

Affected Premises: Shutesbury Road


 Bk: 5443 Pg: 166 Doc: REST FC
 Page: 1 of 18 12/28/2007 09:33 AM

CONSERVATION RESTRICTION

I, Fredric L Cheyette, of 119 Shutesbury Road, Leverett, 01054, Franklin County, Massachusetts, with a mailing address of P.O. Box 152, Leverett, MA, 01054, being the sole owner for my successors and assigns ("Grantor"), acting pursuant to Sections 31, 32 and 33 of Chapter 184 of the General Laws of Massachusetts, hereby grant with quitclaim covenants as a gift to Rattlesnake Gutter Trust, a Massachusetts charitable corporation having the power to acquire interests in land in accordance with said General Laws, with a mailing address of Box 195, Leverett, Massachusetts 01054 and its successors and permitted assigns, ("Grantee"), for no monetary consideration, this restriction being a gift, in perpetuity and exclusively for conservation purposes, the following Conservation Restriction on a parcel of land located in the Town of Leverett, Franklin County, Massachusetts, constituting approximately 6 acres and more particularly described in Exhibit A, the attached sketch plan.

For Grantor's title see Franklin County Registry of Deeds Book 2059, page 217, described as Parcel no; 1 on a plan entitled "Map showing property of Dorothy King Stirling, Leverett, Mass.", dated March 25, 1953, recorded with the Franklin County Registry of Deeds at Plan Book 14, page 3. Also attached are the baseline survey conducted by the Rattlesnake Gutter Trust and certification by the Leverett Conservation Commission. The mortgage is held by Florence Savings Bank, 85 Main Street, Florence MA 01060. ✓

I. PURPOSES

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in its current condition as set forth in baseline documentation in perpetuity and for conservation purposes, predominantly in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

These values include the following:

- **Expansion of Protected Land.** The protection of the Premises contributes to the preservation of the scenic and natural rural character of that section of Leverett to the west of Shutesbury Road, at the north end of East Leverett. It adds to a prospective conservation corridor reaching from East Leverett Meadow on the south to the 4-H Forest parts of which are already protected through conservation restrictions and ownership by non-profit and governmental conservation organizations and agencies.

Scenic Protection. Concern that Leverett's vistas are disappearing, expressed in its *Open Space and Recreation Plan*, underlines the importance of this site. The Premises will provide access along Mountain Brook to the Gordon King, 4-H, and Doolittle Brook areas already protected. It is bounded on the east side by a glacial

moraine dating from the end of the last Ice Age, and on the west gives access to scenic trails along the edge of the Doolittle Brook swamp, which is already a prominent feature on the earliest maps of the town.

- **Aquifer Protection.** The Premises borders Mountain Brook, providing storage for runoff during spring melt and major storm events. Protection of this area from any development will help preserve Leverett's groundwater.
- **Protection of Wildlife Habitat.** The Premises, comprised of approximately 6 acres of land, will connect and add to an expanding wildlife corridor of contiguous preserved land. It contains seasonal ponds and streams, seasonal marshland, vernal pools, deep woods and edge habitats, all of which provide important habitat for a variety of birds, mammals, reptiles and amphibians.
- **Public use.** Access to trails and woods roads will be indicated by signs. The Premises will be generally available to the public for hiking and other passive recreational and educational activities, such as birding and observing vernal pools, so long as such activities do not negatively impact the ecological health of the Premises or the conservation purposes of this Conservation Restriction.
- **Furtherance of Government Policy.** Protection of the Premises contributes to the implementation of all four overall goals listed in the *Leverett Conservation Committee's 2005-2010 Open Space Plan, Section 8, Goals and objectives:*
 - a. Preserve the rural character of the Town
 - b. Protect and preserve natural resources
 - c. Improve public education related to open space
 - d. Provide wider recreational uses of the Town's natural resources

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform, and will take reasonable actions to prevent others from performing the following acts and uses, which are prohibited, on, above, or below the Premises:

- 1) Constructing, placing or allowing to remain any temporary or permanent 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) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area;
- 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 or other vegetation, except as required for reasonable forestry practice;
- 5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or archaeological conservation;
- 6) No snowmobiles, motorcycles, mopeds, all-terrain vehicles, bicycles, trail bikes, or any other motorized or non-motorized vehicles of any kind shall be used, parked, stored, maintained, operated or otherwise allowed on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their lawful duties and farming/forestry equipment necessary to maintain the forest. Individual transportation vehicles necessary for the mobility of persons with physical limitations or disabilities, shall be permitted.
- 7) 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;
- 8) Any other use of the Premises or activity thereon which is inconsistent with the purpose of this Conservation Restriction or which would materially impair its conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction;

B. Reserved Rights and Exceptions to Otherwise Prohibited Acts and Uses

Notwithstanding paragraph A above, the Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the purpose of this Conservation Restriction or other significant conservation interests:

- 1) Recreational Activities: Boating, hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, or do not involve more than *de minimis* use for commercial recreational activities;

- 2) **Forestry.** In accordance with generally accepted forest management practices, removing of brush, selective *de minimus* pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas, woods roads, fence lines and trails and meadows. The cutting and harvesting of trees for commercial timber production on a sustained yield basis, but only if carried out in accordance with a M.G.L. c. 132 Forest Cutting Plan prepared by a Massachusetts certified professional forester, and designed to protect the conservation values of the Premises, including, without limitation, water quality, water features, scenic views, wildlife habitat, etc.
- 3) **Non-native flora.** The removal of non-native or invasive flora and inter-planting of indigenous species;
- 4) **Composting.** The stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not have a deleterious impact on the purposes (including scenic values) of this Restriction;
- 5) **Wildlife Habitat Improvement.** With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;
- 6) **Archaeological Investigations.** The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official);
- 7) **Trails.** The marking, clearing and maintenance of footpaths and woods roads;
- 8) **Signs.** The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, and the protected conservation values;
- 9) **Wells.** The right to dig or drill for water for the use of the home at 119 Shutesbury Road provided that (a) access for well-drilling equipment and any site alteration necessary for access, drilling, maintenance and repair of the well and well line is planned in consultation with and approved in writing by the Grantee, approval not to be unreasonably withheld; (b) any and all necessary permits be obtained by and at the expense of the owner of 119 Shutesbury Road; (c) a survey plan is provided to the Grantee showing the location of the well and well line; and (d) that the site is returned to its former condition by the owner of 119 Shutesbury Road.

- 10) Stone walls. The removal of stones from the stone wall bordering Shutesbury Road for the purpose of repairing and enhancing other stone walls on the Grantor's premises;
- 11) Permits. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with the then-current Zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position of whether such permit should be issued.

C. Notice and Approval.

Whenever notice to or approval by Grantee is required under the provisions of paragraphs A or B, Grantor shall notify Grantee in writing not less than 60 days prior to the date Grantor intends 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 the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice.

III. 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 their condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee shall attempt to resolve issues concerning violations through negotiations with Grantor prior to resorting to legal means.

B. Non-Waiver

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. 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.

C. 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 as it may exist either before or after the grant of restriction, including compliance with hazardous materials and other environmental laws and regulations.

D. 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. The parties to this Conservation Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it is desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises if feasible.

IV. ACCESS

This Conservation Restriction does not grant to the Grantee, to the public, or to any other person or entity any right to enter upon the Premises, except as follows:

The Premises will be generally available to the public for hiking and other passive recreational and educational activities. Trails and woods roads will have signs describing use and may be closed temporarily to permit forestry operations.

Recreational Use Statute: 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 Property in the absence of willful, wanton, or reckless conduct.

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 herewith, of enforcing this Conservation Restriction. 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 have a survey of boundary lines conducted at the Grantee's expense.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as 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 a court of competent jurisdiction under applicable law. 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 in accordance with Section V. B.) below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. Grantor and Grantee agree that the donation 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 to the value of the unrestricted property at that time. Such proportionate value of the Grantee's property right shall remain constant.

C. 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 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 such proportionate value. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. 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 and the successors and assigns of the Grantor 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, on

behalf of herself and her successors and assigns, appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on her behalf. Without limiting the foregoing, the Grantor and her 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:

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, qualifies under Section 170(h) 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.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within 20 days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction.

The Grantor shall be liable to only for violations occurring during or his or her ownership, or for any transfer, if in violation. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this CR 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.

VIII. ESTOPPEL CERTIFICATES

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

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and

the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to ensure that merger does not occur. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction in perpetuity, notwithstanding any merger.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction may be appropriate, Grantor and Grantee 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 Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantor will consider amendments only to correct an error or oversight, to clarify an ambiguity, and in circumstances where in granting an amendment there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. 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 Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution. Any amendment shall be recorded in the Franklin County Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor 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 in the Franklin County Registry of Deeds.

XII. RECORDATION

The Grantee shall record this instrument in timely fashion in the Franklin County Registry of Deeds.