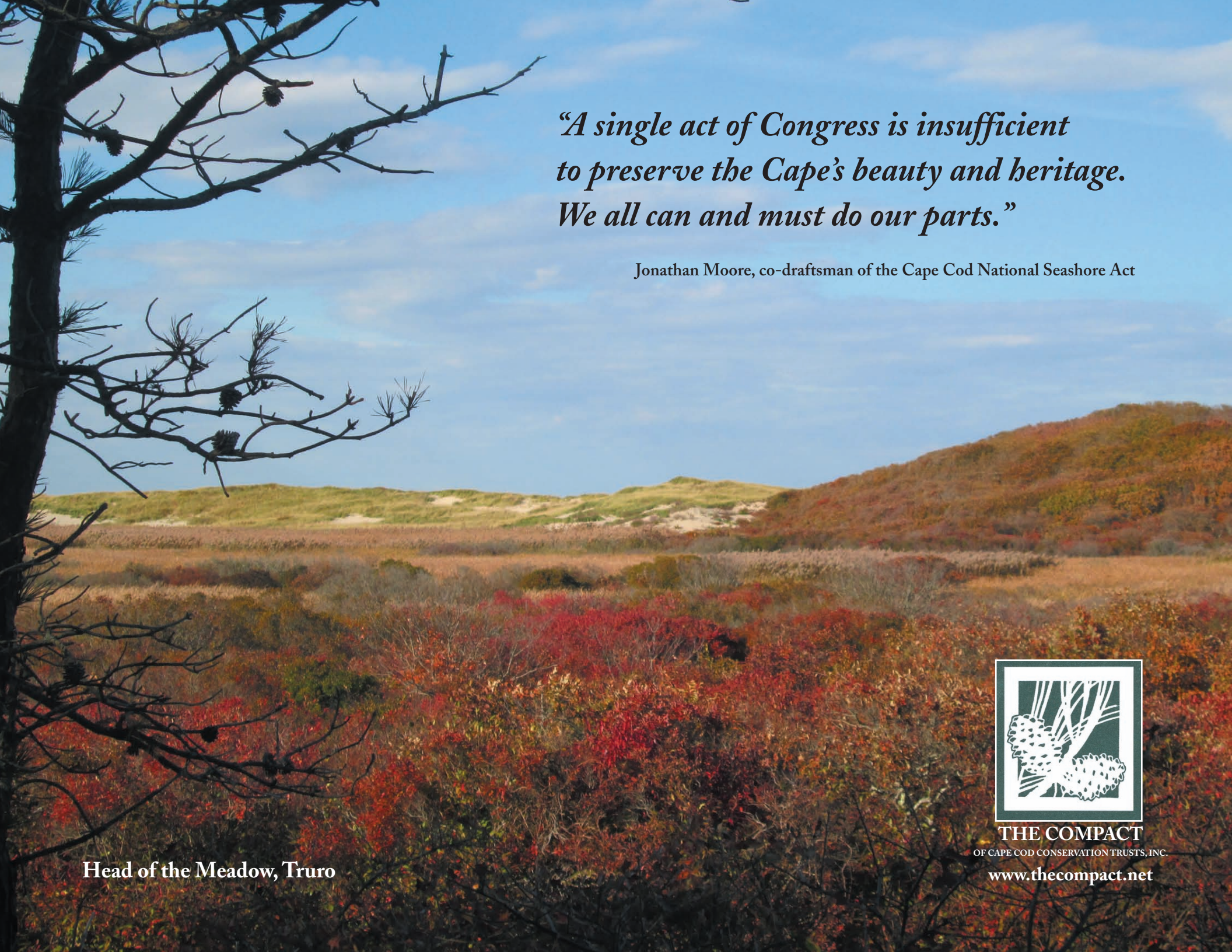
After dinner, the sports would draw from a hat to determine who would get first choice among the hunting spots the following morning: Point of Minister's Flats, Point of Pochie, Teal Hummock, Goose Hummock, Deep Creek, Grassy Slough, 'Tween Channels Flat, Big Box, West Cove, Center Pond Hole, Joe Mayo's Hook and Wizard's Slough. Looking out today over the creeks and hummocks that comprise the expansive Nauset Marsh, it is no wonder that locals had to invent place names to find their way around the maze. (A map with the names is still in use.)

Quincy Adams Shaw, Jr. died in 1987, his wife Marjory in 2003. But he was still going strong as an Eastham duck hunter into his seventies. Friend Guido Perera writes, "Shaw's only compromise is the use of an outboard motor and his gun is as deadly as ever. The opening day of the 1973 season found only one boat in the marsh...We got up at 4:30, cooked our usual hearty breakfast, motored to a point opposite Point of Minister's Flats, walked in to Center Pond Hole and were all set out about ten minutes after shooting started. Twenty minutes later we had our limit of four birds without having missed a shot! A perfect record never before achieved in our Eastham days."



Lawrence Perera says, "I found it interesting that Quinny initially opposed the creation of the Cape Cod National Seashore despite being a friend of Senator Leverett Saltonstall, who with Senator John Kennedy was a driving force behind the Park's legislation. But I am delighted to learn that his daughter has made this gift of land including the old Nauset House site for conservation purposes, so that it will enhance the Seashore experience for the many visitors. They will pass by never knowing the long and wonderful history of Nauset House on those dunes, but it was there nevertheless. Now, people can create their own memories of that beach, secure in knowing that it will be preserved as forever wild."

Henry Lind, President of the ECF since its founding 29 years ago, said, "This land gift is a fitting tribute to their legacy of time well spent on Cape Cod. The Shaws and their friends certainly knew how to enjoy the great outdoors that Eastham has to offer. I thank the Shaw family for their generosity of land and spirit." Since 1978, ECF has preserved over 275 acres through land donations such as the Shaw gift.



*“A single act of Congress is insufficient
to preserve the Cape’s beauty and heritage.
We all can and must do our parts.”*

Jonathan Moore, co-draftsman of the Cape Cod National Seashore Act

Head of the Meadow, Truro



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