

*KA*

Notice of Conservation Restriction

Pursuant to G.L. c. 184, notice is hereby given that a perpetual Conservation Restriction, dated December 11, 1978, granted by Harold A. Buxton and Devina E. Buxton, husband and wife, to the Town of Acton, affecting portions of the property located at 484-486 Great Road, Acton, Massachusetts was recorded on December 28, 1978 with the Middlesex South District Registry of Deeds in Book 13615, Page 339. The Conservation Restriction affects three areas of land containing approximately 13.95 acres, made up of Areas 2, 3, and 4, shown on a plan entitled "Compiled Plan of Land in Acton Owned by Harold A. & Devina Buxton" dated November 30, 1978 by the Town of Acton Engineering Department, recorded with the Conservation Restriction.

The current owner of the property subject to the Conservation Restriction is Sherman E. Rhodes, Trustee of the Rhodes Family Trust, by deed dated April 7, 1998, recorded with the Middlesex South District Registry of Deeds in Book 28421, Page 218.

By its terms, the Conservation Restriction is perpetual, is held by a governmental body pursuant to G.L. c. 184, § 32, and is not subject to any of the statutory provisions limiting unlimited terms to thirty years, G.L. c. 184, s. 23, or including requirements for extending restrictions, G.L. c. 184, s. 26-30.

Executed as a sealed instrument this 16 day of July, 2007.

484 Great Road, Acton, Middlesex County, Massachusetts 01720  
486 Great Road, Acton, Middlesex County, Massachusetts 01720



Bk: 49813 Pg: 536 Doc: REST  
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TOWN OF ACTON, MASSACHUSETTS,  
By its Board of Selectmen

*[Signature]*  
F. Dore' Hunter, Chairman

*[Signature]*  
Lauren Rosenzweig

*[Signature]*  
Andrew Magee

*[Signature]*  
Peter Berry

*[Signature]*  
Paulina Knibbe

Return to:  
Mary Liz Brenninkmeyer  
Anderson & Kreiger LLP  
One Canal Park, Suite 200  
Cambridge, MA 02141

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 16 day of July, 2007, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding document, and acknowledged to me that each signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton.

Carol In Joyce (official signature and seal of notary)

My commission expires Sept 26, 2008

Eugene C. Burns  
Attest Middlesex S. Register

**Tom Tidman**

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**From:** Gwinn, Valerie [VGwinn@GOULSTONSTORRS.com]  
**Sent:** Wednesday, November 14, 2007 7:05 PM  
**To:** Natural Resources Department  
**Cc:** Kiefer, Matthew J.  
**Subject:** FW: Conservation Restriction

I'm just checking in to see if you were able to look into the Conservation Restriction at issue in the email below.

I will be out of the office in the morning, but available via email. Feel free to email me or to call Matthew Kiefer at 617-574-6597.

Thank you again for your help.

Valerie Gwinn

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**From:** Gwinn, Valerie  
**Sent:** Tuesday, November 13, 2007 12:30 PM  
**To:** 'manager@acton-ma.gov'  
**Cc:** 'nr@acton-ma.gov'  
**Subject:** Conservation Restriction

I am following up on an email forwarded to you last week regarding the Conservation Restriction on the Buxton land. I am wondering if you might have time to discuss my question (copied below) some time today. Please feel free to give me a call at your convenience.

Thank you,

*Valerie J. Gwinn*  
***goulston&storrs***  
a professional corporation  
400 Atlantic Avenue  
Boston, Massachusetts 02110-3333  
U.S.A.  
direct: (617) 574-6490  
office fax: (617) 574-7565  
<http://www.goulstonstorrs.com>

Dear Kim,

Thanks for taking a moment to discuss my question regarding the Conservation Restriction on the Buxton land.

As I mentioned over the phone, it is my understanding that all restrictions on the use of land, **except for Conservation Restrictions (and a few other types of restrictions)** are subject to G.L. c. 184 §26-§30 which indicate that restrictions on the use of land expire in 30 years, unless the beneficiary of the restriction (in this case Acton) files a "Notice of Restriction" extending it. According to §26, **Conservation Restrictions** are **not** governed by §26-§30, and thus are not subject to the "30 year

11/15/2007

sunset" provision. Instead, as far as I can tell, Conservation Restrictions live forever, and there is no need to file a "Notice of Restriction" after 30 years.

I am confused because the restriction at issue here seems to be a Conservation Restriction, but Acton treated it as if it were not a Conservation Restriction by filing the Notice of Restriction to extend it. Even more confusing: In the Notice of Restriction, the town notes that the Restriction in "Perpetual" and that no notice need be filed. Is there a way to find out (a) why the July 16, 2007 notice was filed and (b) whether the Town Planner considers the Restriction to be perpetual?

I have attached the following to assist you:

1. An unrecorded version of the restriction dated 1/12/78. I do not think this document is relevant to the questions I posed, but I thought I should include it, incase it turns up in your search.
2. The recorded version of the restriction dated 12/27/78, and signed by the Board of Selectmen and the Secretary of Environment. This is the relevant Conservation Restriction.
3. Notice of Conservation Restriction dated 7/16/07. This is the document causing my confusion. Essentially, I am wondering why this was filed, if the restriction is, in fact, a Conservation Restriction (i.e. not subject to the 30 year time limit).

Thank you for your help. Feel free to call or email to discuss.  
Valerie

Pursuant to IRS Circular 230, please be advised that, to the extent this communication contains any tax advice, it is not intended to be, was not written to be and cannot be used by any taxpayer for the purpose of avoiding penalties under U.S. federal tax law.

*Valerie J. Gwinn*  
***goulston&storr***  
 a professional corporation  
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 Boston, Massachusetts 02110-3333  
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<http://www.goulstonstorr.com>

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***Any Attached goulston&storr Word Documents Are In WORD 2003 Format.***

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**Christine Joyce**

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**From:** John Murray  
**Sent:** Tuesday, July 17, 2007 11:23 AM  
**To:** All Department Heads  
**Cc:** 'Mary Liz Brenninkmeyer'; Stephen Anderson  
**Subject:** RE: Buxton Property Conservation Restriction  
**Importance:** High

All department heads:

Please read the e-mail train below. I have highlighted the last sentence. If you have any knowledge concerning CR entered into before 1985; please send them to Mary Liz for review ASAP. Please cc me in your transmission.

John

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**From:** Mary Liz Brenninkmeyer [mailto:mbrennikmeyer@AndersonKreiger.com]  
**Sent:** Wednesday, July 11, 2007 10:11 AM  
**To:** John Murray  
**Cc:** Stephen Anderson  
**Subject:** Re: Buxton Property Conservation Restriction

John-

We have completed our research concerning whether the Buxton Property Conservation Restriction is in effect in perpetuity or whether it needs to be renewed after thirty years. In December 1978, when the Conservation Restriction was recorded, there was a provision in G.L. c. 184, s. 33, which provided that in order for a conservation restriction to remain in effect after thirty years from the date it was recorded, a notice of restriction would need to be recorded before the expiration of the thirty years. See 1985 Mass. Acts c. 351, s. 2. This provision also provided that once the first notice is recorded, an additional notice needs to be recorded within twenty years thereafter. Although this language was deleted from the statute in 1985, someone might argue that this requirement still applies to the Buxton Property Conservation Restriction because statutory amendments are usually applied prospectively, not retroactively. As a precaution, we recommend that you authorize us to record a notice of restriction to ensure that the Buxton Property Conservation Restriction remains in effect.

The notice of restriction needs to identify the conservation restriction and its Registry Book and Page (or Land Court info) and name one or more of the owners of record of each parcel of land to be affected by the notice. 1985 Mass. Acts c. 351, s. 2. We drafted a Notice of Restriction for your review and approval and have attached it. Upon your approval, this Notice should be executed by the Board of Selectmen and returned to us for recording with the Middlesex South District Registry of Deeds. We will diary the date to record an updated Notice within twenty years from the date this initial Notice is recorded.

Please let me know if you have any questions or if you would like me to make any revisions to the Notice of Restriction.

***In addition, if the Town has other Conservation Restrictions predating 1985, let me know and we will draft a similar notice to be on the safe side.***

<< File: Notice of Restriction.doc >>

Mary Liz

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Mary Liz Brenninkmeyer, Esq.  
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