

# Request For Proposals

## Widemarsh Farm, Fairhaven, MA



Offered At  
**\$650,000**

**21.5 +/- Acres Of  
Protected  
Agricultural &  
Conservation  
Lands**

**2,445 SF Single  
Family Residence  
With Finished  
Lower Level**

**Convenient &  
Beautiful  
Location**

**Less Than 5 Miles  
From Downtown  
New Bedford**

buzzards  
**BAY**  
COALITION

427 Sconticut Neck Rd. Fairhaven, MA 02719

Seeking potential private buyers interested in purchasing the property subject to a conservation restriction that will allow continued agricultural use of this working farm and limit development to a 2 acre portion of the site.

The property is near other protected conservation land in a wonderful landscape with a unique location near the bay but with easy access to nearby highways and the population centers of the Southcoast & New Bedford. Excellent agricultural soils recently in hay & corn.

For more info contact John Chester, Real Estate Project Manager **508-999-6363 Ext. 213** [chester@savebuzzardsbay.org](mailto:chester@savebuzzardsbay.org)

# 21.5 ACRE FARM FOR SALE

## Widemarsh Farm

427 Sconticut Neck Rd. Fairhaven, MA

Map 29, Lot 18D

ASKING PRICE: \$650,000

As part of ongoing conservation efforts in the watershed, Buzzards Bay Coalition (BBC) is working to protect vulnerable lands on Sconticut Neck in Fairhaven, in close proximity to Buzzards Bay. As part of that effort, BBC will be selling a property containing agricultural fields and a single family home at 427 Sconticut Neck Rd. We seek potential private buyers interested in purchasing the property subject to a permanent conservation restriction that will allow continued agricultural use of this working farm but will limit development to a 2 acre portion of the site.

This is a beautiful farm property with excellent agricultural soils. The fields have recently been in hay and corn. An orchard of 96 young Black Walnut trees occupies the northern end of the site. The property is near other protected conservation land in a wonderful landscape with a unique location near the bay but with easy access to nearby highways and population centers.

- Farm House/Residence Area: 2 acre area excluded from conservation restriction. Single family 2,445 SF home on-site in fair condition.
- Driveway/Farm roads: Pervious driveway to residence and farm roads permitted.
- Farm Buildings: Permitted within excluded area.
- Agricultural Use: 21.5 acres of agricultural fields & forests.
- Conservation Restriction: Property will be protected by a permanent conservation restriction allowing agricultural use on the existing fields. There will be no restriction on a 2 acre area excluded for a residence & farm buildings. Additional subdivision and building will be restricted from the remainder of the property.

A draft of the Conservation Restriction to be recorded against the property at closing is attached.

Major changes to the conservation goals and limit to single residence as presented in the draft will not be allowed.

WRITTEN OFFERS ACCEPTED UNTIL  
1PM ON FRIDAY, NOVEMBER 3<sup>RD</sup> 2023

# Delivery and Selection of Offers

Written offers in sealed envelopes must be received by 1:00 pm on Friday, November 3rd, 2023. Envelope must indicate “Widemarsh Farm” on the outside. Offers should be addressed to:

**John Chester**  
Real Estate Project Manager, Watershed Protection  
Buzzards Bay Coalition  
114 Front Street  
New Bedford, MA 02740  
508-999-6363 x 213

Offers must include the proposed purchase price and closing date as well as details about financing, proposed contingencies and needs (time period and access) for due diligence. All offers must be accompanied by a written proposal that describes the buyers proposed plan for agricultural operation/use of the property and the buyer’s qualifications for implementing that plan. Additionally, the attached mandatory questionnaire must be completed and included with the submitted offer.

**BBC will rank all offers received based on purchase price, feasibility of financing, environmental sustainability of proposed agricultural operation/use, and the risk/likelihood of closing within a reasonable timeframe. The highest ranked offer will be notified by November 17<sup>th</sup>, 2023 at which time a good faith effort will be made to negotiate and execute a Purchase and Sale (P&S) Agreement acceptable to both parties.**

If BBC is unable to come to agreement with this interested buyer in a reasonable period of time then the next highest ranked offer(s) will be contacted until an acceptable P&S is executed. The P&S will require a non-refundable deposit and is envisioned to grant the Buyer a reasonable period of time to complete necessary due diligence.

All interested buyers are fully and solely responsible for the information that their decisions are based on. Information provided is believed to be correct, but Buzzards Bay Coalition shall be held totally harmless for any errors, misinformation or misprints of facts or data. The Buzzards Bay Coalition reserves the right to reject any and all offers.

**All interested parties are advised to independently confirm all information before relying on it in a purchase decision.**

**For additional information, please contact  
John Chester at (508) 999-6363 x 213**

**Information Packet Includes:**

Property Map & Photos  
Draft Boundary Survey  
Assessor’s Card  
NCRS Soil Survey Map  
Deed  
Draft Conservation Restriction  
Buyer Response Packet

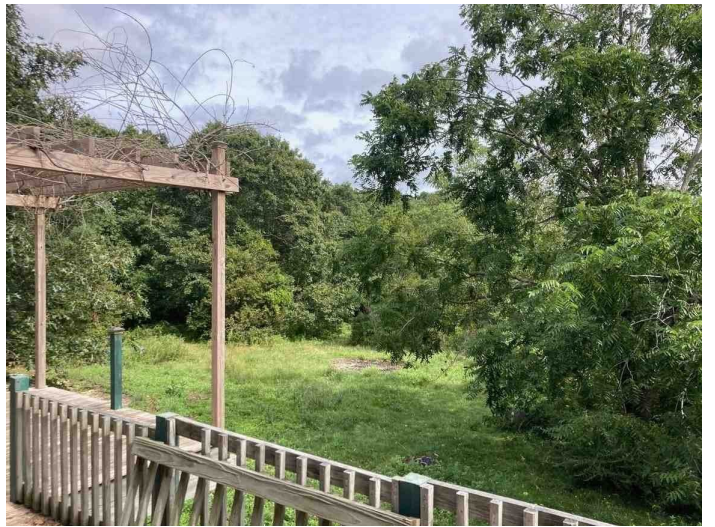
# Wide Marsh Farm, Fairhaven



Photos



Photos



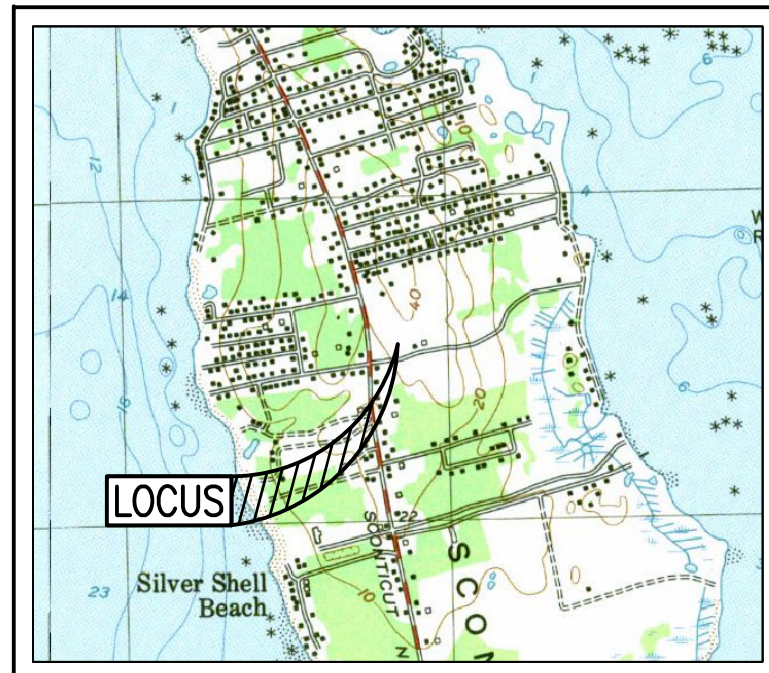
Photos



Photos







LOCUS MAP SCALE: 1"=2,000'±

**— ZONING DATA —**

DISTRICT: RR	
DESCRIPTION	REQUIRED
MINIMUM LOT AREA	30,000 S.F.
MINIMUM LOT FRONTAGE	140 FT

**SURVEY EQUIPMENT:**  
 LEICA FLEXLINE TS06 TOTAL STATION  
 ANGLE MEASUREMENT ACCURACY = 2"  
 DISTANCE MEASUREMENT ACCURACY = 1.5 mm + 2 ppm  
 NOTE: ALL LINES WERE MEASURED BY EDM.

**TRAVERSE CLOSURE DATA: (BEFORE ANGLE BALANCE)**  
 LENGTH OF TRAVERSE = 5,652.58'  
 CLOSURE ERROR DISTANCE = 0.34'  
 CLOSURE ERROR BEARING = S66°18'05"E  
 PRECISION = 1 : 16,455

I CERTIFY THAT AS OF THE TIME OF THIS SURVEY, THE MONUMENTS CONTROLLING PRIOR PLANS ARE IN THE GROUND AS SHOWN AND DESCRIBED HEREON. I FURTHER CERTIFY THAT ANY ADDITIONAL MONUMENTS SHOWN HEREON HAVE BEEN SET IN ACCORDANCE WITH THE LAND COURT INSTRUCTIONS OF 2006 AS OF THE DATE OF THIS SURVEY.

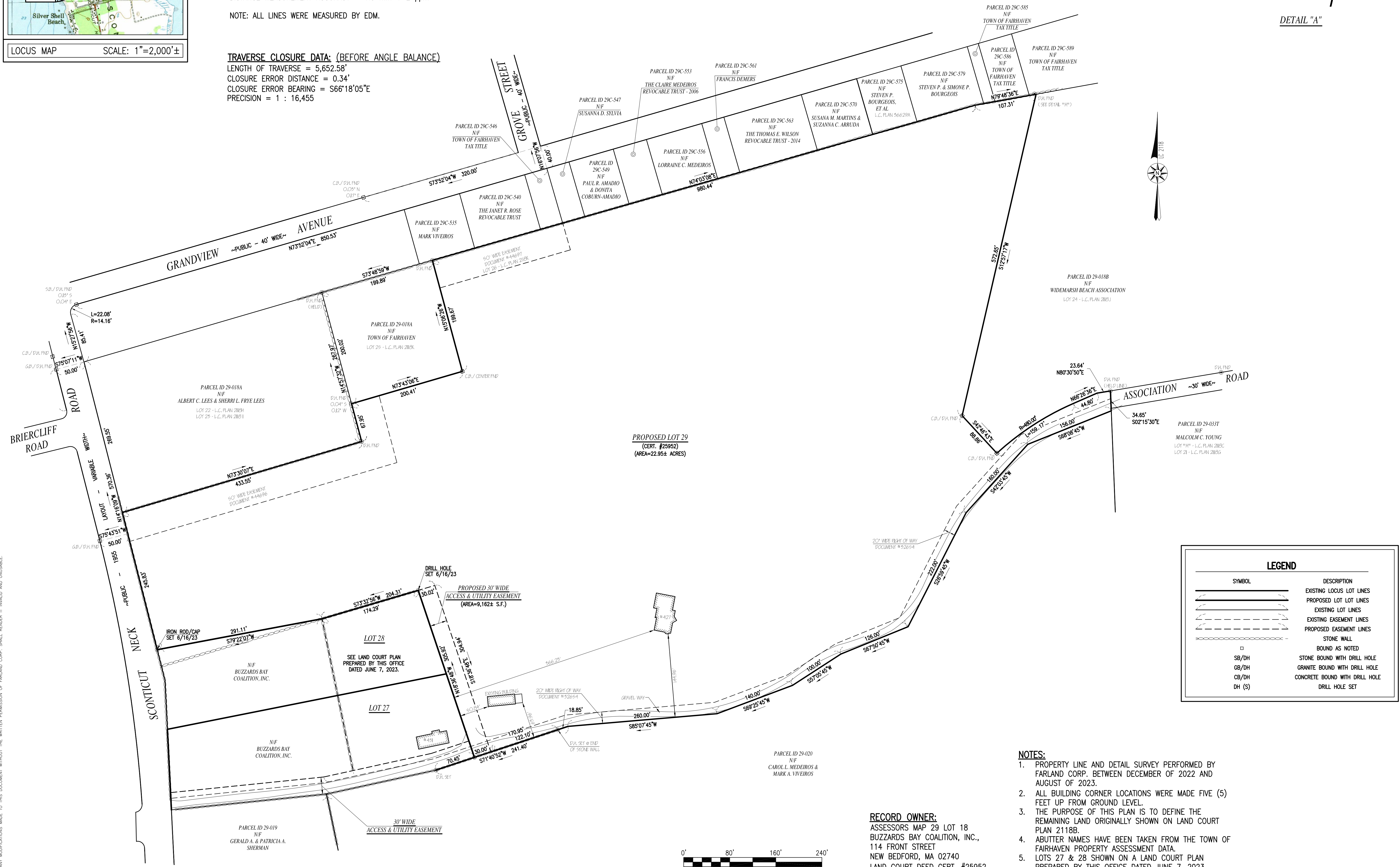
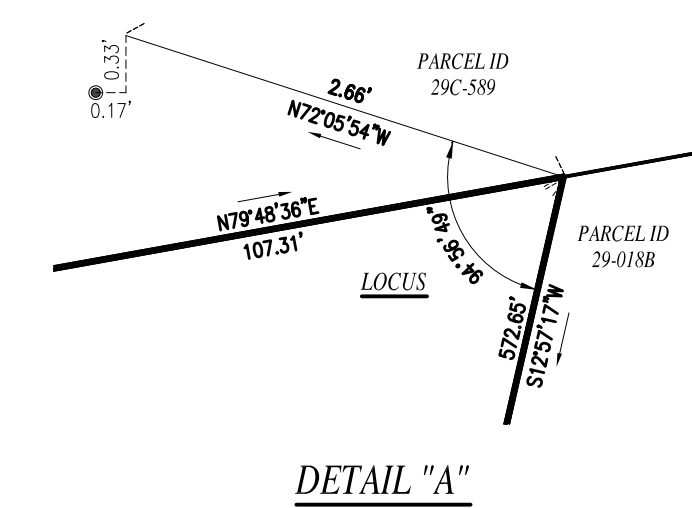
I HEREBY CERTIFY THAT THIS PLAN HAS BEEN PREPARED FROM AN ACTUAL SURVEY MADE ON THE GROUND IN ACCORDANCE WITH THE LAND COURT INSTRUCTIONS OF 2006 IN DECEMBER OF 2022.

BRIAN J. MURPHY, P.L.S.

DATE

BRIAN J. MURPHY, P.L.S.

DATE

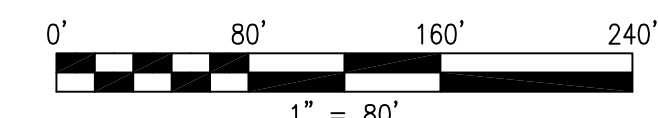


**LEGEND**

SYMBOL	DESCRIPTION
—	EXISTING LOCUS LOT LINES
- - -	PROPOSED LOT LOT LINES
—	EXISTING LOT LINES
- - -	EXISTING EASEMENT LINES
- - -	PROPOSED EASEMENT LINES
—	STONE WALL
□	BOUND AS NOTED
□	STONE BOUND WITH DRILL HOLE
□	GRANITE BOUND WITH DRILL HOLE
□	CONCRETE BOUND WITH DRILL HOLE
○	DRILL HOLE SET

- NOTES:**
- PROPERTY LINE AND DETAIL SURVEY PERFORMED BY FARLAND CORP. BETWEEN DECEMBER OF 2022 AND AUGUST OF 2023.
  - ALL BUILDING CORNER LOCATIONS WERE MADE FIVE (5) FEET UP FROM GROUND LEVEL.
  - THE PURPOSE OF THIS PLAN IS TO DEFINE THE REMAINING LAND ORIGINALLY SHOWN ON LAND COURT PLAN 2118B.
  - ABUTTER NAMES HAVE BEEN TAKEN FROM THE TOWN OF FAIRHAVEN PROPERTY ASSESSMENT DATA.
  - LOTS 27 & 28 SHOWN ON A LAND COURT PLAN PREPARED BY THIS OFFICE DATED JUNE 7, 2023.

**RECORD OWNER:**  
 ASSESSORS MAP 29 LOT 18  
 BUZZARDS BAY COALITION, INC.,  
 114 FRONT STREET  
 NEW BEDFORD, MA 02740  
 LAND COURT DEED CERT. #25952



**REVISIONS**

1	8/24/23	L.C. COMMENTS



www.FarlandCorp.com

154 HUTTLESTON AVENUE  
 FAIRHAVEN, MA 02719  
 P.508.717.3479  
 • ENGINEERING  
 • SITEWORK  
 • LAND SURVEYING  
 • DEVELOPMENT

DRAWN BY: SB  
 CALC'D BY: MOB  
 CHECKED BY: BJM

**APPROVAL NOT REQUIRED PLAN OF LAND**  
 ASSESSORS MAP 29 LOT 18  
 427 SCONTICUT NECK ROAD  
 FAIRHAVEN, MASSACHUSETTS  
 BEING A DIVISION OF L.C. PLAN 2118B, OWNED BY BUZZARDS BAY  
 COALITION, INC. CERTIFICATE OF TITLE No. 25952

FEBRUARY 21, 2023  
 SCALE: 1"=80'  
 JOB NO. 22-717  
 LATEST REVISION:  
 AUGUST 24, 2023

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# Unofficial Property Record Card - Fairhaven, MA

## General Property Data

Parcel ID <b>29-018D</b>	Account Number <b>5</b>
Prior Parcel ID	Property Location <b>427 SCONTICUT NECK RD</b>
Property Owner <b>BUZZARDS BAY COALITION, INC</b>	Property Use <b>OTHER</b>
Mailing Address <b>114 FRONT STREET</b>	Most Recent Sale Date <b>7/7/2022</b>
City <b>NEW BEDFORD</b>	Legal Reference <b>25952</b>
Mailing State <b>MA</b> Zip <b>02740</b>	Grantor <b>JENNEY MARJORIE E &amp; WILLIAM L</b>
ParcelZoning <b>RR</b>	Sale Price <b>2,000,000</b>
	Land Area <b>1,052,409.828 acres</b>

## Current Property Assessment

Card 1 Value	Building Value <b>335,900</b>	Xtra Features Value <b>5,000</b>	Land Value <b>470,200</b>	Total Value <b>811,100</b>
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## Building Description

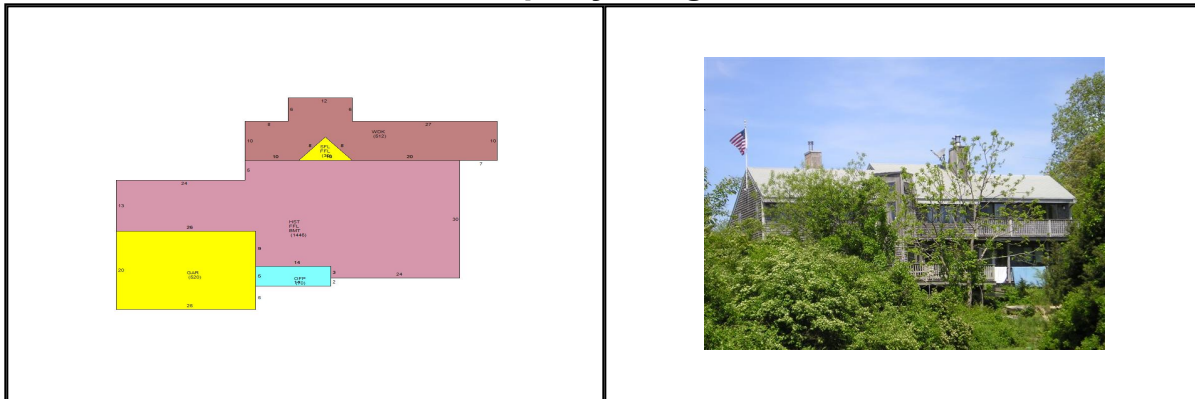
Building Style <b>CAPE</b>	Foundation Type <b>CONCRETE</b>	Flooring Type <b>HARDWOOD</b>
# of Living Units <b>1</b>	Frame Type <b>N/A</b>	Basement Floor <b>N/A</b>
Year Built <b>1997</b>	Roof Structure <b>GABLE</b>	Heating Type <b>FORCED H/W</b>
Building Grade <b>GOOD (-)</b>	Roof Cover <b>ASPHALT SH</b>	Heating Fuel <b>OIL</b>
Building Condition <b>N/A</b>	Siding <b>WOOD SHING</b>	Air Conditioning <b>0%</b>
Finished Area (SF) <b>2445.89997</b>	Interior Walls <b>AVERAGE</b>	# of Bsmt Garages <b>0</b>
Number Rooms <b>7</b>	# of Bedrooms <b>4</b>	# of Full Baths <b>2</b>
# of 3/4 Baths <b>0</b>	# of 1/2 Baths <b>1</b>	# of Other Fixtures <b>0</b>

## Legal Description

## Narrative Description of Property

This property contains 1,052,409.828 acres of land mainly classified as OTHER with a(n) CAPE style building, built about 1997 , having WOOD SHING exterior and ASPHALT SH roof cover, with 0 commercial unit(s) and 1 residential unit(s), 7 room(s), 4 bedroom(s), 2 bath(s), 1 half bath(s).

## Property Images

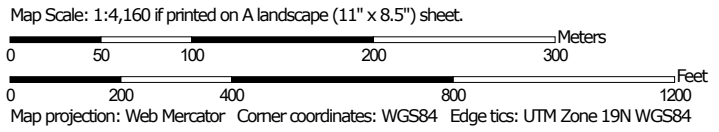


Disclaimer: This information is believed to be correct but is subject to change and is not warranted.

# Custom Soil Resource Report Soil Map



Soil Map may not be valid at this scale.



### MAP LEGEND

**Area of Interest (AOI)**

 Area of Interest (AOI)

**Soils**

 Soil Map Unit Polygons

 Soil Map Unit Lines


 Soil Map Unit Points

**Special Point Features**

-  Blowout
-  Borrow Pit
-  Clay Spot
-  Closed Depression
-  Gravel Pit
-  Gravelly Spot
-  Landfill
-  Lava Flow
-  Marsh or swamp
-  Mine or Quarry
-  Miscellaneous Water
-  Perennial Water
-  Rock Outcrop
-  Saline Spot
-  Sandy Spot
-  Severely Eroded Spot
-  Sinkhole
-  Slide or Slip
-  Sodic Spot

-  Spoil Area
-  Stony Spot
-  Very Stony Spot
-  Wet Spot
-  Other
-  Special Line Features


**Water Features**

 Streams and Canals

**Transportation**

-  Rails
-  Interstate Highways
-  US Routes
-  Major Roads
-  Local Roads

**Background**

 Aerial Photography

### MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:20,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service  
 Web Soil Survey URL:  
 Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

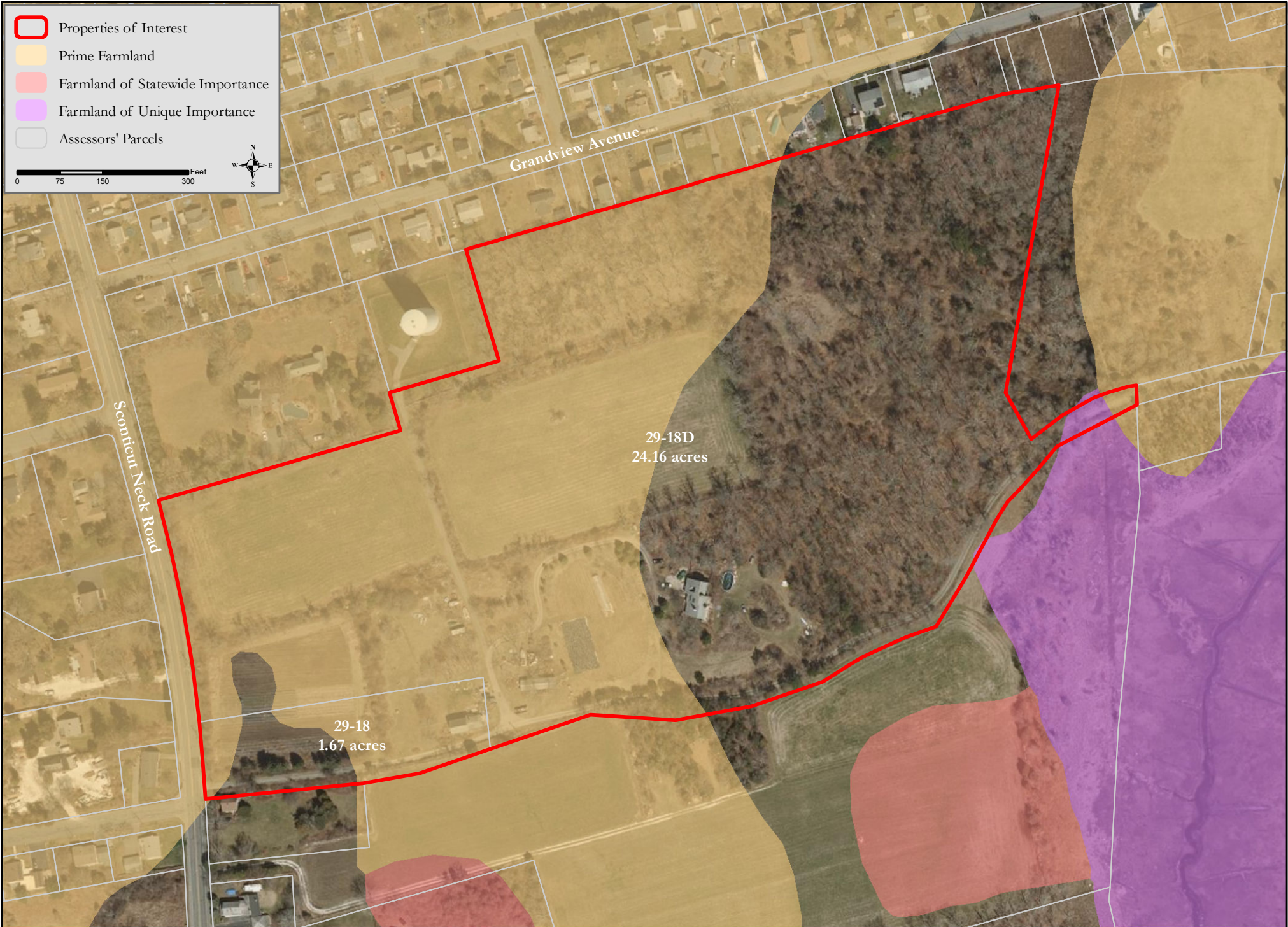
Soil Survey Area: Bristol County, Massachusetts, Southern Part  
 Survey Area Data: Version 16, Sep 9, 2022

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Jun 10, 2022—Jun 30, 2022

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

# 431 Sconticut Neck Road, Fairhaven - Agricultural Soils





2022 00133237

Cert: 25952 Doc: DEED BS  
Registered: 07/07/2022 10:14 AM

Property Address: 427 and 431 Sconticut Neck Road  
Fairhaven, MA 02719

### QUITCLAIM DEED

I, **William H. Jenney, Trustee of the Wide Marsh Farm Realty Trust**, u/d/t dated December 27, 1995 ("Grantor"), a certificate of which is recorded herewith, for consideration paid and in full consideration of Two Million and 00/100 Dollars (\$2,000,000.00), grants to **Buzzards Bay Coalition, Inc.**, a Massachusetts nonprofit corporation, of 114 Front Street, New Bedford, Massachusetts 02740 ("Grantee"), with **Quitclaim Covenants**, the land in Fairhaven, Bristol County, Massachusetts, together with any buildings thereon, bounded and described as follows:

- Westerly by Sconticut Neck Road, seven hundred ninety-three and 50/100 (793.50) feet;
- Northerly by land now or formerly of William C. Stoddard, measuring on the upland about twenty-three hundred twelve and 5/10 (2312.5) feet;
- Easterly by Nasketucket Bay;
- Southeasterly by land now or formerly of John Brown, measuring on the upland about six hundred eighty-seven (687) feet;
- Westerly by land now or formerly of Joseph Rose, by land formerly of Silas Alden, et al, and by land now or formerly of Joseph S. Machado, sixteen hundred forty-one and 25/100 (1641.25) feet; and
- Southeasterly and Southerly by said Machado land and by land now or formerly of Frank Frates about eleven hundred and sixty-four (1164) feet.

All of said boundaries are determined by the Court to be located as shown on plan 2118B, drawn by Abram Gifford, Surveyor, dated September 5, 1913, as modified and approved by the Court, filed in the Land Registration Office at Boston, a copy of a portion of which is filed in Bristol County (S.D.) Registry of Deeds, in Land Registration Book 2, Page 511, with Certificate of Title No. 571, and Lot 26 as shown on subdivision plan 2118K, drawn by E. J. Flynn Engineers Inc., Surveyors, dated July 12, 1984, and filed in the Land Registration Office at Boston, a copy of which is filed in Bristol County (S.D.) Registry of Deeds, in Land Registration Book 78, Page 195, with Certificate of Title No. 14454.

This conveyance does not constitute a conversion of the property and is not being sold for residential, industrial or commercial use.

MASSACHUSETTS EXCISE TAX  
Bristol ROD South 001  
Date: 07/07/2022 10:14 AM  
Ctrl# 036817 23906 Doc# 00133237  
Fee: \$9,120.00 Cons: \$2,000,000.00

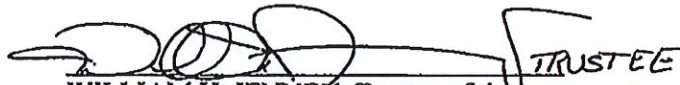
EXCEPTING AND EXCLUDING FROM THE ABOVE DESCRIBED LAND Lot A shown on subdivision plan 2118C filed with Certificate of Title No. 3607, Lot 22 shown on subdivision plan 2118H, filed with Certificate of Title No. 8384, Lot 23 shown on subdivision plan 2118-I filed with Certificate of Title No. 8495, Lot 24 shown on subdivision plan 2118J, filed with Certificate of Title No. 9504 and Lot 25 shown on subdivision plan 2118K, filed with Certificate of Title No. 14454, these lots being previously conveyed.

The extreme Southerly portion of the above described land is subject to the right of said Machado and those claiming under him to take one third of the seaweed from the beach connected therewith as determined in a decision of the Land Court filed October 25, 1911, in Case No. 2118.

Subject to agreements and easements noted on Certificate of Title No. 11264.

For my title, see Certificate of Title No. 17630 in Book 96, Page 52.


Witness my hand and seal this 21<sup>st</sup> day of June, 2022.

  
WILLIAM H. JENNEY, Trustee of the  
Wide Marsh Farm realty Trust

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BRISTOL

On this 21<sup>st</sup> day of June, 2022, before me, the undersigned notary public, personally appeared WILLIAM H. JENNEY, Trustee of the Wide Marsh Farm Realty Trust, proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness,  personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Trustee as aforesaid and swore or affirmed to me that the contents of the preceding document are truthful and accurate to the best of his knowledge and belief.

  
NOTARY PUBLIC -  
My commission expires: 3/2/2029

Doc 00133237

Bristol South LAND COURT  
Registry District

RECEIVED FOR REGISTRATION

On: Jul 07, 2022 at 10:14A

Document Fee 155.00

Receipt Total: \$9,645.00

~~NOTED ON:~~ <sup>(New)</sup> CERT 25952 BK 00151 PG 123

ALSO NOTED ON: CERT 17630 BK 96 PG 52

*5 Connecticut Neck Rd (e) Pl. 2118B*



**GRANTOR:** NEW OWNER  
**GRANTEE:** BUZZARDS BAY COALITION, INC.  
**THIRD PARTY RIGHT OF ENFORCEMENT:** UNITED STATES OF AMERICA  
**ADDRESS OF PREMISES:** 427 Sconticut Neck Road  
Fairhaven, Massachusetts 02719  
**FOR GRANTOR’S TITLE SEE:** Bristol County (Southern District) Registry of Deeds  
Division of the Land Court  
Certificate of Title \_\_\_\_\_

**GRANT OF CONSERVATION RESTRICTION**

Wide Marsh Farm, Sconticut Neck Road, Fairhaven

Fairhaven CR # \_\_\_\_\_

**I. STATEMENT OF GRANT**

**NEW OWNER** and Address, being the sole owner of the Premises as defined herein, constituting all of the owner(s) of the Premises as defined herein, for my successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to **BUZZARDS BAY COALITION, INC.**, a Massachusetts non-profit corporation with an address of 114 Front Street, New Bedford, Bristol County, Massachusetts 02740, its permitted successors and assigns (“Grantee”), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in Fairhaven, Bristol County, Massachusetts containing a 21-acre portion of a 23-acre property (“Premises”), which Premises is more particularly described in Exhibit A and shown in the attached reduced copy of a survey plan in Exhibit B, both of which are incorporated herein and attached hereto.

This Conservation Restriction is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (“ACEP”). Exhibit C is attached hereto and incorporated herein by reference and will run with the land *in perpetuity*. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future use of the Premises identified in Exhibit A is and will remain subject to the terms and conditions described forthwith in this Addendum entitled “Minimum Terms For Agricultural Land Easements” in Exhibit C that is appended to and made a part of this easement deed.

## II. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction (“Purposes”) are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition and available for agricultural use, forestry use and passive outdoor recreational use, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

**The Conservation Values protected by this Conservation Restriction include the following:**

- Open Space. The Premises contributes to the protection of the scenic and natural character of Sconticut Neck and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises is just north of a significant 397-acre block of land already conserved, including Viveiros Farm (State APR), Winsegansett Marshes (owned by Fairhaven-Acushnet Land Preservation Trust) and Salt Winds Reserve (owned by Grantee).
- Soils and Soil Health. The Premises includes a majority of Prime Farmland and Farmland of Statewide Importance as identified by the Web Soil Survey of the USDA Natural Resources Conservation Service. The protection of the Premises will promote healthy soils and healthy soils practices as such terms are defined in Chapter 358 of the Acts of 2020, which added definitions of these terms to Section 7A of Chapter 128 of the Massachusetts General Laws.
- Biodiversity. The Premises includes areas designated as Core Habitat and Critical Natural Landscape as defined by the Massachusetts Natural Heritage and Endangered Species Program (“NHESP”). BioMap3, published in 2022, 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. BioMap3 is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan.
- Water Quality. Protection of the Premises will prevent land use conversion and its associated impacts. Being entirely upland, development scenarios proposed as many as two dozen homesites which would introduce impervious surfaces, stormwater runoff, wastewater, fertilizers and pesticides and other disturbance all of which would impact adjacent Nasketucket Bay and its natural resources and aquatic habitats.
- Working Farmland and/or Forest Land. The protection of the Premises will ensure that the open fields and forests contained on the Premises will be permanently available for agriculture and forestry that is consistent with the Purposes.
- Climate Change Resiliency. The Premises, as mapped by Massachusetts GIS, buffers salt marsh threatened by sea level rise and contains important upland buffer that, over time,

will be available for the existing salt marsh to migrate into as sea level rise begins to flood adjacent low gradient, low elevation uplands. Protection of the Premises will strengthen resilience to climate change on Sconticut Neck which is of great importance to Fairhaven. The protection of these climate resilient sites is an important step in both reducing human and ecosystem vulnerability to climate change and adapting to changing conditions.

- Consistency with Clearly Delineated Local Governmental Conservation Policy. Protection of the Premises supports the Town of Fairhaven’s Open Space and Recreation Plan (“OSRP”) that calls for the preservation of farmland, an increased awareness of open space and protection of habitats and landscapes. Specifically, protection of the Premises supports the goal of preserving important agricultural soils and participation in farmland preservation programs under Chapter 61A of the Massachusetts General Laws (Goal 1) as the soils of the Premises are classified as containing Prime Farmland and Farmland of Statewide Importance; the goal setting aside more land for conservation and open space (Goal 3) as protection of the Premises will prevent land use conversion and its associated impacts; the goal of protecting lands and habitats that are mapped by the Commonwealth as important for biodiversity (Goal 5) as the Premises contains BioMap3 Core Habitat and Critical Natural Landscape and the goal of preserving landscapes important to the Town (Goal 6) such as those found on Sconticut Neck that maintain scenic views and the rural character of that part of Fairhaven. These OSRP goals are echoed in the Town of Fairhaven’s Master Plan evidencing their importance. The Town of Fairhaven’s understanding of the importance of preparation for the effects of climate change are voiced in the Town’s Municipal Vulnerability Preparedness and protection of the Premises helps achieve high priority actions noted like the importance of land conservation and the effectiveness of natural protective systems.
- Consistency with Clearly Delineated State Governmental Conservation Policy. Conservation of the Premises is in furtherance of the clearly delineated policies of the Commonwealth of Massachusetts to encourage land conservation as exhibited by the designation of areas of the Premises as being NHESP BioMap3-designated Core Habitat and Critical Natural Landscape which helps protect terrestrial biodiversity within the Commonwealth. The protection of farmland is supported by the Premises’ current enrollment in Chapter 61A which supports lower property taxes for land kept in agricultural use. Protection of the Premises is also consistent with the Buzzards Bay Comprehensive Conservation and Management Plan. This plan developed by the Buzzards Bay National Estuary Program (a cooperative effort sponsored by the Executive Office of Environmental Affairs and the United States Environmental Protection Agency) includes protecting open space in its action plan, with the objectives of improving water quality and protecting biodiversity.
- Consistency with Clearly Delineated Federal Governmental Conservation Policy. Protection of the Premises is for the scenic enjoyment of the general public of Sconticut Neck and this part of Fairhaven and will yield a significant public benefit meeting IRS Code Section 170(h)(4)(A)(iii)(I) and is pursuant to clearly delineated federal, state and local conservation policies meeting IRS Code Section 170(h)(4)(A)(iii)(II).

### III. PROHIBITED and PERMITTED ACTS AND USES

#### A. Prohibited Acts and Uses

The Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Structures and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam;
2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
5. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;
6. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;
7. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;
8. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;

9. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on this or any other parcel;
10. Adverse Impacts to Stone Walls, Boundary Markers. Disrupting, removing, or destroying stone walls, granite fence posts, or any other boundary markers;
11. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
12. Inconsistent Uses. Using the Premises for commercial purposes that are inconsistent with the Purposes or that would materially impair the Conservation Values, or for any other uses or activities that are inconsistent with the Purposes or that would materially impair the Conservation Values.

**B. Permitted Acts and Uses**

Notwithstanding the Prohibited Acts and Uses described in Paragraph III.A., the Grantor may conduct or permit the following acts and uses on the Premises, provided they do not materially impair the Purposes and/or Conservation Values. In conducting any Permitted Act and Use, Grantor shall minimize impacts to the Conservation Values to ensure any such impairment thereto is not material.

1. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XV.);
2. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
3. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises. No such activities shall allow for the creation of “stump dumps” nor take place closer than one hundred (100) feet from the Premises boundary or any wetland, waterbody or stream;
4. Natural Habitat and Ecosystem Improvement. With prior written approval of the Grantee, conducting measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation;
5. Indigenous Cultural Practices. Allowing indigenous peoples to:
  - a. Conduct cultural land ceremonial uses. Cultural practices are defined, for the purposes of this Conservation Restriction, as including traditional spiritual ceremonies, seasonal celebrations, offerings, and cultural, educational, and interpretive programming; and

- b. Harvest plant-life for traditional cultural practices, using methods which, in the sole judgment of the Grantee, ensure sustainable populations of the harvested species within the Premises, including regrowth and replanting;
6. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee;
7. Trails. Maintaining and constructing trails as follows:
  - a. Trail Maintenance. Conducting routine maintenance of trails, which may include widening trail corridors up to twenty (20) feet in width overall, with a treadway up to twelve (12) feet in width.
  - b. New Trails. With prior written approval of the Grantee, constructing new trails or relocating existing trails, provided that any construction or relocation results in trails that conform with the width limitations above.
  - c. Trail Features. With prior written approval of the Grantee, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benching, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
8. Signs. Constructing, installing, maintaining, and replacing signs and informational kiosks with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, trespass, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises;
9. Motorized Vehicles. Using motorized vehicles by persons with mobility impairments or as necessary for engaging in the Permitted Acts and Uses as permitted herein;
10. Outdoor Passive Recreational and Educational Activities. Hiking, horseback riding, cross-country skiing, snowshoeing, hunting, trapping, nature observation, nature and educational walks and outings, outdoor educational activities, and other non-motorized outdoor recreational and educational activities;
11. Forest Management.
  - a. Harvesting For Personal Use. The sustainable cutting of trees only for the Grantor's personal use, not to exceed two (2) cords or equivalent volume, shall not require a Forest Stewardship Plan.

12. Agricultural Activities.

- a. Permitted Activities. “Agricultural Activities” are collectively defined as “Animal Husbandry” and “Horticulture,” defined below:
  - i. Animal Husbandry. Raising animals, including but not limited to dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, and bees, for the purpose of using, consuming, or selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for use, consumption, or market.
  - ii. Horticulture. Raising fruits, vegetables, berries, nuts, and other foods for human consumption, feed for animals, flowers, trees, nursery or greenhouse products, and ornamental plants and shrubs, all for the purpose of selling such products in the regular course of business; or when primarily and directly used in raising forest products under a Forest Stewardship Plan designed to improve the quantity and quality of a continuous crop for the purpose of using, consuming, or selling these products in the regular course of business; or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising such products and preparing them for use, consumption, or market.
  - iii. Agricultural Activities shall only occur on the existing fields on the Premises (as documented in the Baseline Report (see Paragraph XV.)) with no expansion of said fields or creation of new fields other than, with prior written notice to Grantee, the conversion of the existing black walnut grove (as documented in the Baseline Report (see Paragraph XV.)) into field(s).
- b. Requirement to Follow Best Agricultural Practices. Agricultural Activities shall be conducted in a manner consistent with generally accepted best management practices for sustainable farming as those practices may be identified from time to time by appropriate governmental or educational institutions such as the USDA Natural Resources Conservation Service (NRCS), UMass Extension, Northeast Organic Farming Association (NOFA), Massachusetts Department of Agricultural Resources, and the like, (collectively, “Best Agricultural Practices”) and in a manner that promotes healthy soils and healthy soil practices, as such terms are defined in Chapter 358 of the Acts of 2020, which added definitions of these terms to Section 7A of Chapter 128 of the Massachusetts General Laws (“Healthy Soils and Practices”), and in a manner that does not hinder the ability of future generations to engage in Agricultural Activities on the Premises;
- c. Requirement for a Farm Conservation Plan. Agricultural Activities shall require a farm conservation plan, such as an NRCS Conservation Plan (“Farm Conservation Plan”), prepared for the Premises, and approved in writing by the

Grantee. The Farm Conservation Plan shall be developed in accordance with generally-accepted Best Agricultural Practices, and shall, at a minimum, address the following:

- i. establish wetland buffers and/or filter strips to prevent adverse impacts to the water quality of existing wetlands and waterways;
  - ii. in the event animal husbandry activities are proposed, establish and govern the type and number of each type of animal unit permitted on the Premises, and analyze the pasturage potential of the Premises and establish and govern the cycling of pasturage, and any other measures necessary to ensure the carrying capacity of the Premises is not exceeded in order to protect water quality, prevent soil erosion, and otherwise protect the Conservation Values; and
  - iii. describe how Agricultural Activities will maximize soil and water conservation, and promote Healthy Soils and Practices.
- d. Agricultural Structures and Improvements. Constructing and maintaining structures and improvements to conduct Agricultural Activities, provided:
- i. No permanent structures shall be allowed on the Premises.
  - ii. The following improvements are permitted:
    1. Temporary Structures. Constructing, using, maintaining, repairing, and/or replacing temporary structures and improvements directly related to or in support of Agricultural Activities, including, but not limited to, electricity and/or other related utilities on, over or under the Premises, fencing, hayracks, “run-in” shelters or other three-sided shelters, hoop houses (also known as “high tunnels”), and the like. For the purposes of this Conservation Restriction, the term “temporary” shall mean any improvement without a foundation that can be constructed or removed without significant disturbance of the soil.
    2. The total footprint (as defined herein) of all Temporary Structures shall not exceed five thousand (5,000) square feet in the aggregate. For the purposes of this Conservation restriction, the term “footprint” shall mean that measurement encompassing the enclosed ground area, as measured from the exterior, at the point of contact with the ground.
    3. Wells, including but not limited to artesian wells, and any irrigation structures that require subsurface installation.
- e. Agri-tourism. The use of the Premises for “Agri-tourism” activities, which activities shall be defined as ancillary commercial activities and events that support the financial viability of the use of the Premises for Agricultural Activities, which activities shall be limited to farm-based entertainment such as harvest festivals and farm-based education addressing the subjects of sustainable agriculture, food production and nutrition, and/or environmental



conservation and ecology; Grantor may host unrelated educational activities such as painting or yoga classes, and the like, and up to four (4) recreational events, weddings, or similar types or scale of events per year, provided that said events shall be incidental and subordinate to the primary use of the Premises for Agricultural Activities.

13. Utilities. Installation, maintaining, repairing and replacing utility infrastructure (including, without limitation, electricity, water, sewer, gas, cable, internet, telephone) to serve the Excluded Area (as defined in Exhibit A below) and neighboring properties not subject to this Conservation Restriction that abut the Premises.
14. Roads/Driveways. Construction, maintaining, repairing and improving roads and/or driveways serving the Agricultural Activities and Agricultural Structures as well as the Excluded Area (as defined in Exhibit A below) and neighboring properties not subject to this Conservation Restriction that abut, or are adjacent to, the Premises.
15. Green Energy. With prior written approval of the Grantee, constructing energy producing structures and associated transmission lines that produce negligible or no pollution or carbon emissions (“Green Energy Structures”) to supply power for any Permitted Acts and Uses on the Premises. In addition to the terms of Paragraph III.E., when considering whether to grant approval, the Grantee will take into consideration the energy needs related to the relevant Permitted Act(s) and Use(s). While it is agreed that some power may be fed back into the public power grid during high production periods, such Green Energy Structures shall be limited to a capacity not higher than that necessary to meet, or exceed by up to twenty percent (20%) at the time of installation, the power requirements of the Permitted Acts and Uses;

### **C. Site Restoration**

Upon completion of any Permitted Acts and Uses, any disturbed areas shall be restored substantially to the conditions that existed prior to said activities, including with respect to soil material, grade, and vegetated ground cover.

### **D. Compliance with Permits, Regulations, Laws**

The exercise of any Permitted Acts and Uses under Paragraph III.B. shall be in compliance with all applicable federal, state and local laws, rules, regulations, zoning, and permits, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

### **E. Notice and Approval**

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt,

in writing not less than sixty (60) calendar days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:

- a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
  - b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;
  - c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
  - d. Describe 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 and Conservation Values.
2. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) calendar days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. Resubmittal. Grantee's failure to respond within sixty (60) calendar days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

#### **IV. INSPECTION AND ENFORCEMENT**

##### **A. Entry onto the Premises**

The Grantor hereby grants to the Grantee, and its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction.

##### **B. Legal and Injunctive Relief**

1. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief, including without limitation, compensation for interim losses (i.e., ecological and public use service losses that occur from the date of the violation until the date of restoration) and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition to, and not

in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction.

2. Notice and Cure. In the event the Grantee determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Grantee shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) calendar days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantee may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) calendar days applies only if Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.
3. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

### **C. Non-Waiver**

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

### **D. Disclaimer of Liability**

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

### **E. Acts Beyond the Grantor's Control**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from natural causes beyond the Grantor's control, including but not limited to fire, flood, weather, climate-related impacts, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises

resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

## **V. PUBLIC ACCESS**

This Conservation Restriction does not grant any right of access to the general public and the Grantor retains its rights to prohibit access to the Premises by the general public.

There is hereby granted to Grantee, and its invitees, the right to enter the Premises, led by Grantee staff/board, or other appropriate guide, not more than four (4) times each year, with prior notice and at times mutually convenient for Grantee and Grantor, for the purposes of scenic enjoyment, natural resources study and environmental and/or agricultural education.

## **VI. TERMINATION/RELEASE/EXTINGUISHMENT**

### **A. Procedure**

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated, released, or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official (“Secretary”), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Laws.

### **B. Grantor’s and Grantee’s Right to Recover Proceeds**

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph VI.C., subject, however, to any applicable law which expressly provides for a different disposition of the proceeds, and after complying with the terms of any gift, grant, or funding requirements. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

### **C. Grantee’s Receipt of Property Right**

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted Premises. The proportionate value of the Grantee’s property right will be determined as of the date of termination, release, or extinguishment.

### **D. Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such

action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph VI.B. and Paragraph VI.C. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

## **VII. DURATION and ASSIGNABILITY**

### **A. Running of the Burden**

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

### **B. Execution of Instruments**

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

### **C. Running of the Benefit**

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except when all of the following conditions are met:

1. the Grantee requires that the Purposes continue to be carried out;
2. the assignee is not an owner of the fee in the Premises;
3. the assignee, at the time of the assignment, qualifies under and 26.U.S.C. 170(h), and applicable regulations thereunder, if applicable, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws; and
4. the assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VIII. SUBSEQUENT TRANSFERS**

### **A. Procedure for Transfer**

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

Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor's expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **B. Grantor's Liability**

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

## **IX. ESTOPPEL CERTIFICATES**

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

## **X. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction following the terms set forth in Paragraph VII.C to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

## **XI. AMENDMENT**

### **A. Limitations on Amendment**

Grantor and Grantee may amend this Conservation Restriction only to correct an error or oversight, clarify an ambiguity, maintain or enhance the overall protection of the Conservation Values, or add real property to the Premises, provided that no amendment shall:

1. affect this Conservation Restriction's perpetual duration;
2. be inconsistent with or materially impair the Purposes;
3. affect the qualification of this Conservation Restriction as a "qualified conservation contribution" or "interest in land" under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;
4. affect the status of Grantee as a "qualified organization" or "eligible donee" under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or

5. create an impermissible private benefit or private inurement in violation of federal tax law, as determined by an appraisal, conducted by an appraiser selected by the Grantee, of the economic impact of the proposed amendment; or
6. alter or remove the provisions described in Paragraph VI (Termination/Release/Extinguishment); or
7. cause the provisions of this Paragraph XI to be less restrictive; or
8. cause the provisions described in Paragraph VII.C (Running of the Benefit) to be less restrictive

## **B. Amendment Approvals and Recording**

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor, approved by the Town of Fairhaven and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the applicable registry of deeds or registered in the applicable land court registry district.

## **XII. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in the applicable registry of deeds or registered in the applicable land court registry district.

## **XIII. NOTICES**

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

To Grantor: New Owner  
Address  
Municipality, State, Zip code

To Grantee: Buzzards Bay Coalition, Inc.  
114 Front Street  
New Bedford, Massachusetts 02740  
Attn: Watershed Protection

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

#### **XIV. GENERAL PROVISIONS**

##### **A. Controlling Law**

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

##### **B. Liberal Construction**

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

##### **C. Severability**

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

##### **D. Entire Agreement**

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

#### **XV. BASELINE DOCUMENTATION REPORT**

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and included by reference herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein, and (iv) may be supplemented as conditions on the Premise change as allowed over time. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant in addition to the Baseline Report.



**XVI. MISCELLANEOUS**

**A. Pre-existing Public Rights**

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

**B. Release of Homestead**

The Grantor hereby agrees to waive, subordinate, and release any and all Homestead rights pursuant to Chapter 188 of the Massachusetts General Laws it may have in favor of this Conservation Restriction with respect to any portion of the Premises affected by this Conservation Restriction, and hereby agrees to execute, deliver and/or record any and all instruments necessary to effectuate such waiver, subordination and release. In all other respects, the Grantor reserves and retains any and all Homestead rights, subject to this Conservation Restriction, pursuant to Section 10(e) of Chapter 188 of the Massachusetts General Laws.

**C. Subordination**

The Grantor shall record at the applicable registry of deeds or shall register in the applicable land court registry district simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

**D. Executory Limitation**

If Grantee shall cease to exist or to be qualified to hold conservation restrictions pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, or to be qualified organization under 26 U.S.C. 170(h), and applicable regulations thereunder, if applicable, and a prior assignment is not made pursuant to Paragraph VII, then Grantee's rights and obligations under this Conservation Restriction shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable Massachusetts law and with due regard to the requirements for an assignment pursuant to Paragraph VII.

**E. Prior Encumbrances**

This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.

**F. Maintenance and Upkeep Costs**

Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep and maintenance of the Premises, including maintenance of adequate comprehensive general liability insurance coverage or such like liability insurance coverage as may be appropriate from time to time. Upon request, Grantor will supply a certificate of such insurance to Grantee. Grantor shall keep the Premises free of any liens arising out of work performed for, materials furnished to or obligations incurred by Grantor.

**G. Taxes**

Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on, or assessed against, the Premises by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Restriction and shall furnish Grantee with satisfactory evidence of payment upon request.

**H. Title Warranty**

Grantor warrants that Grantor has good title to the Premises, that the Grantor has the right to convey this Conservation Restriction and that the Premises is free and clear of any encumbrances. Grantor also warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Premises.

**I. The following signature pages are included in this Grant:**

Grantor  
Grantee Acceptance  
Approval of Select Board  
Approval of the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

**J. The following exhibits are attached and incorporated herein:**

Exhibit A: Legal Description of Premises  
Exhibit B: Reduced Copy of Recorded Plan of Premises  
Exhibit C: USDA ACEP-ALE Minimum Terms for Agricultural Land Easements

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
New Owner

THE COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

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

**ACCEPTANCE OF GRANT**

The foregoing Conservation Restriction from New Owner was accepted by Buzzards Bay Coalition, Inc. this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

BUZZARDS BAY COALITION, INC.

\_\_\_\_\_  
Mark Rasmussen, Its President, duly authorized

\_\_\_\_\_  
Michael T. Huguenin, Its Assistant Treasurer, duly authorized

**THE COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Mark Rasmussen and Michael T. Huguenin, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

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

**APPROVAL OF TOWN OF FAIRHAVEN SELECT BOARD**

We the undersigned, being a majority of the Select Board of the Town of Fairhaven, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2023, the Select Board voted to approve the foregoing Conservation Restriction from New Owner to Buzzards Bay Coalition, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF FAIRHAVEN SELECT BOARD

\_\_\_\_\_  
Leon E. Correy, III

\_\_\_\_\_  
Charles K. Murphy, Sr.

\_\_\_\_\_  
Stasia Powers

\_\_\_\_\_  
Keith Silvia

\_\_\_\_\_  
Robert J. Espindola

**THE COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Leon E. Correy, Charles K. Murphy, Sr., Stasia Powers, Keith Silvia and Robert J. Espindola, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

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

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

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby approves the foregoing Conservation Restriction from New Owner to Buzzards Bay Coalition, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Rebecca L. Tepper  
Secretary of Energy and Environmental Affairs

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Rebecca L. Tepper, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

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

**EXHIBIT A**

Legal Description of Premises

The land subject to this Conservation Restriction, referred to herein as the Premises, is located in Fairhaven, Bristol County, Commonwealth of Massachusetts and described as follows:

To be drafted.

Being the same property conveyed by quitclaim deed of Buzzards Bay Coalition, Inc. to NEW OWNER recorded \_\_\_\_\_, 2023 in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Bristol County (Southern District) Registry of Deeds Division of the Land Court.

**EXHIBIT B**

Reduced Copy of Plan of Premises

For official full size plan see Bristol County (Southern District) Registry of Deeds  
Division of the Land Court  
Court Case No. \_\_\_\_\_





## EXHIBIT C

USDA- NRCS February 2020

### MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS

The Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (“ALE”), as described in this Agricultural Land Easement Deed (“ALE Deed”), on real property described in Exhibit A, hereafter referred to as “the Protected Property.” As used herein, references to the “ALE Deed” include this Exhibit, except where explicitly stated otherwise.

**NEW OWNER** (“Grantor”), **BUZZARDS BAY COALITION, INC.** (“Grantee”), and the **United States of America** (the “United States”), acting by and through the United States Department of Agriculture Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (jointly referred to as the “Parties”) acknowledge that the ALE is acquired by the Grantee for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property (the “Purpose of the ALE”).

Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Grantee.

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between this Exhibit and other provisions of the ALE Deed. Notwithstanding any other provision of the ALE Deed, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the terms and conditions identified in the following Sections I and II. If the terms and conditions in Sections I and II are inconsistent with terms and conditions in other portions of the ALE Deed, Sections I and II will control; provided, however, that if other portions of the ALE Deed have terms and conditions that are more restrictive to the rights of the Grantor and are consistent with the provision or intent of the terms and conditions in Section I, Paragraphs 1, 2, and 4, those more restrictive terms and conditions will control. If other portions of the ALE Deed are more restrictive to the rights of the Grantor than Section I, Paragraphs 3 and 5, and Section II, then Section I, Paragraphs 3 and 5, and Section II will control.

### **SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS**

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this ALE, and the restrictions and covenants of this ALE Deed will apply to the Protected Property as a whole.

The terms and conditions of the ALE Deed run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this ALE Deed, including the following:

**1. Limitation on Impervious Surfaces.** Impervious surfaces will not exceed two thousand five hundred (2,500) square feet of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE Deed.

**2. Limitations on Nonagricultural Uses.** Any activities inconsistent with the Purpose of the ALE are prohibited. The following activities are inconsistent with the Purpose of the ALE and are specifically prohibited, subject to the qualifications stated below:

(A) *Subdivision* – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) Agricultural production and related uses in accordance with the terms and conditions of this ALE Deed;

(ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the Purpose of the ALE and in accordance with the terms and conditions of this ALE Deed;

(iii) Temporary or seasonal outdoor activities or events that do not harm the Purpose of the ALE; and

(iv) Commercial enterprises related to agriculture or forestry including but not limited to: agritourism; processing, packaging, and marketing of farm or forest products; farm machinery repair; farm wineries; and small-scale retail enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

(C) *Construction on the Protected Property* – Except as otherwise permitted in this **Section I, Paragraph 2(C)**, no permanent structures or improvements, whether existing or in the future, may be constructed, replaced, or enlarged on the Protected Property.

Temporary agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph 2(B)(ii)** and in this **Section I, Paragraph**

**3(C)** that neither individually nor collectively have an adverse impact on the Purpose of the ALE, may be located on the Protected Property with prior written approval of the Grantee.

New pervious roads may be constructed with prior written approval of the Grantee and are necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Maintenance of existing pervious roads documented on the Baseline Documentation Report is allowed; however, existing pervious roads may not be widened or improved unless widening and improving is necessary to carry out the agricultural operations or other allowed uses on the Protected Property and with prior written approval of the Grantee.

Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of the ALE.

*(D) Granting of Easements for Utilities and Roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Purpose of the ALE as determined by the Grantee in consultation with the Chief of NRCS.

*(E) Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except for the following:

(i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation;

(ii) Erosion and sediment control pursuant to a plan approved by the Grantee;

(iii) Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the Purpose of the ALE; and

(iv) Agricultural activities and related conservation activities conducted in accordance with the terms and conditions of this ALE Deed and the agricultural land easement plan as described in Section I, paragraph 4.

*(F) Surface and Subsurface Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE Deed or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited.

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this ALE Deed is executed, and their interests have not been subordinated to this ALE, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph (F). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this ALE Deed and must incorporate by reference this ALE Deed.

**3. Preserving Agricultural Uses.** The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the Purpose of the ALE. No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the ALE's protection for the Purpose of the ALE. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (2)(B)(i)–(v) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of agricultural crops and livestock are allowed provided these activities are conducted in a manner consistent with the terms of the ALE deed and the agricultural land easement plan described in Section I, Paragraph 4.

(B)

(C) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the Purpose of the ALE.

**4. Agricultural Land Easement Plan.** The Grantee shall prepare an agricultural land easement plan (the “ALE Plan”) in consultation with the Grantor and as needed NRCS. The Grantee agrees to update the ALE Plan, in consultation with the Grantor and as needed, NRCS, in the event the agricultural uses or ownership of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.

The ALE Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describe the conservation measures and practices that may be implemented to address the identified resource concerns, and promote the long-term viability of the land to meet the Purpose of the ALE.

## **SECTION II - PROTECTION OF THE UNITED STATES' INTERESTS**

**1. United States Right of Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE Deed are not enforced by the Grantee. The Secretary of the United States Department of Agriculture (the “Secretary”) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE Deed, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this ALE Deed from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this ALE Deed from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the ALE Deed against the Grantor, up to the amount of the United States' contribution to the purchase of the ALE.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE Deed. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE Deed and the United States ALE-Agreement with the Grantee, the United States will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of the ALE Deed and will give notice to Grantee and Grantor at the earliest practicable time.

**2. General Disclaimer and Grantor Warranty.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this ALE Deed or violations of any Federal, State, or local laws, including all Environmental Laws (defined below).

**3. Environmental Warranty.**

As used herein, “Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

As used herein, “Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor’s indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

**4. Extinguishment, Termination, and Condemnation.** The interests and rights under this ALE Deed may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, any proposed extinguishment, termination, or condemnation action that may affect the United States’ interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is fifty percent (50%), hereinafter the “Proportionate Share,” of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee fifty percent (50%) percent of the Proportionate Share; and (b) to the United States fifty percent (50%) percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

**5. Amendment.** This ALE Deed may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the Purpose of the ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE Deed, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

# Buyer Application

Contact Information	
Name	
Street Address	
City, State, Zip Code	
Home Phone/Cell Phone/ Work Phone ( <i>optional</i> )	/ /
E-Mail Address	
Business Name	
Date of Birth ( <i>optional</i> )	

**\*Please indicate the best way to be reached**

*If necessary, attach longer form answers in same order as queries*

**1. Why is Wide Marsh Farm the right property for you and your operations?**



**2. What are your short term goals for the property (0-36 Months)?**

**3. What are your goals for the property for the future?**

**4. Describe your current agricultural operations & land holdings.**

**5. What is the planned scope and intent of your agricultural practices at the property?**

**6. Describe your business plan & farming techniques.**

**7. Please briefly describe plans for financing or otherwise funding the purchase of the property.**

**8. Do you have any experience with properties subject to Conservation Restrictions?**

**9. Please summarize your understanding of the CR on the property and its impact on your use of the property.**

**10. What past experience(s) has/have most directly lead you to respond to this proposal?**

**11. Please List 3 references relevant to your farm or business.**

**Include Name, Title, Relationship, Phone Number, & Email Address.**

## Our Policy

Buzzards Bay Coalition is proud to be an Equal Opportunity employer. All qualified persons are encouraged to apply and will be considered without regard to race, national origin, gender, gender identity or expression, sexual orientation, disability, age, religion, or veteran status.

**Thank you for completing this application form and for your interest in working with us.**

**Please send completed application to our Real Estate Project Manager:**

Buzzards Bay Coalition  
ATTN: John Chester  
114 Front Street, New Bedford, MA 02740

Or email to [chester@savebuzzardsbay.org](mailto:chester@savebuzzardsbay.org)