

Southern Middlesex - 20/20 Perfect Vision i2 Document Detail Report

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Doc#	Document Type	Town	Book/Page	File Date	Consideration
79024	RESTRICTIONS		58934/314	04/20/2012	
Property-Street Address and/or Description					
6 PIPER RD					
Grantors					
ACTON TOWN, ACTON CONSERVATION COMMISSION, CULLEN JAMES					
Grantees					
References-Book/Pg Description Recorded Year					
Registered Land Certificate(s)-Cert# Book/Pg					

13
12/13



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CONSERVATION RESTRICTION

Property Address: 6 Piper Road, Acton, Middlesex County, Massachusetts

I. Reservation Clause:

The Town of Acton, a municipality of the Commonwealth of Massachusetts acting by and through its Board of Selectmen, with an address of 472 Main Street, Acton, MA 01720, being the owner of "Lot 2" on the plan of land entitled "Plan of Land in Acton, Mass." prepared by Goldsmith, Prest & Ringwall, Inc., dated September 7, 2010, and recorded with the Middlesex South Registry of Deeds as Plan No. 681 of 2010 (the "Plan"), intending hereby to bind itself, its successors and permitted assigns, acting pursuant to Sections 31-33 of Chapter 184 of the Massachusetts General Laws, and authorized by that certain Town Meeting vote dated April 2, 2008 and recorded with said Registry in Book 52270 Page 162, hereby reserves on behalf of the Town of Acton Conservation Commission (the "Holder") in accordance with Chapter 184 of the Massachusetts General Laws, for itself and successors and permitted assigns, in perpetuity and exclusively, for conservation purposes, the following described conservation restriction (hereinafter, the "Conservation Restriction" or the "Restriction") on a parcel of land consisting of approximately 8,771 square feet located in the Town of Acton, Massachusetts, said parcel being shown as "Parcel C" on the Plan (the "Premises"). Said Premises constitutes the rear portion of Lot 2 referenced above, which lot is being transferred by the Town of Acton to James Cullen, individually, through a deed recorded simultaneously herewith, which deed references this Conservation Restriction (the transferee is referred to herein as the ("Lot Owner"). For the Town of Acton's title to Lot 2, see the deed dated February 5, 2009 recorded with said Deeds in Book 52270, Page 164 and the deed dated July 1, 2010 recorded with said Deeds in Book 54950, Page 180.

II. Purpose:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. Its purpose is to assure that the Premises will be retained for conservation purposes, predominately in a natural and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values. The public benefits resulting from conservation of the Premises include, without limitation:

(1) The Premises, comprised of upland forest in a predominantly undeveloped and natural condition, are located in a rapidly developing area of South Acton. The diversity of its wildlife habitat, including scarlet tanager, red-eyed vireos, redstarts, ovenbirds and several species of owls, while of substantial public benefit even out of context, is more valuable for its location in an area of diminishing open space resources.

(2) The Premises border conservation land shown as "Lot 1" on the Plan that, in turn, borders approximately 184 acres of additional conservation land known as Great Hill Conservation and Recreation Land. The restriction of the Premises contributes to the contiguous restricted land in the area, and it contributes to the ecological viability of the Great Hill Conservation and Recreation Land by enlarging the area of relatively natural habitat available to wildlife.

III. Prohibited Acts and Uses, Exceptions Thereto, and Permitted Uses:

A. Prohibited Acts and Uses. Except as provided in the reserved rights set forth in Section III.B below, the Lot Owner will neither perform nor allow others to perform the following acts and uses, which are expressly prohibited on, above and under the Premises:

(1) **Buildings and Improvements.** Constructing, placing or allowing to remain any temporary or permanent shed, building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;

(2) **Soil and Water.** 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 property drainage or soil conservation and then only in a manner that does not impair the purpose of this Conservation Restriction); and alteration of the existing natural topography of the Premises;

(3) **Trash.** Placing, filling, storing or dumping on the Premises of soil, refuse, trash, automobiles, boats, trailers, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;

(4) **Vegetation.** Cutting, removing or otherwise destroying trees, grasses or other vegetation, except as otherwise required in conjunction with one of the uses allowed under Section III.B below;

(5) **Drainage.** Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;

(6) Vehicles. The use, temporary or permanent parking, or storage of motorcycles, motorized trail bikes, snowmobiles, automobiles, trailers, campers, and all other motor vehicles, except as necessary for the police, firefighters or other governmental agents to carry out their lawful duties and except as reasonably necessary in exercising any of the reserved rights in Section III.B;

(7) De Minimis Uses. The use of the Premises for commercial recreation, business, or industrial purposes;

(8) Other Uses. Any other use of the Premises or activity thereon that is inconsistent with the purpose of this Restriction or that would materially impair significant conservation interests, unless the use or activity is necessary for the preservation of the Premises or in an emergency and is temporary in duration; and

(9) Subdivision. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel.

B. Reserved Rights. All acts and uses not prohibited in Section III.A are permissible, provided that such acts and uses do not materially impair the purpose of this Restriction or other significant conservation interests. The following acts and uses, otherwise prohibited in Section III.A, are permitted, but only if such uses and activities do not materially impair the purpose of this Restriction or other significant conservation interests:

(1) Recreation. Passive outdoor recreational activities, including construction, maintenance and marking of trails for pedestrian use.

(2) Vegetation Management. In accordance with generally accepted forest management practices, removing of brush, selective *de minimis* pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage.

(3) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.

(4) Wildlife Habitat Improvement. With the prior written permission of the Holder, measures designed to restore native biotic communities, or to maintain, enhance, restore or eradicate wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species.

(5) Signs. Signs identifying the boundaries of the Premises.

(6) Stockpiling and Composting. Stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on Lot 2, in locations where the presence of such materials will not have a deleterious impact on the purposes of this Conservation Restriction.

(7) Zoning Compliance. Notwithstanding anything set forth in this Restriction to the contrary, the Premises may be used to determine compliance of the Premises and the remainder of Lot 2 with any present or future bylaw, order or regulation of the Town of Acton that affects the use which lawfully may be made of any land in the Town of Acton or the dimensions thereof, including without limitation the dimensional and other requirements of the Acton Zoning Bylaws, so long as the Premises and the remainder of Lot 2 remain in common ownership and the remainder of Lot 2 is used for single-family housing purposes.

The exercise of any right by the Lot Owner under this Section III.B shall be in compliance with the then-current Zoning Bylaws of the Town of Acton, the Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40) and all other applicable federal, state and local law. The inclusion of any reserved right in this Section III.B requiring a permit from a public agency does not imply that the Holder or the Commonwealth takes any position as to whether such permit should be issued.

C. Notice and Approval. Whenever notice to or approval by the Holder is required under the provisions of Sections III.A or B, the Lot Owner shall notify the Holder in writing, delivered to the Holder at the address provided herein, by certified mail, return receipt requested, not less than sixty (60) days prior to the Lot Owner's commencement of 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 the Holder to make an informed judgment as to its consistency with the purposes of this Restriction. Where the Holder's approval is required, the Holder shall grant or withhold its approval in writing within sixty (60) days of receipt of the Lot Owner's written request therefor, provided that the Lot Owner's request complies in every respect with the requirements of this Section III.C. The Holder's approval shall not be unreasonably withheld, but shall be granted only upon a showing that the proposed activity will not materially impair the purposes of this Restriction. Failure of the Holder to respond in writing within such sixty (60) days to a request which complies with the requirements of this paragraph shall be deemed to constitute approval by the Holder 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.

IV. Extinguishment:

A. Holder's Reservation of Property Right. The reservation of this Conservation Restriction gives rise for purposes of this section to a real property right, immediately vested in the Holder, with a fair market value that is equal to the proportionate value that this Conservation Restriction bears to the value of the unrestricted Premises.

B. Right of the Holder to Recover Proportional Value at Disposition. If circumstances arise in the future that render the purpose of this Restriction impossible to accomplish, this Restriction can be terminated, released or extinguished, whether in whole or in part, only by proceedings consistent with Massachusetts General Laws Chapter 184 or judicial proceedings in a court of competent jurisdiction. In case of any such extinguishment or other release of this Restriction, then the Holder, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Section IV.A above, subject, however, to any applicable law that expressly provides for a different disposition of proceeds.

C. Lot Owner/Holder 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 Lot Owner and the Holder shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.

D. Allocation of Expenses upon Disposition. All related expenses incurred by the Lot Owner and the Holder shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Lot Owner and the Holder in shares proportional to their interests in the Premises, as described in Section IV.A above.

E. Continuing Trust of the Holder's Share of Proceeds of Conservation Restriction Disposition. In all cases arising under this Section IV, the Holder shall use its share of the proceeds in a manner consistent with the conservation purposes of this grant.

V. Access:

The Restriction hereby conveyed does not reserve for the Holder, to the public generally, or to any other person any right to enter upon the Premises, except as follows: the Holder hereby reserves, for itself and its representatives, the right (a) to enter the Premises at reasonable times and in a reasonable manner for the purpose of regular monitoring and inspecting the same to determine compliance herewith, including the right to access the Premises over roads and rights of way owned by the Lot Owner and any rights of way or other access ways now or hereafter available to the Lot Owner for access to the Premises, and (b) after thirty (30) days' prior written notice, to take any and all actions with respect to the Premises as may be necessary or appropriate, with or without order of court, to remedy, abate or otherwise enforce any violation hereof.

VI. Legal Remedies of the Holder:

A. Legal and Injunctive Relief. The rights hereby reserved shall include the right to enforce this 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 their condition prior to such violation (it being agreed that the Holder will have no adequate remedy at law). The rights hereby reserved

shall be in addition to, and not in limitation of, any other rights and remedies available to the Holder.

B. Reimbursement of Costs of Enforcement. The Lot Owner shall reimburse the Holder for all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Restriction or in taking reasonable measures to remedy or abate any violation thereof, provided that a violation of this Restriction is acknowledged by the Lot Owner or determined by a court of competent jurisdiction to have occurred.

C. Disclaimer of Liability. By its reservation of this Conservation Restriction, the Holder does 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. Any election by the Holder as to the nature and timing of its actions pursuant to 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. Acts Beyond the Lot Owner's Control. Nothing contained in this Restriction shall be construed to entitle the Holder to bring any action against the Lot Owner for any injury to or change in the Premises resulting from causes beyond the Lot Owner's control, including, but not limited to, fire, flood, storm and earth movement, or from any prudent action taken by the Lot Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of damage to the Premises from acts beyond the Lot Owner's control, if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible.

VII. Duration and Assignability:

The burdens of this Restriction shall run with the Premises and shall be enforceable against the Lot Owner in perpetuity. The Holder is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Restriction. By accepting title to the Premises, the Lot Owner appoints the Holder its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Lot Owner shall execute any such instruments upon request. The benefits of this Restriction shall be in gross and shall not be assignable by the Holder, except in the following instances from time to time: (i) as a condition of any assignment, the Holder requires that the purpose of this Restriction continue to be carried out; (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 Massachusetts General Laws, as an eligible donee to receive this Restriction directly; (iii) the Holder complies with the provisions required by Article 97 of the Amendments to the State Constitution, if applicable; and (iv) the assignee is the holder of a Conservation Restriction on adjacent land owned by the Holder. The restrictions arising hereunder shall take effect when all requisite signatures pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws have been

obtained and the document has been recorded in the Middlesex South Registry of Deeds.

VIII. Subsequent Transfers:

The Lot Owner shall incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which the Lot Owner divests any interest in all or a portion of the Premises, including a leasehold interest, and shall notify the Holder within twenty (20) days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction. Any transfer shall comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

IX. Termination of Rights and Obligations:

Notwithstanding anything to the contrary contained herein, the rights and obligations under this 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 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.

X. Estoppel Certificates:

Upon request by the Lot Owner, the Holder shall within twenty (20) days execute and deliver to the Lot Owner any document, including an estoppel certificate, that certifies the status of the Lot Owner's compliance with any obligation of the Lot Owner contained in this Restriction, or that otherwise evidences the status of this Restriction, as may reasonably be requested by the Lot Owner.

XI. Amendment:

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, the Lot Owner and the Holder may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of the Holder under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986 as amended and as applicable, or Sections 31-33 of Chapter 184 of the Massachusetts General Laws. Any amendment shall occur only in exceptional circumstances. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs or as required by applicable statutes in effect at the time of the proposed amendment and, if applicable, shall comply with the provisions of Article 97 of the Massachusetts Constitution. Any such amendment shall be recorded in the Middlesex South Registry of Deeds. Any amendment of this Restriction shall not require the approval of any lender, and will not affect the priority of this Conservation Restriction.

XII. Effective Date:

This Conservation Restriction shall be effective when the Holder has 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 Middlesex South Registry of Deeds.

XIII. Recordation:

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

XIV. Notices:

Any notice, 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 to the party to be notified at the address last known to the notifying party.

XV. Miscellaneous:

A. Controlling Law. The interpretation and performance of this 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 Restriction shall be liberally construed in favor of the grant to effect the purpose of this Restriction and the policy and purpose of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

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

E. Joint Obligation. The obligations imposed by this Restriction upon the parties that together comprise the "Lot Owner" and the "Holder" shall be joint and several.

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

G. No Merger. Any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Lot Owner shall not grant, and the Holder agrees that it will not take, title to any part of the Premises without having first assigned this Conservation Restriction, in accordance with Section VIII, above (if necessary to avoid merger), to ensure that merger does not occur.

H. Counterparts. This Restriction may be executed in counterparts that shall constitute a single agreement whether or not all signatures appear on a single copy hereof.

I. Baseline Documentation. In order to establish the present condition of the Premises and the conservation values thereon which are protected by this Conservation Restriction, so as to enable the Holder to monitor future uses of the Property and to assure compliance with the terms hereof, the Holder has prepared an inventory of the relevant features and conditions of the Premises (the "Baseline Documentation Report"). The same is an accurate representation of the condition of the Premises as of the date of the execution of this Conservation Restriction. Verified originals of the Baseline Documentation Report will be deposited with the Lot Owner and in the permanent records of the Holder. If the originals of said Baseline Documentation Report are subsequently destroyed by casualty or other circumstance, other evidence may be offered by the Holder or the Lot Owner to establish the condition of the property as of the date of this Restriction.

No documentary stamps are required, as this Restriction is held by a municipality.

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Executed under seal this 26 day of March, 2012.

TOWN OF ACTON
BOARD OF SELECTMEN

Michael Gowling
Michael Gowling

John Sonner
John Sonner

Janet K. Adachi
Janet K. Adachi

David Clough
David Clough

Pamela A. Harting-Barrat
Pamela A. Harting-Barrat

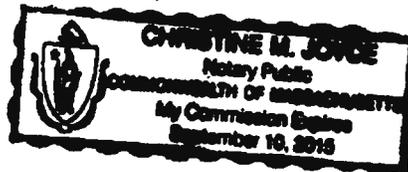
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

3/26, 2012

On this 26 day of March 2012, before me, the undersigned notary public, personally appeared The members of the Board of Selectmen and _____, proved to me through satisfactory evidence of identification, which was Known to me, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as members of the Town of Acton Board of Selectmen.

Christine M. Joyce
Notary Public
My commission expires:



ACCEPTANCE

The above Conservation Restriction is accepted this 21st day of March, 2012.

TOWN OF ACTON
CONSERVATION COMMISSION

Terry Maitland, Chair

William Froberg

William Froberg

Frances Portante

Frances Portante

James C. Colman

James Colman

Thomas B. Arnold

Andy Magee

Andy Magee

Amy Green

Amy Green

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

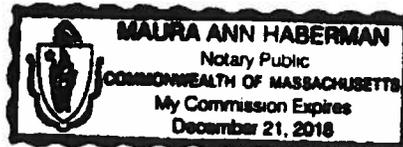
March 21, 2012

On this 21 day of March, 2012, before me, the undersigned notary public, personally appeared Acton Conservation Commission proved to me through satisfactory evidence of identification, which was known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Conservation Commission of Town of Acton

Maura Ann Haberman

Notary Public

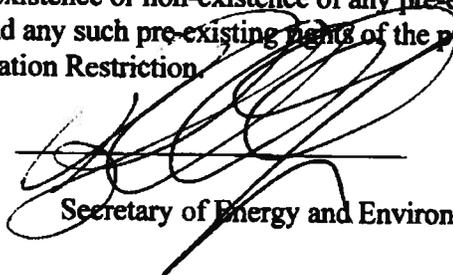
My commission expires:



APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32. Said approval 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 Property, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

Date: April 13, 2012

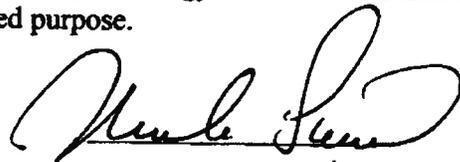

Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

April 13, 2012

On this 13th day of April, before me the undersigned notary public, personally appeared Richard K. Sullivan, Jr., and proved to me through satisfactory evidence of identification, which was (*personal knowledge of identity*) to be the person whose name is signed on the document and acknowledged to me that he signed it voluntarily as Secretary of Energy and Environmental Affairs for the Commonwealth of Massachusetts, for its stated purpose.



Notary Public

My Commission expires:

12/7/2018

