

16m/!

DONALD CONSERVATION RESTRICTION
TO
SUDBURY VALLEY TRUSTEES, INC. and ACTON CONSERVATION TRUST

I. Grantor Clause:

We, James and Mary Donald, husband and wife having an address of 42 Taylor Road, Acton, MA 01720, ("Grantors"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws, grant, with quitclaim covenants, to Sudbury Valley Trustees, Inc., and Acton Conservation Trust, Massachusetts non-profit corporations with mailing addresses of P.O. Box 7, Wayland, MA 01778, and P.O. Box 658, Acton, MA 01720 respectively, and their successors and permitted assigns ("Grantees") in perpetuity and exclusively for conservation purposes, the following described Conservation Restriction on a parcel of land located in the Town of Acton, Massachusetts, constituting approximately 11.2 acres, being shown as "Lot A" on a plan of land entitled "Plan of Land in Acton, MA, prepared for Sudbury Valley Trustees, scale: 1"=80', Date: 5 December 2001, prepared by: The Jillson Company, Inc." (hereinafter referred to as the "Premises") attached hereto in reduced form as Exhibit A and recorded herewith, and being a portion of that parcel as described in a deed recorded in the Middlesex South Registry of Deeds (the "Registry") in Book 11456 at Page 403. ✓

II. Purposes:

The Premises 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. These qualities include:

1. The Premises contain diverse upland and wetland wildlife habitat, including a varied topography and glacial features including an esker, which serves as the boundary between the Premises and the adjacent conservation land.
2. The Premises provide a naturally vegetated watershed containing intermittent and perennial tributaries to Fort Pond Brook, the functions of which include natural flood control and groundwater recharge.

ACTON
RD
TAYLOR
42
MSD 12/28/01 11:46:23 957 132.36

SEE PLAN IN RECORD BOOK 34449 PAGE 5
#1283

3. The Premises abut the Acton Arboretum, approximately 55-acres of conservation land, which is held by the Town of Acton and contains one of the town's three quaking bog and associated peat land ecosystems. Protection of the Premises will benefit the adjacent conservation area by providing protected wildlife access to the perennial and intermittent streams and their adjacent wetlands, further buffering the quaking bog and peat land ecosystem from development, and expanding passive recreational opportunities for users of the Acton Arboretum property. Additionally, the Grantors intend, after the recording of this Conservation Restriction, to donate the fee interest in the Premises to the town of Acton to be incorporated into the Acton Arboretum as a public conservation area.
4. The Premises are located on Taylor Road and Minot Avenue, roads designated as scenic in the Open Space and Recreation Plan for the town of Acton (1996-2001). Protection of the Premises will further protect the rural character of this portion of Acton.
5. The Premises are located within 25 miles of the Minuteman National Park and within the Boston Metropolitan Statistical Area as defined by the Office of Management and Budget and therefore meet the requirements of Section 2031(c) of the Internal Revenue Code, the Premises qualify for the benefits of said Section 2031(c) upon the effective date of this Conservation Restriction.

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 following acts and uses are prohibited on the Premises:
 1. Constructing or placing of any building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility 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;
 3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;
 4. Cutting, removing or otherwise destroying trees, shrubs, grasses or other vegetation, including leaf litter except as provided 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 Grantees;
6. Activities detrimental to wildlife habitat, drainage, flood control, water conservation, water quality, erosion control or soil conservation including the use of motorized vehicles, except for emergency vehicles;
7. Commercial recreational activities;
8. Any other activity on or use of the Premises that is inconsistent with the Purposes of 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 the maintenance of good drainage, soil conservation practices or to other permissible use of the Premises, except that any topsoil so excavated must remain on the Premises.
2. The maintenance of piles of limbs, brush, leaves and similar biodegradable material generated on the Premises provided such piles are not unduly conspicuous, placed in any wetlands or otherwise interfere with the Purposes of this Conservation Restriction.
3. In accordance with generally accepted forestry conservation practices, selective pruning and clearing for fire protection, unpaved trail maintenance, to control or prevent an imminent hazard, to manage invasive and/or exotic species, or otherwise to preserve the present condition of the Premises.
4. Vegetative management in compliance with the conservation goals of the Acton Arboretum and with local regulations.
5. Woodland and forestry operations carried on in accordance with the Acton Arboretum master plan (including but not limited to the selective cutting and planting of trees).
6. Erection of signs by the Grantors or Grantees with respect to hunting and/or

trespass, and signs by the Grantors or Grantees identifying the Grantees as holders of the Conservation Restriction and Grantors as owners of the property and to educate the public about the conservation values protected.

7. Hiking, horseback riding, cross-country skiing and other non-motorized passive outdoor recreational and educational activities, and the construction, maintenance, and marking of trails, including boardwalks, for such purpose.

C. Permitted Acts and Uses. All acts and uses not prohibited by subparagraphs A and B are permissible but only if such acts and uses do not materially impair the Purposes of this Conservation Restriction.

IV. Notice and Approval:

A. Notice of Intention to Undertake Certain Permitted Actions

Grantors agree to notify Grantees, in writing, before exercising any right not explicitly described under "Reserved Rights" (paragraph III, B) as a permitted use or activities under paragraph III, C as noted, the exercise of which may have a substantial adverse impact on the Purposes of this Conservation Restriction. The purpose of requiring such notice is to afford Grantees an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the Purposes of this Conservation Restriction. Whenever notice is required Grantors shall notify Grantees in writing not less than forty-five (45) days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantees to make an informed judgment as to its consistency with the Purposes of this Conservation Restriction.

B. Grantees' Approval

Where Grantees' approval is required, as set forth above, Grantees shall grant or withhold their approval in writing within forty-five (45) days of receipt of Grantors' written request therefor. Grantees' approval may be withheld only upon a reasonable determination by Grantees that the action as proposed would be inconsistent with the Purposes of this Conservation Restriction. Failure of Grantees to respond in writing within such forty-five (45) days shall be deemed to constitute approval by Grantees of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

V. Legal Remedies of the Grantees:

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 Grantees may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantees.

B. Reimbursement of Costs of Enforcement

The Grantors, and thereafter the successors and assigns of the Grantors covenant and agree to reimburse the Grantees 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

Grantors hereby release and agree to hold harmless, and indemnify Grantees and their members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") 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 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, unless caused solely by any of the Indemnified Parties. By its acceptance of this Conservation Restriction, the Grantees 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 Grantees 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.

VI. Access:

The Conservation Restriction hereby conveyed does not grant to the Grantees, to the general public, or to any other person any right to enter upon the Premises except there is granted to the Grantees and their representatives 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.

VII. Extinguishment:

A. Grantees' Receipt of Property and Development Rights

The Grantors and the Grantees agree that the donation of this Conservation Restriction gives rise for purposes of this paragraph to a real property right, immediately vested in the Grantees, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction determined at the time of the gift bears to the value of the unrestricted Premises at that time, and represents all development rights associated with the Premises.

B. Value of Grantees' Property Right

Such proportionate value of the Grantees' property right shall remain constant.

C. Right of Grantees to Recover Proportional Value at Disposition

~~If any occurrence ever gives rise to extinguishment or other release of this~~
Conservation Restriction under applicable law, then the Grantees, 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.

D. Grantors/Grantees 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 Grantors and the Grantees 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 Grantors and the Grantees shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantors and Grantees in shares equal to such proportionate value.

F. Continuing Trust of Grantees' Share of Proceeds of Conservation Restriction Disposition

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

VIII. 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 Grantors and the successors and assigns of the Grantors holding any interest in the Premises.

B. Execution of Instruments

The Grantees are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantors on behalf of themselves and their successors and assigns appoint the Grantees their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantors 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 Grantees, except in the following instances and from time to time:

- (i) as a condition of any assignment, the Grantees require 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.

IX. Subsequent Transfers:

The Grantors agree 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. Grantors further agree to give written notice to Grantees of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Failure of the Grantors to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

X. Estoppel Certificates:

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

XI. Effective Date:

This Conservation Restriction shall be effective when the Grantors and the Grantees 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.

XII. Recordation:

The Grantors shall record this instrument in timely fashion in the Middlesex South Registry of Deeds.

XIII. 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 transfer of that party's 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.

XIV. 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 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 by the Grantors, their successors and assigns of this Conservation Restriction shall be in compliance with the then-current Zoning By-Laws of the Town of Acton, the state Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40) 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: Jim and Mary Donald
42 Taylor Road
Acton, MA 01720

To Grantee: Sudbury Valley Trustees, Inc.
P.O. Box 7
Wayland, MA 01778

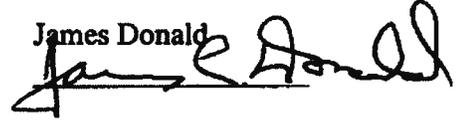
And

Acton Conservation Trust
C/O Hardt
328 Pope Road
Acton, MA 01720

With a copy to: Jonathan Book, Esq. or Charles Beard, Esq.
Foley, Hoag & Eliot LLP
1 Post Office Square
Boston, MA 02109

Executed under seal this 7 day of February, 2000.

James Donald



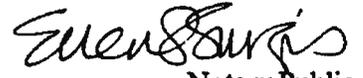
Mary Donald



COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Feb 7, 2000.

Then personally appeared the above-named James and Mary Donald and acknowledged the foregoing instrument to be their free act and deed, before me.


Notary Public

My Commission Expires:

11/10/2006

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 8th day of February, 2000. 2001

SUDBURY VALLEY TRUSTEES, INC. ✓

By [Signature]
Its Executive Director

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Feb 8th, 2000 |

Then personally appeared the above-named Stephen T. Johnson and _____ and acknowledged the foregoing to be its free act and deed, before me.

[Signature]
Notary Public

My Commission Expires:
Nov 10, 2006

The above Conservation Restriction is accepted this 7th day of February, 2000.

ACTON CONSERVATION TRUST

By [Signature]
Its President

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Feb 7th, 2000

Then personally appeared the above-named Susan Mitchell Hadt and _____ and acknowledged the foregoing to be its free act and deed, before me.

[Signature]
Notary Public

My Commission Expires:
Nov 10, 2006

APPROVAL BY BOARD OF SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Acton, Massachusetts, hereby certify that at a meeting duly held on 11/7, 2000 the Selectmen voted to approve the foregoing Conservation Restriction to SUDBURY VALLEY TRUSTEES, INC. and ACTON CONSERVATION TRUST pursuant to M.G.L. Ch. 184, §31-33.

Selectmen:

[Handwritten signatures of five selectmen]

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. 11/7, 2000

Then personally appeared the above-named Bd members and acknowledged the foregoing to be his/her/their free act and deed, before me.

[Handwritten signature of Christine M. Joyce]

Notary Public

My Commission Expires:

**Christine M. Joyce
NOTARY PUBLIC**

My commission exp. May 25, 2001

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

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

Date: 2/13, 2001
~~2/13, 2000~~

Bob DeLuca
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. 12/13, 2000

Then personally appeared the above-named *Bob DeLuca* and acknowledged the foregoing to be his or her free act and deed, before me.

Nicole Sicard
Notary Public

My Commission Expires:

NICOLE SICARD
Notary Public
My Commission Expires December 31, 2004

