

TO: Executive Office of Environmental Affairs  
From: Ashley Freetown Realty Trust  
RE: Alternatives Analysis for 104 Copicut Road, Freetown, MA  
Date: July 19, 2024

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The Ashley Freetown Realty Trust (“Trust”) submits the following Alternatives Analysis in support of amending the deed restriction applicable to the real property located at 104 Copicut Road, Freetown, MA, 02702. As outlined below, there is no reasonable or feasible alternative to amending the applicable deed restriction.

## **I. BACKGROUND**

The Trust is the present owner of the real property located 104 Copicut Road, Freetown, MA 02702 (the “Property”). The Property was previously part of a larger, 14-acre property which was purchased from the Commonwealth in 1981. The entire 14 acres was made subject to a deed restriction which limited the grantees, and their heirs and assigns, to the construction of no more than two single family dwellings on the land.

In 2014, the owner, known as the Bellfree Realty Trust, began to subdivide the 14-acre property and sold a 1.6 acre parcel, now known as 112 Copicut Road, to a third party who began to construct a residential home. Shortly thereafter in early 2015, the Bellfree Trust then sold another 1.6 parcel, 104 Copicut Road, Freetown, MA, to the Trust. The Trust then constructed a single-family home and garage on the Property. None of the deeds for these purchases included or referenced the prior deed restriction on the original 14-acre property. Neither the Trust or its sole Trustee was advised or made aware of the deed restriction by its closing attorney.

By certified letter dated February 3, 2020, and copied to the Trust, the Department of Conservation and Recreation (“DCR”) notified the Bellfree Realty Trust that its development of the 14 acres was in violation of the prior deed restriction. H.900 was filed by Representative Paul A. Schmid, III, as a means of rectifying the inadvertent violation of the existing deed restriction.

## **II. PROPOSED ART. 97 ACTION**

The Trust seeks to have the deed restriction amended or otherwise removed from the Property so as to permit the already constructed residence and garage. Since DCR’s 2020 letter, the Trust and its Trustee has been in communication with the Department regarding the development and possible resolution. As a result of those discussions, DCR supports amending the restriction. In exchange, the Trust will pay fair market value for the Property to the Commonwealth as compensation.

To be clear, the Trust seeks the amendment/removal of the restriction as it pertains *only* to the 1.6-acre Property. The remaining portions of the original 14-acre property would remain subject to the deed restriction, and no further development in violation of that restriction would occur.

### III. ALTERNATIVES

No feasible alternatives to the proposed Art. 97 action exist. The purpose of the proposed action is to permit a change in use of the property. However, the construction of the residence was completed long before the Trust was made aware of the applicable deed restriction. This was an inadvertent violation resulting from the failures of third parties upon which the Trust relied. Due to those failures, the structures have already been built and the change in use of the Property has already occurred.

No further development of the Property would occur. This would, to the extent feasible, mitigate any further loss to the Commonwealth. Moreover, the area immediately surrounding the Property includes residential homes of similar use and size. Therefore, this use of the Property is not out of place for the character of the immediate area.

Further, full enforcement of the restriction is neither economically feasible nor equitable. The Trust acted at all times in good faith under the impression its construction of the home was permissible. The home otherwise complies with all other applicable codes, restrictions, and requirements. The demolition and removal of the home would remove available housing from the market, result in the loss of significant economic investments, and would not realistically restore the property to its original condition. DCR has not recommended or pursued such enforcement under the circumstances.

Nor is preserving the status quo desirable or feasible. Unless the proposed Art. 97 action is approved, and the deed restriction amended or removed from the Property, the real estate will continue to exist as a home constructed contrary to the applicable restriction. This places the Trust, and any heirs, successors, or assigns, in a legally uncertain position. For example, it is unclear what course of conduct would be permitted if the home was severely damaged or destroyed by fire or other casualty. Amending the deed restriction would ensure legal clarity and clear title.

The Trust believes it is in the public interest to see that the Commonwealth is properly compensated for this change in use. Accordingly, with DCR's support and recommendation, the Trust seeks to make the Commonwealth and its residents whole by paying fair market value for the property. This funding in lieu request is appropriate because it is not feasible to contemporaneously designate replacement land. The original parcel is 14 acres that was entirely privately owned as residential property. The natural resource value of the Trust's 1.6 acre parcel is directly relative to its position and relationship to the overall, larger 14-acre parcel. It is not feasible for the Trust to designate replacement land that is reasonably equivalent given the unique circumstances. Moreover, the change in use has already occurred and therefore it is not possible to designate such land, if it were available, contemporaneously with the change in use.

The Property is not located within an Environmental Justice Population. Moreover, the original 14-acre property was at all times private land. Therefore, the Property's change in use would not adversely impact an environmental justice population.

#### IV. CONCLUSION

Because no feasible alternatives exist, the Trust's proposed Art. 97 action to remove or amend the deed restriction applicable to the 1.6 acre Property should be granted.

Respectfully submitted,  
Ashley Freetown Realty Trust,  
By its Attorney,

A handwritten signature in dark ink, appearing to read 'CHB', is positioned above a horizontal line.

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