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Thomas M. Fiorentino
Assistant Attorney General
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Dear Atty. Fiorentino,

It appears that the AG's office has convinced CAS that the 1989 letters setting the terms (restrictions) of Harlo's gift are indeed legally enforceable, as though they were in the deed itself. If true, this is as it should be, and good news for the honest conservation community.

This sets the stage that CAS' only hope of realizing money from a sale of property must be tied to the "two conforming lots", "earmarked" for the carrying costs of the Preserve itself. In a sense this would be a way for CAS to repay itself for the last 16 years of paying carrying costs out of pocket. And, this is the basis for the "Friends"'s standing offer to pay CAS whatever these verifiable expenses were, in return for the deed.

What is not in the donor's intent is the sale of the entire 57 acres, even to another conservation organization, whereby CAS pockets the money for itself. There is no hint in any document that Harlo was entrusting the care of his gift to CAS so that they could sell it for a profit. To say this in a blunt way, such a purchase would be equal to buying stolen property. The Connecticut DEP office made this assessment early in the affair, much to their credit.

When a conservation organization determines to divest itself of property that has such restrictions, it passes it to another willing conservation organization, along with an endowment to cover reasonable carrying costs. For this reason, all interested conservation organizations are served best in not offering to purchase charitably-given sanctuary land. In theory, CAS should be unable to find any conservation organization willing to purchase this preserve. To date, this seems to be the case.

However, the situation appears to be eroding, though to what extent is only a guess. CAS has confronted the AG's office with a three word phrase tacked onto the end of a sentence and the AG's office appears taken with it. The sentence in the July 18, 1989, letter (this one from CAS to Harlo) is as follows: "I (Morehouse, CAS attorney) suggest in this regard (to create carrying cost endowment by sale of two conforming lots) that we (CAS) be permitted to sell not more than two conforming lots (zoned 1 acre), with the proceeds earmarked as an endowment for the Haagenson property as part of our Board-restricted endowment." The last three words seem to trigger certain legal consequences that you and I, as ordinary people, would translate as "CAS slush fund". If the sentence is examined closely, one might say it is self-contradictory; how can it say the money is specifically earmarked for the preserve and at the same time end up in a CAS slush fund, for whatever use they dream up? This is a mistake. Mr. Morehouse made a mistake - he authored a practically and legally impossible circumstance and all in the same sentence.

What can be done with this legal mess? It seems straight-forward and obvious; the entire tenor of the discussion is clearly devoted to fixing up the charitably-given gift with a mechanism that would create money for the preserve's carrying costs. No one is addressing this as a way to put money in CAS' slush fund - Mr. Morehouse included - he just unwittingly used a three word phrase without understanding or examining its legal interpretation.

In my layman's opinion, the AG's office has no substantial reason for getting cold feet over this incidental, perhaps accidental, misused three word phrase that contradicts the import of all that the two parties were attempting to come to grips with. If this is considered a legal grey area, we

know the Attorney General has the authority to resolve it using the donor's intent as the principal goal.

Unless the AG's office has weakened in its overall resolve (for reasons that can only be speculated over) to enforce the terms of Harlo's gift, there should be no undue concern over this fly in the ointment. In fact, one can understand it as a move by CAS to raise conservationists' concerns to the point where the Friends group over-reacts to the threat that two lots will be sold to private parties, the proceeds ending up in CAS' general fund, and the remaining acreage still being in CAS hands. First, the money must end up "carrying" the Preserve, the donor's intent, and secondly, it seems doubtful that CAS would have the energy, knowledge and patience required to subdivide a sanctuary. The latter seem particularly true, since identifying two conforming lots and going through the subdivision process has become such a headache, particularly in Harlo's hometown. And the element of time, four to six months of surveying, planning, and regulatory agencies will make this undertaking less appealing. In particular, less necessary, if CAS has indeed overcome their financial difficulties, as recently reported at their annual meeting.

Frankly, CAS' options seem severely limited unless the Friends group breaks ranks and offers money above and beyond the "carrying costs" offer, or the AG's office decides to allow CAS a loophole. And this analysis does not include the possibility that the AG's office will pursue the wrongdoing associated with the transfer to Owl Properties, LLC, a premeditated act that unlocked the tax free sanctuary status and converted the property into a developable, salable chunk of pristine real estate. Presently, there is no indication that the AG's office has the will to follow up this aspect of the affair, but it is not for the lack of evidence.

In conclusion, there are two possible outcomes; either the situation is returned to its 1989 status, with restrictions in the deed and Owl Properties LLC out of business, or CAS could accept the offer from the East Haddam Land Trust and the Friends of Haagenson Preserve to reimburse their carrying costs to date in return for the deed. If the latter outcome is realized, CAS would be required to substantiate their costs, and that should include profits realized from the sale of timber, and it should not include the property taxes which Owl Properties is now paying.

Respectfully,

Gustaf B. Carlson

cc: Friends of Haagenson Preserve Website
Roland C. Clement, Past President, CAS
Senator Christopher Dodd
Linda Krause, The Gateway Commission
Tim Northrup, The Trust for Public Land
DEP Commissioner Gina McCarthy

PS: The reader is advised that the above thoughts and conclusions are those of the writer and do not necessarily represent the position of the Friends of Haagenson Preserve.