

AMENDED AND RESTATED
CONSERVATION RESTRICTION
TO THE TOWN OF BOXFORD

165-012

This is an amended and restated conservation restriction that serves to supersede a previous conservation restriction recorded with the Essex South District Registry of Deeds on June 15, 1978, filed with original Certificate of Title #16778. The purpose of the amendment is to update the conservation restriction to be consistent with Section 31 through 33 of Chapter 184 of the General Laws of Massachusetts and the laws and regulations of the Internal Revenue Service.

The undersigned, Otis E. Curtis of Boxford, Essex County, Massachusetts, hereby grants to the town of Boxford, a municipal corporation of Essex County, Massachusetts acting by and through its conservation commission established under Section 8C of Chapter 40 of the General Laws of Massachusetts, its successors and permitted assigns in perpetuity and exclusively for conservation purposes, without consideration except as may be provided herein, a conservation restriction on a parcel described below and as shown on land plan in Exhibit A, attached hereto. (Said parcel of land being hereinafter referred to as the "Restriction Area").

The Restriction Area for the Conservation Restriction amended and restated by Otis E. Curtis granted to the Town of Boxford is bounded and described as:

Northerly by Ipswich Road four hundred and thirty nine (439) feet, Easterly and Northeasterly by Main Street twenty three hundred twelve and 69/100 (2312.69) feet; Easterly three hundred thirty three and 4/10 (333.4) feet and Southerly thirteen hundred eighty and 65/100 (1380.65) feet by land now or formerly of Myron E. Killam; and Westerly and Northwesterly by land now or formerly of Avarid P. Lyon twenty five hundred twenty three and 90/100 (2523.90) feet. All of said boundaries are determined by the Land Court to be located as shown upon plan numbered 18353-A, drawn by Morse, Dickinson & Goodwin, Engineers, dated September 1941, as modified and approved by the Court, filed in the Land Registration Office, a copy of a portion of which is filed with original Certificate of Title #16778 in Essex South Registry of Deeds, and the above described land is shown as parcel B, thereon.

Otis E. Curtis and his successors in title to the Restriction Area are hereinafter called the "Grantor" and the Town of its successors and permitted assigns are hereinafter called the "Grantee".

1. Purposes.

The Restriction Area, comprised of approximately 55 acres of land and water, contain outstanding and unique qualities.

The Restriction Area provides a corridor of protected open space and provides a pleasing vista of the surrounding land;

The Restriction Area is directly across the street from a significant parcel of land known as "Witch Hollow Farm" that was purchased by the town of Boxford, with assistance from the Massachusetts Executive Office of Environmental Affairs with Self Help funds, for the protection of open space;

The Restriction Area has historically been maintained in agricultural and forestry use and contains open fields and upland forest, wetland and streams and is a distinctive Massachusetts landscape as defined in "The Massachusetts Landscape Inventory, 1981" of the Department of Environmental Management, embodying the special character of the region in which it is located;

The Town of Boxford through its Conservation Commission and the Boxford Trails Association/Boxford Open Land Trust are working to encourage Boxford residents to grant conservation restrictions for the purpose of open space protection; and

The 1994 Open Space and Recreation Plan and the 1995 Master Plan for the town of Boxford identifies the protection of open space and the existing trails network as an objective of the Town and recognizes conservation restrictions as a means of reaching those objectives.

In order to protect and preserve the Restriction Area in perpetuity and for conservation purposes, and thereby provide significant scenic, aesthetic, educational and passive recreational values to the public, generally, and to protect the natural and watershed resources of said town, the Grantor hereby conveys to the Grantee a Conservation Restriction within the meaning of Chapter 184, Section 31 through 33 of the General Laws of Massachusetts.

The terms of this Conservation Restriction are as follows:

2. Prohibited activities. Except as herein provided, the Grantor shall not carry out nor permit others to carry out any of the following activities on the Restriction Area:

- (a) Constructing or placing of any buildings, sign, outdoor advertising display, mobile home, tennis courts, windmills, roads, utility poles, towers and wires or other structures placed on, above, or under ground, except as provided in Section 2c. and those existing in the Restriction Area on the date of this Conservation Restriction;
- (b) Dumping or placing of soil or other substances on the ground as landfill, or dumping or placing of vehicle bodies or parts, junk, trash, solid or chemical waste or unsightly or offensive materials or the installation of underground storage tanks;

- (c) Excavation, dredging, or removal of loam, peat, sand, gravel, or other mineral substances or natural deposits in such manner as to alter the surface topography of the Restriction Area;
- (d) Any development or other improvement for purposes of residential, commercial, industrial, or institutional use;
- (e) Use of motorized vehicles of any nature or kind (including but not limited to automobiles, trucks, motorcycles, all-terrain vehicles, and ski mobiles), except such as may be necessary in the exercise of the Grantor's reserved rights or for property maintenance, security patrol, or to fight fire;
- (f) Activities detrimental to flood control, water or soil conservation, wetland protection, or erosion control;
- (g) Cutting, removal or destruction of trees, grasses, forbs, shrubs, or other vegetation; or
- (h) Other acts or uses, which in the reasonable opinion of the Grantee are detrimental to the preservation of the Restriction Area consistent with the purposes of this Conservation Restriction.

3. Reserved Rights. Notwithstanding anything contained in Paragraph 1 above, the Grantor reserves for himself and his successors and assigns, and others subject to prior approval and consent from the grantor, his successors or assigns, the right to conduct or permit the following activities on the Restriction Area:

- (a) The right to conduct or permit for personal use of the Grantor and his successors agriculture, silviculture, horticulture, and floriculture, as commonly construed and as restricted below, conducted in an ecologically sensitive manner, so not to be detrimental to the Restriction Area, while recognizing that the existing fields have specific requirements for their productivity and with the intent of protecting the existing forest and wetlands. Such practices shall include but not be limited to:
 - (i) the cultivation and harvesting of vegetables, flowers, fruits, grasses, hay and legumes for private use or for the sale to the public, in accordance with recognized natural resource conservation and farm management practices. Any expansion of the existing 10 acres of farm fields shall not occur in any wetland, must be approved by the Grantee and shall be done in accordance with recognized natural resource conservation and farm management practices;

- (ii) the planting, transplanting and cutting of forest products in the existing forested portion of the Restriction Area, for personal use but not for sale or commercial use or construction or maintenance of lanes for access and fire protection;
 - (iii) the cultivation, planting, transplanting, and harvesting of shrubs, bushes and trees but not for sale or commercial use;
 - (iv) the raising and grazing of livestock and poultry in accordance with recognized natural resource conservation and animal husbandry practices, for personal use or for sale to the public within the Restriction Area from a farm stand;
 - (v) with the prior written approval of the Grantee, which approval shall not be unreasonably withheld or delayed, the making of improvements, including the creation of a farm stand, sight pervious fencing and the maintenance and creation of water ponds and wells in the furtherance of the foregoing activities;
 - (vi) the use and storage of agricultural and forestry machinery and implements and the storage and use of new and used metal for the construction and repair of said machinery and implements used exclusively on the Restriction Area and materials for the maintenance of such, provided that the storage is maintained in a neat and orderly fashion and is not in plain view from outside of the Restriction Area; and
 - (vii) the hauling in and storage of soil, peat, gravel, sand, rock, manure, fertilizer and other organic or mineral substance for use in the maintenance of the grounds and buildings of the Restriction Area and provided that such storage is conducted in a manner consistent with the purposes of this Conservation Restriction.
- (b) The maintenance of the Restriction Area including, without limitation, the planting, selective cutting and pruning and periodic mulching with organic matter of trees, shrubs, or other vegetation to improve the scenic view and to implement disease prevention measures, provided that all such cut vegetation shall be handled in accordance with the Slash Law, MGL Chapter 48, Sections 16 and 16A, except for such material as the Grantor and his successors may wish to compost, which material may remain in the Restriction Area for composting provided that such composting is accomplished in a manner consistent with the purposes of this Conservation Restriction and is not in plain view from outside the Restriction Area;

- (c) The existing residential dwelling on the Restriction Area may be maintained, remodeled, expanded, or replaced within the limits of the existing foundation as a single family residence. Any expansion or replacement is subject to the prior written approval of the Grantee, which approval shall not be unreasonably withheld or delayed. Other existing buildings may also be maintained, remodeled or replaced within the limits of their existing dimensions, with the prior written approval of the Grantee which approval shall not be unreasonably withheld or delayed. Existing utilities, including water, sewer, telephone, electric, and other such utilities may be maintained. All new utilities shall be located underground, such that the surface of the Restriction Area shall be restored to the same condition that it was in prior to the disturbance thereof;
- (d) Hunting, cross-country skiing, nature study and the periodically posting of the Restriction Area against entry and take such other measures as are necessary and appropriate to prevent the ripening of prescriptive rights in the Restriction Area and the maintenance of existing trails for the permitted uses within the Restriction Area, in collaboration with the Grantee in its program to maintain a network of recreational trails throughout the town. Pursuant to MGL chapter 21, section 17c, the Grantor is not liable to any member of the public who uses trails for injuries to person or property sustained by such person while on the trails in the absence of willful, wanton, or reckless conduct by the Grantor.

4. Access by the Grantee.

(a) The Grantee, through its duly designated representative, after having notified the Grantor, shall have the right to enter the Restriction Area at reasonable times and in a reasonable manner to inspect the Restriction Area to ensure compliance with the terms of this Conservation Restriction, and to prevent, abate, or remedy any violations thereof. The Grantee shall also have the right to enter the Restriction Area to selectively cut or prune trees, shrubs or other vegetation to the extent necessary to protect the condition of the Restriction Area from disease and insect damage, provided, however, that such cutting or pruning shall not be performed by the Grantee so long as the Grantor owns and occupies the Restriction Area. The Grantee hereby agrees to save the Grantor harmless and to indemnify him from all injury, loss, claims, and damage to any person or property arising from the exercise by Grantee, or any person acting by, through or under Grantee, of any rights granted by this instrument, unless arising from omission, fault, gross negligence, or other misconduct on the Grantor.

5. Proceeds from Extinguishment: Eminent Domain. The Grantor and Grantee agree that the donation of this Conservation Restriction gives

rise for purposes of this paragraph to a property right, immediately vested in the Grantee, with a fair market value determined by multiplying the current fair market value of the Restriction Area unencumbered by this Conservation Restriction (minus any increase in value attributable to improvements made after the date of this grant) by the ratio of the value of this Conservation Restriction at the time of this grant to the value of the Restriction Area, without deduction for the value of this Conservation Restriction, at the time of this grant. Such proportionate value of the Grantee's property right shall remain constant. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Restriction Area, shall be entitled to a portion of the proceeds equal to such proportionate value, subject however, to any applicable law which expressly provides for a different disposition of proceeds. Whenever all or any part of the Restriction Area or any interest therein is taken by public authority under power of eminent domain, or if all or any part of the Conservation Restriction is otherwise extinguished by 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 actions. All related expenses incurred by the Grantor and the Grantee in such action shall be paid out of recovered proceeds. The remaining recovered proceeds (including, for purposes hereof, proceeds from any lawful sale of the property unencumbered by the restrictions hereunder) shall be distributed to the Grantor and the Grantee in shares proportional to the fair market value or their interest in the Restriction Area on the date of execution of this Conservation Restriction. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein and in accordance with MGL chapter 44, section 63.

6. Binding Effect; Enforcement. The burdens of the Conservation Restriction shall be deemed to run with the Restriction Area and shall be enforceable against the Grantor, his heirs, executors, personal representatives, assigns and his successors in title in perpetuity. This Conservation Restriction shall supersede and amend the Conservation Restriction previously signed on June 15, 1978 and is in addition to and not in lieu of any other restrictions or easements of record affecting the Restriction Area. Nothing contained in the Conservation Restriction shall impose on the Grantee any duty to maintain or require that the Restriction Area be maintained in any particular state or condition, notwithstanding its acceptance hereof.

In the event that a breach of this Conservation Restriction by the Grantor comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of such a breach. The grantor shall, within 30 days after receipt of such notice, undertake actions reasonably calculated to cure the conditions constituting such a breach. If the Grantor fails to take such corrective action, the Grantee may at its discretion undertake any and all actions reasonable to cure said breach. In addition, the Grantee shall have the right to

enforce this Conservation Restriction by proceedings at law or in equity, including the right to obtain injunctive relief. In the event a court of competent jurisdiction decrees that the Grantor has caused or allowed a breach of this Conservation Restriction, the Grantor shall bear the costs of corrective action, including repair or restoration as appropriate, and shall reimburse the Grantee for legal fees incurred in the enforcement of this Conservation Restriction. Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Conservation Restriction shall not be deemed or construed to be a waiver. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

7. Acts Beyond Grantor's Control Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Restriction Area resulting (i) from causes beyond the Grantor's control, including, but not limited to fire, flood, storm, and earth movement, (ii) from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Restriction Area resulting from such causes, or (iii) from the actions of third parties (except third parties acting with the expressed authority of the Grantor).

8. Subsequent Transfers The Grantor, his successors or assigns 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 Restriction Area, including without limitation, a leasehold interest.

9. Estoppel Certificates Upon request by the Grantor, the Grantee shall within 30 days execute and deliver to the Grantor any document requested, including an estoppel certificate, which certifies the Grantors' compliance with any obligation of the Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction.

In as much as there is no monetary or other consideration of substance for this Conservation Restriction, no Massachusetts stamps are affixed hereto.

IN WITNESS WHEREOF, the said Otis E. Curtis has hereunto set his hand and seal this 31st day of March, 1997.

Otis E. Curtis
Otis E. Curtis

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

March 31, 1997

Then personally appeared before me the above-named Otis E. Curtis and acknowledged the foregoing instrument to be his free act and deed.

Latricia A. Shield
Notary Public
My Commission Expires

My Commission Expires November 4, 1999

The Boxford Conservation Commission hereby accepts this Conservation Restriction and agrees to be bound by its terms as requested by vote of its members for the protection of the Restriction Area, pursuant to M.G.L. Chapter 40, Section 8C.

Dated: May 8, 1997

[Signature]

Lara L. Sequin Spillman

[Signature]

Linda Loderoute

[Signature]

PATRICIA SHIELDS, TOWN CLERK, HAS HEREUNTO SET HER HAND AND SEAL THIS 15TH DAY OF MAY, 1997.

[Signature]

PATRICIA SHIELDS, CMC, TOWN CLERK

APPROVAL BY SELECTMEN - TOWN OF BOXFORD

We the undersigned Board of Selectmen of the Town of Boxford, Massachusetts, hereby certify that we approve the foregoing Conservation Restriction to the Boxford Conservation Commission for the preservation of the natural and scenic resources of said Town pursuant to M.G.L Chapter 40, Section 8C and Chapter 184, Section 32.

Dated: April 14, 1997

[Signature]
Gerald R. Johnston, Chairman

[Signature]
Kendall E. Pagge

[Signature]
Robert A. Was

Patricia A. Shields, Town Clerk, has hereunto set her hand and seal this 29th day of April, 1997.

[Signature]

Patricia A. Shields, CMC
Town Clerk

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned Secretary of the Executive Office of Environmental Affairs, of the Commonwealth of Massachusetts, hereby certifies that the foregoing amended and restated Conservation Restriction to the Town of Boxford 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 Restriction Area, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

Dated: July 8, 1997

[Signature]
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

July 8, 1997

Then personally appeared the above-named Tandy Cox and acknowledged the foregoing instrument to be his or her free act and deed, before me.

[Signature]
Notary Public
My Commission expires:

Sharon M. Pelosi
NOTARY PUBLIC
My Commission expires:

Sharon M. Pelosi
NOTARY PUBLIC
My Commission expires June 21, 1997

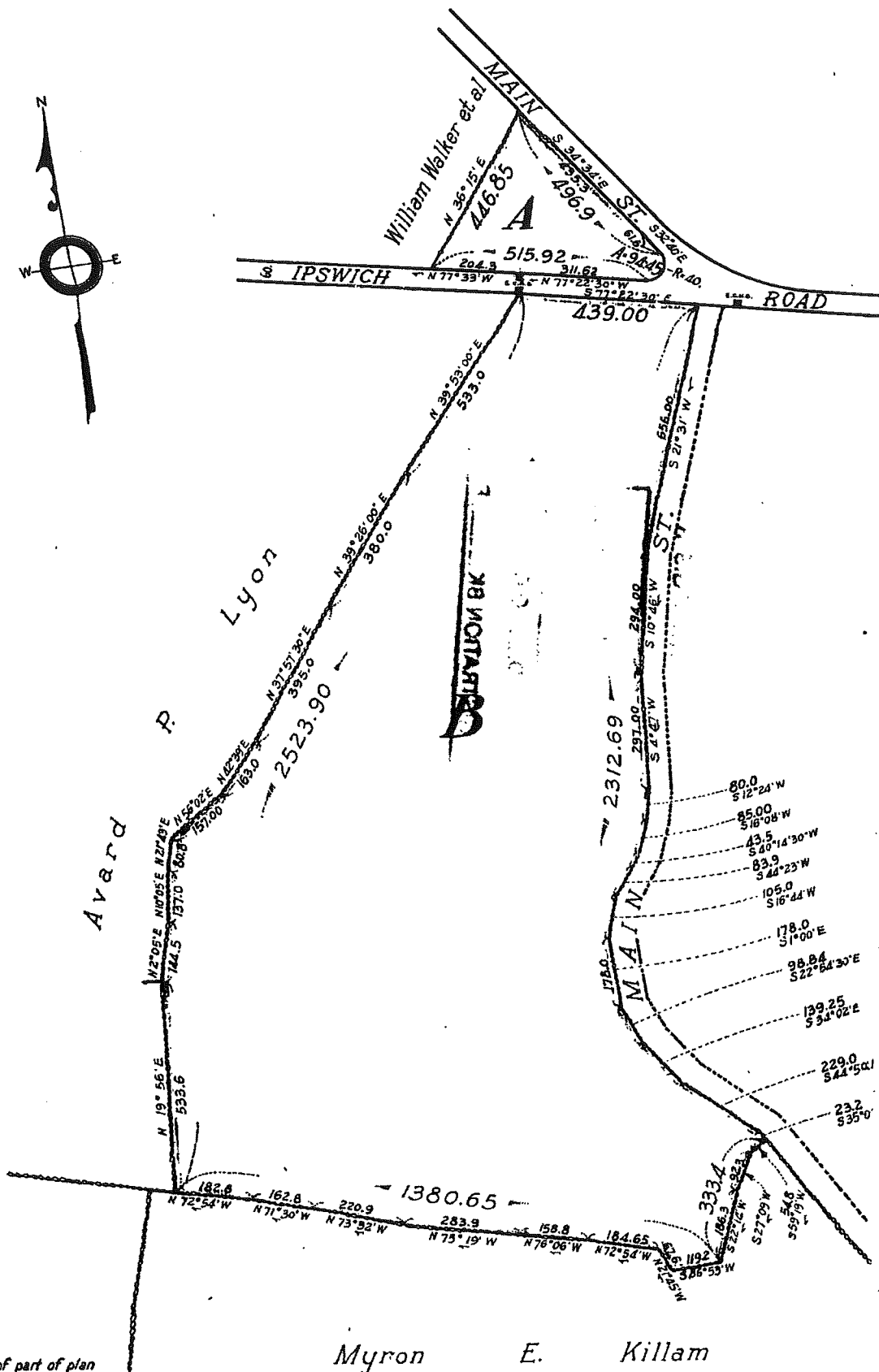
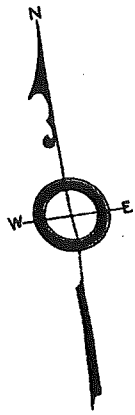
PLAN OF LAND IN BOXFORD

EXHIBIT A

18353^A

Morse, Dickinson & Goodwin, Engineers

SEPTEMBER -- 1941



Office

Copy of part of plan
filed in
LAND REGISTRATION OFFICE
JUNE 23, 1942

Myron E. Killam

South Registry Dist.

DOCUMENT NO. 331944

*Amended and
Restated
Conservation
Restriction*

ESSEX SOUTH REGISTRY DISTRICT

JUL 17 1997

RECEIVED 2 O'CLOCK 6 M (M)

REGISTRATION BK 69 PG(7052)