

Conservation Restriction

TOWN OF ACTON, CONSERVATION COMMISSION CONSERVATION RESTRICTION

**ON “THE GROENER LAND”
TO
ACTON CONSERVATION TRUST**

I. GRANTOR CLAUSE:

We, the Town of Acton Conservation Commission, by authority of M.G.L. Chapter 40 section 8C and M.G.L. Chapter 44B, its successors and assigns (“Grantor”, acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws, grant, with quitclaim covenants for nominal consideration, to the Acton Conservation Trust, a Massachusetts non-profit, land trust having an address of PO Box 658, Acton, Massachusetts 01720, its successors and permitted assigns (Grantee”) in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on an attached parcel of land located in the Town of Acton Massachusetts, constituting approximately 12.1 acres, said parcel being described in a deed recorded in the Middlesex Registry of Deeds (the “Registry”) in Book 50251 at Page 161 and shown as Lot 3B on a plan of land entitled “Plan of Land in Acton, Mass.”; dated May 18, 2007) recorded in the Registry of Deeds as plan number 1136 of 2007 in Book 02007 at Page 1136 and shown as Exhibit A “sketch plan” attached (hereinafter referred to as the "Premises").

II. Purposes:

The acquisition and protection of the Premises has been made possible by funds generated in accordance with the Community Preservation Act (M.G.L. Chapter 44B), and that said acquisition requires the Premises to be protected with a perpetual conservation restriction. The purposes of this Conservation Restriction, given in compliance with the CPA requirements, are to assure that while permitting certain acts and uses described in Section III.B herein, the Premises will be subject to the prohibitions described in Section III.A hereof so that the Premises are retained in perpetuity in its natural scenic, and open condition for wildlife conservation, native habitat protection, associated public recreation and other conservation uses consistent with and subject to the protections of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, and to prevent any use of the Premises that will materially impair or interfere with the conservation values thereof. The conservation and permanent protection of the Premises will yield a significant public benefit.

The Premises, defined above, contain unusual, unique or outstanding qualities the protection of which in their predominately natural, vegetated or open condition will be of benefit to the public. The Premises are comprised of approximately 12.1 acres in area and abuts the Nagog Hill Conservation Area. The parcel consists of approximately 8 acres of oak and maple upland forest, and 4 acres of red maple forested wetlands, which have been identified as a priority parcel for conservation in the Acton Open Space and Recreation Plan.

Long term protection of the Premises is important because it would permit maintenance of crucial wildlife habitat, wetlands and other important ecosystems. The Premises lies within areas designated as prime protection lands on the Natural Heritage and Habitat, the Biodiversity and Living Waters, and the Sudbury Valley Trustees Priorities maps prepared by the Sudbury Valley Trustees. It is similarly located within a prime biodiversity area identified in the 2000 Biodiversity Protection and Stewardship Plan prepared by Francis Clark under the direction of the Massachusetts Riverways Program. It also lies within the watershed of Nashoba Brook. The proximity of the site to tributaries of Nashoba Brook offers specific environmental benefits, such as surface water protection and water quality.

This parcel will essentially become part of the Nagog Hill Conservation Area and be accessible by the public for passive recreation from the existing trail system.

The Premises with its stone walls and glacial erratics preserve a site of potentially historic value for direct preservation of historic or archeological resources.

The property under permanent protection of a conservation restriction is consistent with the goals and objectives set forth in the Town of Acton 2001 Open Space and Recreation Plan, the Community Preservation Act G.L. ch. 44B, 12(a), and the Acton Annual Town Meeting vote of April 10, 2007. A copy of the Town Meeting vote approving the purchase of the premises is attached hereto as Exhibit 'B'.

III. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES:

- A. Prohibited Acts and Uses. Subject to the exceptions set forth in paragraph B below, the Grantor will neither perform nor allow others to perform the following acts and uses which are prohibited on the above and below Premises:
1. Constructing or placing of any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, septic systems fences, asphalt or concrete pavement, sign, billboard or other advertising display, antennas, utility poles, towers, windmills, solar panels conduit, line or other temporary or permanent structures, utilities, or facilities, or improvements of any kind on, under, or above the Premises;

2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit except as necessary for proper soil conservation and then only in a manner which does not impair the purposes of this Conservation Restriction after consultation with and approval by the Grantee;
 3. Placing, filling, storing or dumping on the Premises of soil, grass clippings, compost, yard debris or other substances on the ground or dumping or placing of vehicle bodies or parts, junk, trash, refuse, solid or chemical waste, or any materials whatsoever or the installation of underground storage tanks;
 4. Cutting, removing, harvesting or otherwise destroying trees, shrubs, grasses or other vegetation, including leaf litter unless otherwise permitted in Paragraph B below;
 5. The conveyance of a part or portion of the Premises alone, or the division or subdivision of the Premises (as compared to the conveyance of the Premises in its entirety which shall be permitted) without the prior written consent of Grantee; but in no event shall any portion of the Premises be used towards building requirements on this or any other parcel;
 6. Activities detrimental to wildlife habitat, drainage, flood control, water conservation, water quality, archeological conservation, erosion control or soil conservation including the use of motorized recreational vehicles, except for emergency vehicles necessary, in the performance of their official duties, provided, however, that individual transportation vehicles only as necessary for the mobility of persons with disabilities shall be permitted;
 7. Commercial recreational activities. In no event shall the property be used for commercial recreational activities in compliance with I.R.C. Section 2031 (8)(B) or any successor statute or regulation; or
 8. Any other activity on or use of the Premises that is inconsistent with the purposes of this Conservation Restriction or which would materially impair other significant conservation values unless such use or activity is necessary in an emergency for the protection of the conservation values that are subject to this Conservation Restriction.
- B. Reserved Rights: Notwithstanding any provisions of Paragraph A above, the Grantors reserve to themselves and their successors the right to conduct or permit the following activities on and uses of the Premises, but only if such uses and activities do not materially impair the Purposes of this Conservation Restriction.

1. Excavation and removal from the Premises of soil, gravel or other mineral resource or natural deposit as may be incidental to the maintenance of good drainage, provided that (a) such activities follow generally accepted soil conservation practices, (b) that any topsoil so excavated must remain on the Premises, and (c) disturbed areas are re-vegetated with native plant materials. Grantee's approval is required before exercising this reserved right.
2. The placing of sight-pervious fences that do not interfere with the passage of wildlife to, from, and through the Premises or with the conservation purposes of this restriction. This use explicitly requires notice to the Grantee.
3. Limited and selective pruning and clearing for non-commercial purposes incidental to (a) forest fire prevention or management, (b) unpaved trail establishment, marking, and maintenance, (c) control or prevention of an imminent hazard to structure or life, (d) control or prevention of a grave or formidable disease, (e) control and removal of invasive or exotic species, or (e) otherwise to preserve the present condition of the Premises. This use explicitly requires notice to the Grantee.
4. Hiking, horseback riding, cross-country skiing and other non-motorized passive outdoor recreational and educational activities.
5. Erection of signs by the Grantors or Grantee identifying Grantees as holder of the Conservation Restriction and Grantors as owners of the property and educating the public about the conservation values protected and uses allowed.

C. Permitted Acts and Uses:

1. All acts and uses not explicitly permitted by Section III, paragraph B are Prohibited unless otherwise approved as described in Section IV below.

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 causes beyond the Grantor's control, including but not limited to fire, flood storm 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.

IV. LEGAL REMEDIES OF THE GRANTEE:

A. Legal and Injunctive Relief

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

B. Reimbursement of Costs of Enforcement Including Encroachment by a Third Party on the Premises

The Grantor(s), and thereafter the successors and assigns of the Grantor(s) covenant and agree to reimburse the Grantee for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing this Conservation Restriction or in remedying or abating any violation thereof.

C. Hold Harmless Clause

Grantor hereby releases and agrees to hold harmless, and indemnify Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties" and individually an "Indemnified Party") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Premises, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Premises; (3) the presence or release in, on, from, or about the Premises, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement (including without limitation M.G.L. c.21E), as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, except to the extent caused solely by an Indemnified Party, in which case this indemnity obligation shall not apply to the Indemnified Party (or Parties) causing such condition. By its acceptance of this Conservation Restriction, the Grantee do not undertake any liability or obligation

relating to the condition of the Premises, including with respect to compliance with hazardous materials or other environmental laws and regulations.

D. Severability Clause

If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

E. Non-Waiver

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.

F. Boundary Dispute

In the event of a dispute over the boundaries of the Premises, Grantor shall be responsible for a survey and placing permanent boundary markers.

V. ACCESS:

The Grantee and its representatives are hereby granted the right to enter the Premises at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith. The Grantor also grants to the grantee, after 30 days notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines and to take enforcement actions against third party violations of the provisions of this Restriction.

The Grantor grants to the Grantee and to the general public a right of access easement in perpetuity over the Grantor's land lying northerly and adjacent to the premises and Nagog Hill Road for all lawful purposes permitted under Conservation this Restriction, and the right to enter upon the Premises from the access provided from Nagog Hill Road from other land owned by the Town Conservation Commission adjacent to the premises to the north for passive outdoor recreational purposes including, but not limited to, hiking, wildlife observation, cross-country skiing, horseback riding, and other non-motorized, passive outdoor recreational and educational activities (except for motorized wheelchairs or similar equipment reasonably necessary to enable handicapped members of the public to access the Premises or as otherwise outlined in Section III of this Conservation Restriction, which shall be allowed).

VI. EXTINGUISHMENT:

A. Grantee's Receipt of Property and Development Rights

The Grantor(s) and the Grantee agree that the donation of this Conservation Restriction gives rise for all purposes – see c. 184 sec. 32 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, and represents all development rights associated with the Premises.

B. Value of Grantee's Property Right

C. Right of Grantee to Recover Proportional Value at Disposition

If any occurrence ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds, and only after complying with the terms of any gift, grant, or funding requirements, including MGL c. 44B (CPA statute).

D. Grantor/Grantee 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(s) and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.

E. Allocation of Expenses upon Disposition

All related expenses incurred by the Grantor(s) and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor(s) and Grantee in shares equal to such proportionate value, subject, however to any applicable law which expressly provides for a different disposition after complying with the terms of any gift, grant, or funding requirements including MGL c. 44B.

F. Continuing Trust of Grantee's Share of Proceeds of Conservation Restriction Disposition

The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.

G. 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(s) and the successors and assigns of the Grantor(s) 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(s) on behalf of themselves and their successors and assigns appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantor(s) and their successors and assigns agree themselves to execute any such instruments upon request.

c. Running of the Benefit

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances and from time to time:

- i. As a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continue to be carried out; and
- ii. The assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly; and
- iii. Grantee complies with the provisions of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

H. SUBSEQUENT TRANSFERS:

The Grantor(s) agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Failure of the Grantor to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

I. ESTOPPEL CERTIFICATES:

Upon request by the Grantor(s), the Grantee shall within twenty (20) days execute and deliver to the Grantor(s) any document, including an estoppel certificate, which certifies the Grantor(s) compliance with any obligation of the Grantor(s) contained in this Conservation Restriction.

J. EFFECTIVE DATE:

This Conservation Restriction shall be effective when the Grantor(s) and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded, or if registered land, it has been registered.

K. RECORDATION:

The Grantor(s) shall record this instrument in timely fashion in the Middlesex South Registry of Deeds.

L. TERMINATION OF RIGHTS AND OBLIGATIONS:

Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding any interest in the Premises terminate upon and to the extent of such party's transfer of its interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself if the transfer is in violation of this Conservation Restriction, shall survive the transfer.

M. MISCELLANEOUS:

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 favor of the grant to effect the Purposes of this Conservation Restriction and the policy and purpose of Mass. Gen. Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Entire Agreement

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

d. Joint Obligation

The obligations imposed by this Conservation Restriction upon the parties that together comprise "Grantors" shall be joint and several.

e. Captions

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

f. Pre-existing Rights of the Public

Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs 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.

g. Compliance with Applicable Law

The exercise of any right reserved under this Conservation Restriction by the Grantor(s) or its successors and assigns shall be in compliance with the then-current Zoning By-Law of the Town of Acton, the state Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40, as amended) and all other applicable federal, state, and local law.

h. 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 prepaid, addressed as follows:

To Grantor: Town of Acton
 Conservation Commission

 472 Main Street
 Acton, MA 01720

With a copy to: Steve Ledoux, Town Manager
472 Main Street
Acton, MA 01720

To Grantee: ACTON CONSERVATION TRUST
PO Box 658
Acton, MA 01720

With a copy to: Steve Anderson
Anderson & Kreiger
Suite 200
Cambridge, MA 02141,

Executed under seal this _____ day of _____, 2011 pursuant to a public meeting of the Commission held on _____ wherein the Commission voted to grant the within Conservation Restriction to the Acton Conservation Trust:

COMMONWEALTH OF MASSACHUSETTS, Middlesex _____ County

On this _____ day of _____, 2011, before me, the undersigned notary public, personally appeared, _____ The Chairman of the Conservation Commission proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

APPROVAL OF GRANT:

At a public meeting duly held on _____ the Board of Selectmen of the Town of Acton approved the above Conservation Restriction.

COMMONWEALTH OF MASSACHUSETTS, Middlesex _____ County

On this _____ day of _____, 2011, before me, the undersigned notary public, personally appeared _____, _____, _____, _____, and _____, Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification, which were

_____, to be the people whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

**APPROVAL BY SECRETARY OF ENERGY & ENVIRONMENTAL AFFAIRS,
COMMONWEALTH OF MASSACHUSETTS:**

The undersigned, Secretary of the Executive Office of Energy & Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to ACTON CONSERVATION TRUST has been approved in the public interest pursuant to M.G.L. Ch. 184, 31-33.

*Secretary of Energy & Environmental
Affairs*

Date

COMMONWEALTH OF MASSACHUSETTS, Middlesex County

On this ____ day of _____, 2011, before me, the undersigned notary public, personally appeared, Richard K. Sullivan, Jr., Secretary of the Massachusetts Executive Office of Energy & Environmental Affairs, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires: