

**CURTIS THAXTER**  
ATTORNEYS AT LAW

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July 1, 2013

Marge Schmuckal  
Zoning Administrator  
City of Portland  
389 Congress St.  
Portland, ME 04101

RECEIVED

JUL 09 2013

Dept. of Building Inspections  
City of Portland Maine

RE: Meserve Conservation Easement – Cushings Island

OTTAWA AVE -  
106A-C-023  
106A-A-012

Dear Marge:

Please find enclosed a copy of the filed Conservation Easement for the benefit of the Meserves. A copy of your letter dated November 14, 2012, which references the easement is also enclosed for reference. Thank you for your assistance.

Sincerely,



Sidney St. F. Thaxter

SST/rar

Enclosures

cc: Richard and Martha Meserve  
Shelby Schuck

## CONSERVATION EASEMENT

SHELBY SCHUCK of Tucson, Arizona (hereinafter referred to as the "Grantor"), 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-C; and

WHEREAS, the Holder is a municipality as defined by Title 33 M.R.S.A. §476(2)(A), 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 on Cushings Island, Portland, Maine, being a portion of Tax Map 106A, Block A, Lot 12, which is described in deed dated December 6, 1979 and recorded in the Cumberland County Registry of Deeds in Book 4539, Page 88 (the "Protected Property"); and

WHEREAS the Protected Property, which is defined in Exhibit A, 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 certain real property situated on Cushings Island, Portland, ME, being a portion of Tax Map 106A, Block C, Lot 23, owned by RICHARD A. MESERVE and MARTHA R. MESERVE described in deed dated August 6, 2010 and recorded in the Cumberland County Registry of Deeds in Book 27974, Page 28 (the "Meserve Lot"); 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"):

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Dept. of Building Inspections  
City of Portland Maine

1. Purpose.

This conservation easement is intended to benefit the Meserve Lot in order 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 Meserve Lot as described in Section 1 and shown on Tax Map 106A, Block C, Lot 23.

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 Title 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 and the Holder that any such changes shall not be deemed to be changed conditions permitting termination of this Conservation Easement.

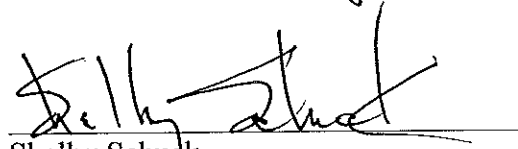
c. The inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds to terminate it or alter its terms.

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.

SHELBY SCHUCK has executed this Easement this 13 day of June, 2013.

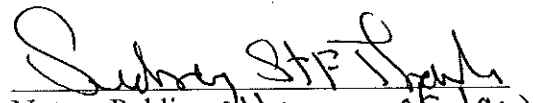
  
Shelby Schuck

STATE OF MAINE  
COUNTY OF CUMBERLAND, SS.

June 13, 2013

Personally appeared the above named Shelby Schuck and acknowledged the foregoing instrument to be her free act and deed.

Before me,

  
Notary Public attorney at law

Print name: SIDNEY ST F THACK  
My commission expires: Bar # 1301

EXHIBIT A

A certain parcel of land situated on the southwesterly side of Ottawa Avenue, on Cushing Island, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point on the assumed southwesterly sideline of Ottawa Avenue at the northeast corner of the land now or formerly of Christopher A. and Lynda J.R. Bond (see Book 8492, Page 281) as shown on "Boundary Survey on Ottawa Avenue Cushing Island - Portland, Maine made for Martha R. & Richard A. Meserve & John E. Meserve, Richard A. Meserve & Jeanne M. Meserve August 15, 2012 Owen Haskell, Inc. Job No. 2012-038 P";

Thence, S 52° 50' 44" E by Ottawa Avenue 16.33 feet;

Thence, S 48° 38' 46" W by the remaining land of Schuck 103.25 feet;

Thence, N 41° 21' 14" W by the remaining land of Schuck 16.00 feet to the land of Bond;

Thence, N 48° 38' 46" E by the land of Bond 100.00 feet to the point of beginning.

Said parcel contains 1,626 square feet and is shown on the above mentioned plan.

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Received  
Recorded Register of Deeds  
Jun 14, 2013 11:43:58A  
Cumberland County  
Pamela E. Lovley



# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life • [www.portlandmaine.gov](http://www.portlandmaine.gov)*

*Jeff Levine, AICP, Director  
Marge Schmuckal, Zoning Administrator*

November 14, 2012

Curtis Thaxter Attorneys at Law  
One Canal Plaza, Suite 1000  
PO Box 7320  
Portland, Maine 04112-7320  
Attn: Sidney St. F. Thaxter Esq.

RE: Meserve Conservation Easement –Ottawa Avenue - Cushing Island 106A-C-023  
& 106A-A-012

Dear Attorney Thaxter,

I am in receipt of your request for a determination in regard to a conservation easement concerning two properties on Ottawa Avenue, Cushing Island described by tax map #106A-C-023 (owned by Meserve) and 106A-A-012 (owned by Shuck). I have made my determination based upon 2 surveys performed by John C. Schwanda of Owen Haskell, Inc. The properties are both located in the IR-1 zone which requires a minimum lot size of 40,000 square foot of land area for properties with public water. Public Services has confirmed a water line in Ottawa Avenue that extends to the Meserve property (106A-C-023).

Section 14-145.5(a)7 allows for the merging of two lots on the same island in order to meet the minimum lot size requirement of the IR-1 Zone. Such noncontiguous merging is accomplished by means of a Conservation Easement granted to the City as outlined within Section 14-145.5(a)7.

Per the submitted survey, the Meserve property (106A-C-023) is 38,438 square foot in size. The "merged" property to be conveyed from the Shuck property at 106A-A-012 and to be used in conjunction with the Meserve property is 1,626 square foot in size. Therefore the total "merged" property is a total of 40,064 square foot in size and meets the minimum lot size of 40,000 square foot. I have also reviewed the Shuck property for compliance with the Land Use Ordinance after the conveyance of 1,626 square feet. The Shuck property will remain in compliance with the Land Use Ordinance

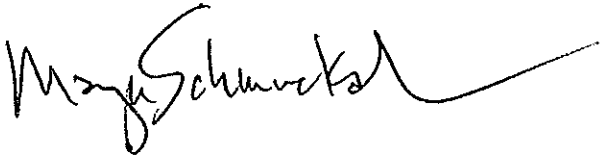
I have also reviewed the submitted Conservation Easement language. Such conservation easement is meeting the requirements of 14-145.5(a)7. The transfer of the parcel subject to the easement from Shuck to Meserve is sufficient to enable the Meserves to apply for a building permit.



Please note that this determination is not an approval to build. The Meserve property is also encumbered by a Shoreland Overlay Zone. All IR-1 and Shoreland Overlay zone requirements shall be met at the time of a building permit and site plan application submission. At the time of the submission all Ordinance requirements shall be reviewed and approved prior to a building permit issuance. At the time of submission, copies of the transfer of land and the executed Conservation Easement shall be included.

If there are any questions regarding this matter, please feel free to contact me at (207) 874-8695.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marge Schmuckal", with a long horizontal flourish extending to the right.

Marge Schmuckal

Zoning Administrator