

Corporation Counsel

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CITY OF PORTLAND

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February 16, 1996

Christopher Neagle, Esq.
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P.O. Box 586
Portland, ME 04112

106A-C-036
106A-A-011

RE: Linda Sutter/Josh Empson Lot, Cushings Island
Bethea/Allen Conservation Easement

Dear Chris:

Enclosed for your files is a copy of the Conservation Easement granted by Thomas Bethea and Pamela Allen to Linda Sutter and Josh Empson which has been recorded in the Cumberland County Registry of Deeds.

Very truly yours,

Natalie

Natalie L. Burns
Associate Corporation Counsel

NLB:lab

Enclosure - copy

pc: Peggy Peterson, Treasury (w/Enclosure - original)
Marge Schmuckal, Zoning Administrator (w/Enclosure - copy)
Donald Hall, Appraiser (w/Enclosure - copy)
File #94-86 (w/Enclosure - copy)

CONSERVATION EASEMENT

THOMAS D. BETHEA and PAMELA K. ALLEN, (hereinafter collectively referred to as the "Grantor") of Madison, Wisconsin, hereby conveys to the CITY OF PORTLAND, a municipal corporation organized and existing under the laws of the State of Maine, with a mailing address of 389 Congress Street, Portland, Maine (hereinafter referred to as the "Holder"), a Conservation Easement as described below.

WHEREAS, this Conservation Easement is created pursuant to Title 33 M.R.S.A. §§ 476 through 479-B; and

WHEREAS, the Holder is a municipality as defined by 33 M.R.S.A. §476(2)(B), that is: a municipality authorized to accept lands, easements and buildings for the purpose of preserving and protecting natural, scenic and open space values of real property; and

WHEREAS, the Grantor holds title to certain real property situated in Portland, Maine (the "Protected Property"), being a portion of Tax Map 106A, Block C, Lot 36, and further described on Exhibit A; and

WHEREAS the Protected Property remains in a substantially undisturbed natural state and has significant aesthetic and ecological value; and

WHEREAS the Grantor and Holder, recognizing the value of the Protected Property as a scenic and aesthetic and wildlife area, have the common purpose of conserving the natural values of the Protected Property by the conveyance of a Conservation Easement on, over and across the Protected Property, which easement shall benefit, protect and conserve the natural values of the Protected Property, conserve and protect the indigenous animal and plant populations, and prevent the use or development of the Protected Property for any purpose or in any manner that would conflict with its natural, scenic condition; and

WHEREAS Section 14-145.5 of the Portland City Code requires the granting of this Conservation Easement in order for a building permit to issue for the construction of a structure on a lot owned by Helen Linda Sutter and Joshua Empson being Tax Map 106A, Block A, Lot 11; and

NOW THEREFORE, in consideration of the foregoing and the covenants herein contained, the Grantor hereby grants to the Holder, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity, a conservation easement in gross as described hereinbelow on and over the Protected Property as set forth herein (the "Conservation Easement"):

A certain lot or parcel of land located on the south side of Calumet Avenue, on Cushings Island, in the City of Portland, County of Cumberland, and State of Maine, further described as follows:

Beginning at a 3/4" iron pipe found on the south side of Calumet Avenue at the northeast corner of land of the Grantor;

Thence S 41° 52' 40" E, along land now or formerly of The Island Company, 125.58 feet to a 1" iron pipe;

Thence N 85° 07' 36" W, along other land of Bethea/Allen, 121.29 feet to a # 5 rebar;

Thence S 77° 16' 04" W, along other land of Bethea/Allen, 119.50 feet to the east side of a 12 foot wide easement for the benefit of Donnelly;

Thence N 06° 37' 18" E, along the Donnelly easement, 18.00 feet;

Thence N 14° 25' 58" W, along the Donnelly easement, 36.24 feet;

Thence N 63° 13' 06" W, along the Donnelly easement, 62.48 feet to land of Donnelly;

Thence N 27° 57' 45" W, along land of Donnelly, 27.53 feet to Calumet Avenue;

Thence N 87° 54' 44" E, along Calumet Avenue, 155.10 feet;

Thence S 88° 47' 26" E, along Calumet Avenue, 74.35 feet to the 3/4" iron pipe and point of beginning.

Containing 20,901 square feet as shown on a plan by Des Lauriers & Associates of New England, Inc. dated October 16, 1995, Job No. 12933.

Being a portion of the premises conveyed to Thomas D. Bethea and Pamela K. Allen by the 1985 deeds recorded in Book 6748, Page 176, Page 178, Page 180, Page 182, and Page 184, and the 1990 deed recorded in Book 9078, Page 110.

Subject, however, to a view easement given to Donnelly dated January 25, 1990 and recorded in Book 9064, Page 185.

1. Purpose.

This conservation easement is intended to benefit land of Helen Linda Sutter and Joshua Christopher Empson as described in the deeds recorded in Book 9202, Page 189, Book 11349, Page 286, and Book 11431, Page 284, to add additional land for purposes of computing lot size pursuant to §14-145.5 of the Portland Zoning Ordinance. The property over which the Conservation Easement has been granted shall be used for passive recreational and conservation purposes only, and shall be subject to the following restrictions:

- a. No structure shall be permitted on this protected property.
- b. No parking or storage of vehicles or machinery shall be permitted on this protected property at any time.
- c. No area of this protected property shall be paved.
- d. No exterior storage for commercial use shall be permitted on this property.

2. Conservation Easement.

The affirmative rights conveyed by this Conservation Easement, subject always to the reserved rights of the Grantor, are the following:

- a. The right of the Holder to identify, to preserve and to protect in perpetuity the natural space and aesthetic features of the Protected Property;
- b. The right of the Holder to require that the Protected Property be kept free of any taint, corruption or pollution of whatever character arising from any use of the Protected Property not permitted hereunder;
- c. The right of the Holder upon reasonable prior notice to the Grantor, to enter the Protected Property and inspect the Protected Property at any time, in any manner that will not unreasonably interfere with the permitted uses being made of the Protected Property;
- d. The right of the Holder to enforce by proceedings at law or in equity the covenants and restrictions herein set forth, including the right to restore the Protected Property, at the cost of Grantor, to its condition prior to any breach hereof.

3. Use of the Protected Property.

The Protected Property shall be used for passive recreational and conservational purposes only. No commercial, industrial, quarrying or mining activities shall be permitted on the Protected Property. Notwithstanding the above, use of the Protected Property for agricultural or forestry purposes is permitted. No structures presently exist on the Protected Property. No structures or facilities of any kind whatsoever shall be constructed on the Protected Property. Provided, however, the following rights are expressly reserved and retained by the Grantor:

- a. The right of Grantor, their families, guests, employees and invitees, to use the Protected Property for recreational purposes which may include hiking, picnicking, bird watching, camping, tenting and any use that is not expressly prohibited above or destructive to the natural values to be conserved herein.
- b. The right to post the Protected Property, to control and prohibit unauthorized use, hunting and fires, and to notify the public of limitations on use of the Protected Property. Any use of the Protected Property which is destructive to the natural values to be conserved by this Conservation Easement, or to the reasonable quiet use and enjoyment of private property by the owners of the Protected Property or by owners of land in the vicinity of the Protected Property, shall be presumed to be an unauthorized use.
- c. The right to advertise the Protected Property for sale or rent and to convey the Protected Property, always subject to the terms of this Conservation Easement.
- d. Except as expressly limited herein, Grantor reserves for itself all rights as owner of the Protected Property, including the right to use the Protected Property for all purposes not inconsistent with this Conservation Easement.

4. Monitoring Rights of Holder.

The Holder shall make reasonable efforts from time to time to assure compliance by Grantor with all of the covenants and restrictions herein. In connection with such efforts, Holder shall make periodic inspections of the Protected Property, and for such inspection and enforcement purposes, the Holder shall have the right of access to the Protected Property at a reasonable time and in a reasonable manner, provided that the time and manner of such entry does not unreasonably interfere with the uses of the Protected Property permitted hereunder. Notwithstanding the above, failure or inability of the Holder to

make such periodic inspections shall in no way affect the continuing validity of this Conservation Easement.

5. Enforcement Rights of Holder.

In the event the Holder becomes aware of an event or circumstance of noncompliance with the terms and conditions set forth herein, Holder shall give notice to Grantor of such event or circumstance of noncompliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such event or circumstance of noncompliance and to restore the Protected Property to its condition prior to such breach. Failure by the Grantor with reasonable dispatch to cause discontinuance, abatement or such other corrective action as may be demanded by Holder shall entitle Holder to take such action reasonably necessary to effect such correction, to bring a civil action in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to obtain injunctive relief and to recover any damages arising from such noncompliance. If such court determines that Grantor has failed to comply with this Conservation Easement, Grantor shall reimburse Holder for any reasonable costs of restoration, corrective action and enforcement, including court costs, reasonable attorney's fees, and other payments ordered by such court.

6. Grant in Perpetuity.

This Conservation Easement shall be recorded at the Cumberland County Registry of Deeds. The terms hereof shall constitute real covenants running with the land; the terms shall be a burden upon and shall run with the Protected Property in perpetuity and shall bind the Grantor, its heirs, successors and assigns forever. A copy of the restrictions contained in this Conservation Easement or an incorporation by reference of this indenture shall be included in any subsequent deed or legal instrument by which the Grantor conveys any interest, including a leasehold, in the Protected Property. Failure to include the foregoing shall not affect the validity of any future conveyance, but said conveyance shall be nonetheless subject to the terms of this Conservation Easement.

Furthermore, both parties to this Easement agree that it shall not be released or modified without the express written consent of the owner of the Sutter/Empson parcel as described in Section 1 and shown on Tax Map 106A, Block A, Lot 11.

7. Subsequent Transferees.

By acceptance of this Conservation Easement, the Holder covenants and agrees, as real covenants running with the land in perpetuity, and not as conditions to this Conservation Easement or as restraints on alienability,

- a. that it will hold this Conservation Easement in perpetuity for conservation purposes;
- b. that it will not transfer said Conservation Easement except to any entity which, as a condition precedent to such transfer, gives the Holder assurances that it is willing and able to enforce the rights granted in this Conservation Easement, which entity shall also have purposes which encompass the purposes set forth in this Conservation Easement; and
- c. that any such transferee shall satisfy the requirements of 33 M.R.S.A §476(2) (or successor provisions thereof).

8. Miscellaneous.

a. The terms "Grantor" and "Holder", wherever used herein, and any pronouns used in place thereof, shall mean and include respectively, the above named Grantors and their heirs, successors and assigns, and the above-named Holder and its representatives, successors and assigns. Notwithstanding the foregoing, a person shall have no obligation by virtue of this Conservation Easement, if and when such person shall cease to have any present, partial, contingent, collateral or future interest in the Protected Property or any portion thereof by reason of a transfer of the Protected Property.

b. The fact that any of the uses prohibited herein, or other uses not mentioned, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to non permitted uses, has been considered by Grantor in granting this perpetual easement. It is the intent of the Grantor, the Holder that any such changes shall not be deemed to be changed conditions permitting termination of this Conservation Easement.

c. The inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds to terminate it or alter its terms.

d. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those found to be invalid shall not be affected thereby.

9. Construction.

If uncertainty should arise in the interpretation of this Conservation Easement, judgment should be made in favor of

conserving the Protected Property in its natural, traditional and open scenic state. Nothing in this Conservation Easement shall be construed to permit any activity otherwise prohibited by the valid laws and regulations of any federal, state or local government or governmental agency having competent jurisdiction over the Protected Property.

THOMAS D. BETHEA and PAMELA K. ALLEN have executed this Easement this 13th day of December, 1995.

T. Bethea
Thomas D. Bethea

Pamela K. Allen
Pamela K. Allen

STATE OF WISCONSIN

County of DANE

13 December, 1995

Personally appeared the above-named Thomas D. Bethea and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Dennis Alan Ruskin
Notary Public
State of Wisconsin
Print Name: Dennis Alan Ruskin

SEAL

My Commission expires:
10 November 1996

Draft: December 8, 1995
(CSN.SUTTER.CUSHINGS)CONSERV.ESM

RECEIVED
RECORDED REGISTRY OF DEEDS

95 DEC 28 PM 1:20

CUMBERLAND COUNTY

John B. O'Brien