

4
pages

37151

601

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DECLARATIONS OF
RESTRICTIVE COVENANTS
FOR WETLANDS PRESERVATION

1st THIS DECLARATION OF RESTRICTIVE COVENANTS is made this day of November, 1995, by Battery Point, A Partnership, Organized and Existing Under The Laws of the State of South Carolina, (hereinafter referred to as "Declarant").

R E C I T A L S

WHEREAS, Declarant is the owner of certain real property ("real property" includes wetlands, lands underlying other waters of the U. S., uplands, associated riparian/littoral rights), located in Beaufort County, South Carolina, more particularly described in Exhibit "A" attached hereto and by reference made a part hereof; and

WHEREAS, in consideration of the issuance of Department of the Army Permit No. 95-1G-190-C ("Permit") to Declarant by the U. S. Army Corps of Engineers, Charleston District ("Corps"), and consistency certification by the S. C. Department of Health and Environmental Control, Office of Coastal and Resource Management ("OCRM"), and for the protection or enhancement of the Property's wetlands, scenic, conservation, resource, environmental, or other values, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Declarant has agreed to place certain restrictive covenants on the Property, in order that the Property shall remain substantially in its natural condition forever, as provided herein.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land.

1. Declarant, and its successors and assigns forever, are and shall be prohibited from the following: filling, draining, flooding, dredging, impounding, clearing, cultivating, excavating, constructing or erecting in, or otherwise altering or improving the Property; burning, systematically removing, cutting, or otherwise destroying vegetation on the Property in other than an incidental fashion, spraying with biocides, introducing exotic species into the Property; otherwise altering the natural state of the Property; and from changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters, and any other discharge or activity requiring a permit under federal or state clean water and water pollution control laws and regulations, as amended.

2. The following are excepted from Paragraph 1:

A. Wetland O and C shall have a thirty-five (35') foot buffer located around each of these wetlands except for drainage

easements and at the entrance road as shown on the Wetland Impact and Mitigation Plan dated 4/20/95 and revised 9/26/95 by Civil Site Environmental. The Buffer shall undisturbed.

B. Wetland B, G, I & K shall be undisturbed except for one six (6') foot elevated board walk that will be allowed through these wetlands as shown on Wetland Impact & Mitigation Plan dated 4/20/95 and revised 9/26/95 by Civil Site Environmental. The clearing necessary for these board walks shall be done by hand.

C. Wetlands A & J shall be partially filled as shown on Wetland Impact & Mitigation Plan dated April 20, 1995 and revised 9/26/95 by Civil Site Environmental.

1. Wetland A

Total area	.21 Ac.
To be filled	.09 Ac.
Remaining	.12 Ac.

2. Wetland J

Total area	.51 Ac
To be filled	.34 Ac
Remaining	.17 Ac.

Also these wetlands shall have a six (6') foot elevated board walk that will be allowed through these wetlands, clearing for these wetlands shall be done by hand.

3. Any request for modification of the Permit, or any other permit application or request for certification or modification which may affect the Property made to any governmental entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy of these restrictive covenants.

4. It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Property. These restrictive covenants are created solely for the protection of the Property, wetlands, and associated values, and Declarant reserves the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the rights to exclude others and to use the property for all purposes not inconsistent with these restrictive covenants.

5. The Corps, OCRM, (and any successor agencies) and its/their authorized agents shall have the right to enter and go upon the lands of the Declarant, its successors and assigns, to inspect the Property and take actions necessary to verify compliance with these restrictive covenants.

6. These restrictive covenants shall be binding upon the

Declarant, its successors and assigns, and the restrictions herein shall be legally binding upon all subsequent owners, lessees, or other occupiers or users.

7. The Declarant grants to the Corps, the U. S. Department of Justice, OCRM, or any other governmental entity with jurisdiction over wetlands on the Property, a discretionary right to enforce these restrictive covenants or terms hereof in an action at law or in equity against any person(s), or other entity/entities violating or attempting to violate this Declaration of Restrictive Covenants; provided, however, that no violation of these restrictive covenants or terms hereof shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other remedy under law or in equity. An enforcing agency shall also be entitled to an award of costs and attorney fees in any enforcement action in which it obtains relief. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the Permit.

8. Declarant, its successors and assigns shall include the following warning on all deeds, mortgages, plats or any other legal instruments used to convey any interest in the Property:

WARNING: This Property is Subject to Declaration of Restrictive Covenants for Wetlands Preservation Recorded in the Office of the R.M.C. for Beaufort County, South Carolina in Book at Page .

9. The perimeter of the Property shall at all times be plainly marked by permanent signs saying "Protected Natural Area", or by an equivalent, permanent marking system.

10. A plat depicting the Property, entitled "Property Subject to Declaration of Restrictive Covenants for Wetlands Preservation" shall be recorded in the RMC Office for Beaufort County, South Carolina in which the Property is situated prior to the recording of these restrictive covenants. The plat is recorded in the Office of the R.M.C. for Beaufort County, South Carolina in Book 54 at Page 167.

11. Should any separable part of these restrictive covenants be determined to be contrary to law, the remainder shall continue in full force and effect.

12. Declarant may in the future request a modification of the Permit to substitute or trade property which is not encumbered by conservation easements or covenants, for, and in place of, the Property and restrictive covenants herein, provided such substitute or traded property is of greater values (wetlands, scenic, conservation, resource, environmental) than the Property herein, is placed under equivalent or more restrictive easements or covenants,

and is otherwise consistent with mitigation law and policy, which discretionary determinations shall be made by the Corps and OCRM (or their successors), in consultation with resource agencies as appropriate.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed in its name under seal, as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

DECLARANT
Battery Point, A Partnership
Organized and Existing Under
The Laws of the State of
South Carolina

Ann B. Williamson
Signature of Witness

By: *Golden R. Battey, Jr.*
Golden R. Battey, Jr.
Its Managing Partner

Susan M. Lanier
Signature of Notary Public
My Commission Expires:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned witness, who, under oath states that she saw the Battery Point, A Partnership Organized and Existing Under the Laws of the State of South Carolina by Golden R. Battey, Jr., its Managing Partner, sign, seal and as his act and deed, deliver the within written instrument and that she with the other witness witnessed the execution thereof.

Ann B. Williamson
Signature of Witness

SWORN TO and subscribed before
me this 1st day of November, 1995

Susan M. Lanier
Notary Public for South Carolina
My Commission Expires: 8-28, 2001

787 FILED *Basque + Assoc.*
JOHN A. SULLIVAN, JR.
R.H.C.
BEAUFORT COUNTY, S.C.

605

95 NOV -3 PM 3:12

BK *814* PG *601*
FOLDER #

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DECLARATIONS OF
RESTRICTIVE COVENANTS
FOR WETLANDS PRESERVATION

1st THIS DECLARATION OF RESTRICTIVE COVENANTS is made this day of November, 1995, by Battery Point, A Partnership, Organized and Existing Under The Laws of the State of South Carolina, (hereinafter referred to as "Declarant").

R E C I T A L S

WHEREAS, Declarant is the owner of certain real property ("real property" includes wetlands, lands underlying other waters of the U. S., uplands, associated riparian/littoral rights), located in Beaufort County, South Carolina, more particularly described in Exhibit "A" attached hereto and by reference made a part hereof; and

WHEREAS, in consideration of the issuance of Department of the Army Permit No. 95-1G-190-C ("Permit") to Declarant by the U. S. Army Corps of Engineers, Charleston District ("Corps"), and consistency certification by the S. C. Department of Health and Environmental Control, Office of Coastal and Resource Management ("OCRM"), and for the protection or enhancement of the Property's wetlands, scenic, conservation, resource, environmental, or other values, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Declarant has agreed to place certain restrictive covenants on the Property, in order that the Property shall remain substantially in its natural condition forever, as provided herein.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land.

1. Declarant, and its successors and assigns forever, are and shall be prohibited from the following: filling, draining, flooding, dredging, impounding, clearing, cultivating, excavating, constructing or erecting in, or otherwise altering or improving the Property; burning, systematically removing, cutting, or otherwise destroying vegetation on the Property in other than an incidental fashion, spraying with biocides, introducing exotic species into the Property; otherwise altering the natural state of the Property; and from changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters, and any other discharge or activity requiring a permit under federal or state clean water and water pollution control laws and regulations, as amended.

2. The following are excepted from Paragraph 1:

A. Wetland O and C shall have a thirty-five (35') foot buffer located around each of these wetlands except for drainage

easements and at the entrance road as shown on the Wetland Impact and Mitigation Plan dated 4/20/95 and revised 9/26/95 by Civil Site Environmental. The Buffer shall undisturbed.

B. Wetland B, G, I & K shall be undisturbed except for one six (6') foot elevated board walk that will be allowed through these wetlands as shown on Wetland Impact & Mitigation Plan dated 4/20/95 and revised 9/26/95 by Civil Site Environmental. The clearing necessary for these board walks shall be done by hand.

C. Wetlands A & J shall be partially filled as shown on Wetland Impact & Mitigation Plan dated April 20, 1995 and revised 9/26/95 by Civil Site Environmental.

1. Wetland A

Total area	.21 Ac.
To be filled	.09 Ac.
Remaining	.12 Ac.

2. Wetland J

Total area	.51 Ac
To be filled	.34 Ac
Remaining	.17 Ac.

Also these wetlands shall have a six (6') foot elevated board walk that will be allowed through these wetlands, clearing for these wetlands shall be done by hand.

3. Any request for modification of the Permit, or any other permit application or request for certification or modification which may affect the Property made to any governmental entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy of these restrictive covenants.

4. It is expressly understood and agreed that these restrictive covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the Property. These restrictive covenants are created solely for the protection of the Property, wetlands, and associated values, and Declarant reserves the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the rights to exclude others and to use the property for all purposes not inconsistent with these restrictive covenants.

5. The Corps, OCRM, (and any successor agencies) and its/their authorized agents shall have the right to enter and go upon the lands of the Declarant, its successors and assigns, to inspect the Property and take actions necessary to verify compliance with these restrictive covenants.

6. These restrictive covenants shall be binding upon the

Declarant, its successors and assigns, and the restrictions herein shall be legally binding upon all subsequent owners, lessees, or other occupiers or users.

7. The Declarant grants to the Corps, the U. S. Department of Justice, OCRM, or any other governmental entity with jurisdiction over wetlands on the Property, a discretionary right to enforce these restrictive covenants or terms hereof in an action at law or in equity against any person(s), or other entity/entities violating or attempting to violate this Declaration of Restrictive Covenants; provided, however, that no violation of these restrictive covenants or terms hereof shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other remedy under law or in equity. An enforcing agency shall also be entitled to an award of costs and attorney fees in any enforcement action in which it obtains relief. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the Permit.

8. Declarant, its successors and assigns shall include the following warning on all deeds, mortgages, plats or any other legal instruments used to convey any interest in the Property:

WARNING: This Property is Subject to
Declaration of Restrictive Covenants for
Wetlands Preservation Recorded in the Office
of the R.M.C. for Beaufort County, South Carolina
in Book at Page .

9. The perimeter of the Property shall at all times be plainly marked by permanent signs saying "Protected Natural Area", or by an equivalent, permanent marking system.

10. A plat depicting the Property, entitled "Property Subject to Declaration of Restrictive Covenants for Wetlands Preservation" shall be recorded in the RMC Office for Beaufort County, South Carolina in which the Property is situated prior to the recording of these restrictive covenants. The plat is recorded in the Office of the R.M.C. for Beaufort County, South Carolina in Book 54 at Page 107.

11. Should any separable part of these restrictive covenants be determined to be contrary to law, the remainder shall continue in full force and effect.

12. Declarant may in the future request a modification of the Permit to substitute or trade property which is not encumbered by conservation easements or covenants, for, and in place of, the Property and restrictive covenants herein, provided such substitute or traded property is of greater values (wetlands, scenic, conservation, resource, environmental) than the Property herein, is placed under equivalent or more restrictive easements or covenants,

