

8/5 (10)

050

**Christine Joyce**

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**From:** Steve Ledoux  
**Sent:** Wednesday, July 31, 2013 6:24 AM  
**To:** Stephanie B. Dubanowitz  
**Cc:** Ryan Pace; Christine Joyce; Janet Adachi  
**Subject:** Re: Simeone/Caouette Land CR

I think BoS should sign off on changes and we can put on 8/5 agenda

Sent from my iPad, please excuse any brevity or typos

On Jul 30, 2013, at 6:35 PM, "Stephanie B. Dubanowitz" <[sdubanowitz@andersonkreiger.com](mailto:sdubanowitz@andersonkreiger.com)> wrote:

Steve,

The state has received the Conservation Restriction signed by the BOS, Acton Conservation Trust and the Sudbury Valley Trustees and has requested a change to one of the provisions (attached) before it will execute the document. We have reviewed the change and it is acceptable. ACT and the Sudbury Valley Trustees have also consented to the change. Given that the BOS has already signed this document, however, we would like to discuss with you how you would like to handle making the change. We recommend, from an open meeting law perspective, that this go back to the Board as an agenda item for approval. Karen O'Neill, who submitted the CR, is proposing that she make the revisions to the two pages and resubmit the re-paginated text from this section to the end of the document, keeping the three parties' signature pages intact. Can you please confirm how you would like to proceed and if this will go back to the Board, whether we can include this on the agenda for next Monday?

Of course, please call me with any questions.

Best,  
Stephanie

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## V. ACCESS

### **A. Access by the Grantee**

The Grantor hereby grants to the Grantee, or 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. The Grantor also grants to the Grantee, after 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 reasonably necessary or appropriate to remedy or abate any violation hereof.

### **B. Access by the Public**

The Grantor and the Grantee agree that the Grantor shall have the right to permit the general public access to the Premises for fishing, boating, biking, walking, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities on the established trails on the Premises, except during certain limited times of the year when such access would interfere with agricultural activities being conducted on the Premises, in which case limited public access must be posted on the Premises, including the dates during which such limitations or access prohibitions are in effect. The Grantor hereby reserves the right to alter the locations of established trails, provided that as so relocated, neither the conservation values of this Conservation Restriction nor access to and passage through the Premises is impaired. To the extent permitted by law, the Grantee hereby expressly disclaims any duty to maintain the Premises or warn persons who may enter upon the same. Pursuant to M.G.L. c. 21, s. 17c, neither the Grantor nor the Grantee is liable to any member of the public for injuries to person or property sustained by such person while on the Premises in the absence of willful, wanton, or reckless conduct.

## VI. EXTINGUISHMENT

### **A. Termination by Judicial Proceeding Only**

If circumstances arise in the future which render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction under applicable law.

### **B. The Grantee's Property Right in the Conservation Restriction; Value**

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Grantor and Grantee agree that the grant 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, ~~determined at the time of the gift,~~ bears

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This is language for IRS tax deductions for which you have an appraisal establishing the proportionate values at the time of the gift

to the value of the unrestricted property ~~at that time~~. Such proportionate value of the Grantee's property right shall remain constant.

**C. Grantee's Right to Recover Value of its Property Right**

If any change in conditions ever gives rise to extinguishment or other release of the 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 equal to the proportionate value set forth in Paragraph VI.B. All reasonable and directly-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 such proportionate value, subject, however to the requirements of any gift, grant, or funding program or applicable law which expressly provides for a different disposition of the proceeds.

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including MGL c 44B

**D. Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by the state or federal government by public authority under power of eminent domain, 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 shares equal to the proportionate value set forth in Paragraph VI.B. 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 such proportionate value, subject, however to the requirements of any gift, grant, or funding program or applicable law which expressly provides for a different disposition of the proceeds

**E. Grantee's Use of Proceeds**

Grantee shall use its share of any proceeds it receives pursuant to this Section VI to support its conservation mission.

**VII. ASSIGNABILITY**

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances: As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; and the Assignee, at the time of the assignment, is a "Qualified Organization" as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.