

MICHAEL S. BONNANO  
JOHANNA McCORMICK  
PAUL M. GERAGHTY\*  
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\*Also Admitted in New York  
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July 6, 2023

Via email [ggoeschel@eltownhall.com](mailto:ggoeschel@eltownhall.com)  
Gary Goeschel  
Director of Planning  
Inland Wetlands Enforcement Officer  
Town of East Lyme  
108 Pennsylvania Avenue  
Niantic, CT 06357

Re: Nehantic Highlands Subdivision

Dear Gary,

As a follow up to our meeting this correspondence shall confirm my clients will be conveying, via warranty deed, to the East Lyme Land Trust, Inc., on Monday July 10, 2023, all of the inland wetlands on the property of the above referenced proposed subdivision. In addition, my clients will be conveying a Conservation Easement on additional portions of the property subject to the pending subdivision application, (see Exhibit A), once the proposed subdivision is approved. I have attached a copy of the proposed Conservation Easement as Exhibit B.

The effect of the deeded conveyance of the entirety of the wetlands renders the Planning Commission's Inland Wetland referral and the Inland Wetlands Agency's report moot given the fact that statutory requirements under Connecticut General Statute 8-26(e) no longer exist. I have attached the cited statute as Exhibit C.

Please make this letter a part of the record of both the Planning Commission and Inland Wetland Agency with regard to the proposed Nehantic Highlands Subdivision.



Please contact me should we need to discuss this matter further.

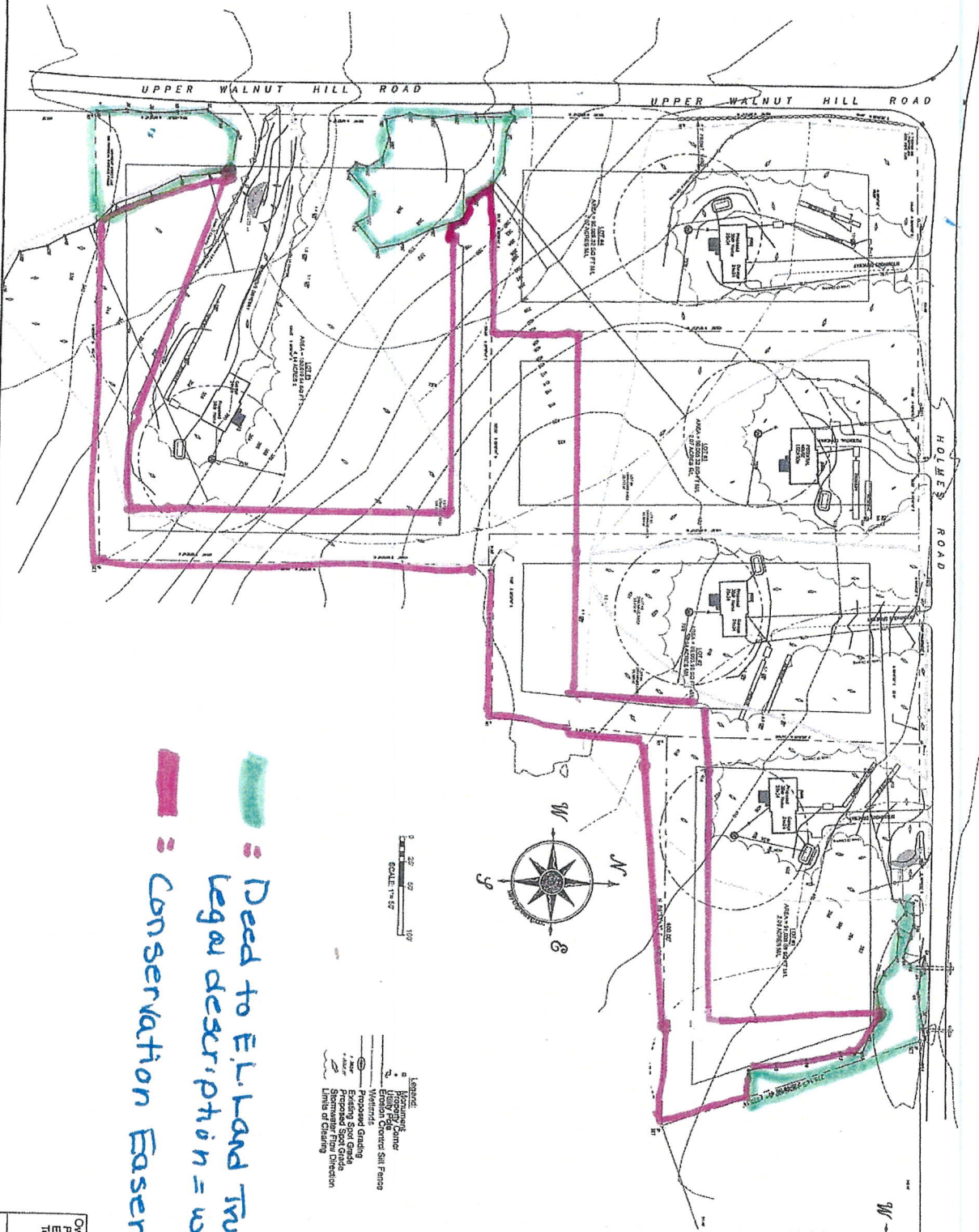
Sincerely,

Paul M. Geraghty

Cc Kristen Clarke P.E. w/o enc.  
James Bernardo L.S. w/o enc.  
Tim May P.E. w/o enc.  
Enc.



# **EXHIBIT A**



Deed to E.L. Land Trust - 3 Parcels  
 Legal description = wetlands flags  
 Conservation Easement

- Legend
- Boundaries
- Existing Spot Grade
- Proposed Grading
- Stormwater Runoff Direction
- Limits of Clearing

<b>Owner:</b> Port Side Holdings Inc. & English Harbour Capital Partners LLC Tenants in Common 507 Clarendon Ave Swampscott, MA 02561		<b>Applicant:</b> May Engineering LLC Civil Engineering and Site Planning 1257 RT 163 Oakdale, CT 06370 860.894.0071	
<b>Site Development and Stormwater</b> Drainage Flow Paths		<b>HOLMES ROAD</b> EAST LYME, CT SCALE: 1"=50' DATE: 26 April 2023 JOB NUMBER: 21040 SHEET: 6 of 10	

# **EXHIBIT B**

## CONSERVATION EASEMENT

**KNOW ALL PERSONS BY THESE PRESENTS**, that **HATHAWAY FARM LLC** ("Grantor") for the consideration of One Dollar (\$1.00) and other valuable consideration received to our full satisfaction of the **EAST LYME LAND TRUST, INC.**, ("Grantor"), do give, and grant, and convey unto the Grantee, it's successors and assigns forever, the following;

A Conservation Easement to have all the force and effect for a "Conservation Easement" as defined by Section 47-42a of the Connecticut General Statutes for the purpose of retention of the hereinafter described land predominantly in its present natural and open condition in perpetuity.

The land subject to this Conservation Easement consists of those portions of the land located in the Town of East Lyme, County of New London, and State of Connecticut, which is designated as "Conservation Easement Area" consisting of \_\_\_\_\_ acres on a plan entitled "**SUBDIVISION PLAN NEHANTIC HIGHLANDS SUBDIVISION**", Applicant: Kristen Clarke PE & Shelly Harney Holmes Road & Upper Walnut Hill Road East Lyme, Connecticut, prepared by **JAMES BERNARDO LAND SRUVEYING, LLC**, and dated February 7, 2023, revised to \_\_\_\_\_ and to be filed in the East Lyme Land Records.

1. maintenance of buildings, camping accommodations, mobile homes, patios, decks, porches, or other structures except as specifically permitted below;
2. There shall be no filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock minerals or other materials, nor any change in the topography of the land in any manner, except as specifically permitted below;
3. There shall be no removal, destruction of cutting of trees or plants, spraying with biocides, herbicides, or their agents inimical to plant, animal or insect life, grazing of domestic or farm animals, or disturbance of change in the natural habitat in any manner, except as specifically permitted below;
4. There shall be no dumping of ashes, trash, garbage, other unsightly or offensive material, and no changing of the topography through the placing of soil or other substances of material such as land fill or dredging spoils, except as specifically permitted below;
5. There shall be no manipulation nor alteration of natural water courses, shores, marshes, or other water bodies or activities or uses detrimental to water purity, except as specifically permitted below;



6. There shall be no operation of motorized vehicles, including snowmobiles, dune buggies and all-terrain vehicles; and
7. There shall be no construction, improvement, or upgrading of roads, driveways, parking areas, cart paths, or footpaths except as necessary to maintain existing footpaths in the current condition or specifically permitted below.

The provisions of the preceding restrictions notwithstanding, the following uses and activities by Grantors, and their heirs, successors and assigns, and any work or activity otherwise prohibited by the preceding restrictions which is reasonably necessary or appropriate in connection with such uses or activities otherwise not be prohibited by this Conservation Easement or considered inconsistent with the intent of this grant and are specifically permitted;

- a. The removal of dead, diseased, or hazardous trees or other vegetation when such removal is necessary for reasons of safety, to control the spread of disease, or to control obnoxious plant growth such as cat brier, poison ivy, wild grape, oriental bittersweet, or other invasive species, and when such activities are conducted in a manner which will otherwise not be harmful to the remaining plant life; and
- b. Activities associated with an approved inland wetlands permit, such as, but not limited to, wetland mitigation or enhancement, stormwater management, or stormwater discharges.
- c. The use of the area for drainage and drainage structures.
- d. Any activity exempt from Connecticut General Statute Section 22a-40

Reserving to the grantor the right to use the servient tenements for any purposes not inconsistent with the restrictions herein granted.

This grant for Conservation Easement is intended to encompass the powers and rights granted pursuant to Sections 47-42a through 47-42c of the Connecticut General Statutes as they may be amended from time to time, and the Grantee is hereby granted the right, in a reasonable manner and at reasonable times, to enforce by proceedings of law or in equity the covenants herein above set forth, including, but not limited to, the right to require restoration of the Conservation Easement area substantially to its condition immediately prior to any violation of the restrictions herein contained. The failure of the Grantee to act in any one or more instances to enforce such rights shall not act as a waiver or forfeiture of its rights to take action as may be necessary to insure compliance with the covenants and purposes of this grant; provided, however, nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantors or the owners of the servient tenements for any



changes to the Conservation Easement area due to causes beyond the control of the Grantor's or the owners of the servient tenements, such as changes caused by fire, flood, storm, earthquake, insect infestation, wildlife damage, or the unauthorized wrongful acts of third parties.

In the event that the Grantee becomes aware of an event or circumstance of noncompliance with the terms and conditions herein set forth, the Grantee shall give notice of such event or circumstances of noncompliance by certified mail, return receipt requested, to the owner of the servient tenement of the property involved at his last known address, such notice to contain a request for corrective actions reasonable required to abate such even or circumstances of noncompliance and restore the conservation Easement area to substantially its previous condition.

Failure by the owner of the servient tenement to whom notice has been given to cause discontinuance or abatement or to undertake such other action as may be reasonably requested by the Grantee within thirty (30) days after receipt of notice shall entitle the Grantee to bring an action at law equity in a court of competent jurisdiction to enforce the terms of the conservation Easement to require the restoration of the Conservation Easement area to substantially its previous condition, to enjoin such noncompliance by appropriate temporary or permanent injunction and/or to seek to recover damages arising from such noncompliance. Such damages, when and if removed shall be applied by the Grantee first to any necessary corrective action on the Conservation Easement area, then to other damages incurred by the Grantee and arising from such noncompliance. Such damages, when and if recovered shall be applied by the Grantee first to any necessary corrective action of the Conservation Easement area, then to other damages incurred by the Grantee and arising from such noncompliance.

If a court of competent jurisdiction determines that an owner of the servient tenement has failed to comply with the terms and conditions of this Conservation Easement, the owner shall reimburse the Grantee for any reasonable cost of enforcement, including court costs and reasonable attorney's fees. If such court determines that such owner was in compliance with the terms and conditions of this Conservation Easement the Grantee shall reimburse such owner for court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. The Grantors, for themselves, their heirs, successors and assigns, hereby waive any defense of laches with respect to any delay by the Grantee, its successors and assigns, in actions to enforce any restriction to exercise any rights under this grant.

This instrument shall be recoded on the land records to the Town of East Lyme and shall be governed by the laws of the State of Connecticut. In the event that any provisions of clause of this instrument conflicts with any applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and, to this end, the provisions hereof are declared to be severable



IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of July, 2023

PORT SIDE HOLDINGS, INC.

Witness

\_\_\_\_\_

By \_\_\_\_\_  
Shelly Harney, President

\_\_\_\_\_

STATE OF NORTH CAROLINA )  
COUNTY OF \_\_\_\_\_ ) ss:

Personally appeared Shelly Harney, President of Port Side Holdings, Inc. Signer and Sealer of the forgoing instrument, and acknowledged the same to be her free act and deed and the free act and deed of said corporation, this \_\_\_\_ day of July, 2023, before me.

\_\_\_\_\_  
Notary Public

ADDITIONAL SIGNATURE ON THE FOLLOWING PAGE







**IN WITNESS WHEREOF**, I have hereunto set my hand this \_\_\_\_ day of July, 2023

**ENGLISH HARBOUR CAPITAL PARTNERS  
LLC**

## Witness

By Kristen T. Clarke, Manager

STATE OF NEW HAMPSHIRE )  
COUNTY OF \_\_\_\_\_ ) ss:

Personally, appeared Kristen T. Clarke, Manager of Hathaway Farm LLC, Signer and Sealer of the foregoing instrument, and acknowledged the same to be her free act and deed and the free act and deed of said limited liability company, this \_\_\_\_ day of July, 2023, before me.

Notary Public



The **EAST LYME LAND TRUST, INC.** hereby acknowledges acceptance of the foregoing conveyance.

Signed, Sealed and Delivered  
In the presence of

**EAST LYME LAND TRUST, INC.**

By \_\_\_\_\_  
Ronald Luich, President

\_\_\_\_\_  
\_\_\_\_\_  
  
STATE OF CONNECTICUT

SS \_\_\_\_\_

COUNTY OF NEW LONDON

The foregoing Instrument was acknowledged before me this \_\_\_\_ day of July, 2023 by Ronald Luich, President of the East Lyme Land Trust, Inc., a State of Connecticut Corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary  
My commission expires

# EXHIBIT C



(b) The commission may establish a schedule of fees and charge such fees. The amount of the fees shall be sufficient to cover the costs of processing subdivision applications, including, but not limited to, the cost of registered or certified mailings and the publication of notices, and the costs of inspecting subdivision improvements. Any schedule of fees established under this section shall be superseded by fees established by ordinance under section 8-1c.

(c) The commission may hold a public hearing regarding any subdivision proposal if, in its judgment, the specific circumstances require such action. No plan of resubdivision shall be acted upon by the commission without a public hearing. Such public hearing shall be held in accordance with the provisions of section 8-7d.

(d) The commission shall approve, modify and approve, or disapprove any subdivision or resubdivision application or maps and plans submitted therewith, including existing subdivisions or resubdivisions made in violation of this section, within the period of time permitted under section 8-26d. Notice of the decision of the commission shall be published in a newspaper having a substantial circulation in the municipality and addressed by certified mail to any person applying to the commission under this section, by its secretary or clerk, under his signature in any written, printed, typewritten or stamped form, within fifteen days after such decision has been rendered. In any case in which such notice is not published within such fifteen-day period, the person who made such application may provide for the publication of such notice within ten days thereafter. Such notice shall be a simple statement that such application was approved, modified and approved or disapproved, together with the date of such action. The failure of the commission to act thereon shall be considered as an approval, and a certificate to that effect shall be issued by the commission on demand. The grounds for its action shall be stated in the records of the commission. No planning commission shall be required to consider an application for approval of a subdivision plan while another application for subdivision of the same or substantially the same parcel is pending before the commission. For the purposes of this subsection, an application is not "pending before the commission" if the commission has rendered a decision with respect to such application and such decision has been appealed to the Superior Court.

(e) If an application involves land regulated as an inland wetland or watercourse under the provisions of chapter 440, the applicant shall submit an application to the agency responsible for administration of the inland wetlands regulations no later than the day the application is filed for the subdivision or resubdivision. The commission shall, within the period of time established in section 8-7d, accept the filing of and shall process, pursuant to section 8-7d, any subdivision or resubdivision involving land regulated as an inland wetland or watercourse under chapter 440. The commission shall not render a decision until the inland wetlands agency has submitted a report with its final decision to the commission. In making its decision the commission shall give due consideration to the report of the inland wetlands agency and if the commission establishes terms and conditions for approval that are not consistent with the final decision of the inland wetlands agency, the commission shall state on the record the reason for such terms and conditions. In making a decision on an application, the commission shall consider information submitted by the applicant under subsection (b) of section 8-25 concerning passive solar energy techniques. The provisions of this section shall apply to any municipality which exercises planning power pursuant to any special act.

(1949 Rev., S. 859; 1959, P.A. 679, S. 6; 1963, P.A. 55, S. 2; 273, S. 1; February, 1965, P.A. 622, S. 5; 1967, P.A. 884, S. 2; 1971, P.A. 862, S. 9; P.A. 73-550; P.A. 75-40; P.A. 77-450, S. 5; 77-545, S. 3; P.A. 78-243, S. 1, 2; P.A. 86-236, S. 3, 4; P.A. 87-215, S. 5, 7; 87-533, S. 9, 14; P.A. 89-356, S. 14; P.A. 92-191; 92-218; P.A. 93-124, S. 1; May 25 Sp. Sess. P.A. 94-1, S. 10, 130; P.A. 03-177, S. 7; P.A. 07-102, S. 2; P.A. 08-38, S. 2.)

History: 1959 act permitted charging of fees for processing applications and set amounts of charges and provided for action on "subdivision application or maps and plans submitted therewith" rather than "a subdivision plan"; 1963 acts required commission to state grounds for "its action" rather than for "disapproval," raised the maximum fee the commission may charge from \$2 to \$3 for each lot and provided for newspaper publication of decision of commission; 1965 act set 10-day time limit for notice by publication in a newspaper and provided notice by mail be given within 3 days instead of on or before day of notice by publication; 1967 act deleted requirement that applicant be notified of decision within 3 days and required instead notification within 10 days; 1971 act changed requirement that hearing notice be published at least 7 days before hearing to "publication ... at least twice at intervals of not less than two days, the first not more than fifteen days, nor less than ten days and the last not less than two days" before hearing, required that commission take action within 65 rather than 60 days of hearing or submission and that notice of decision be published and mailed to applicant within 15 rather than 10 days and limited extensions to 65 days; P.A. 73-550 included resubdivisions and subdivisions in existence but not submitted to commission for approval under requirement re application to commission; P.A. 75-40 increased minimum fee from \$25 to \$35 and maximum fee from \$3 to \$5 per lot; P.A. 77-450 replaced 65-day limit for decision with limit equaling period of time under Sec. 8-26d and deleted provision for 65-day extension; P.A. 77-545 added provisions concerning waivers of requirements and added provisions concerning concurrent consideration of more than one plan for same or substantially same parcel and concerning applications involving wetlands and watercourses; P.A. 78-243 increased fees to \$50 or \$25 per lot; P.A. 86-236 specified that the provisions of the section shall apply to any municipality which exercises planning power pursuant to any special act; P.A. 87-215 authorized commission to provide by regulation for additional notice by mail to adjacent landowners; P.A. 87-533 substituted provision requiring filing of applications simultaneously with inland wetlands applications, prohibiting a decision until after submission of the report of the inland wetlands agency and requiring consideration of such report for prior provision requiring that applicant file copy of application with agency responsible for administering wetlands regulation; P.A. 89-356 added provision authorizing the person who made a subdivision or resubdivision application to provide for the publication of the notice of the decision of the commission when such notice is not published in a timely manner; P.A. 92-191 added provision that an application is not "pending before the commission" if the commission has rendered a decision and such decision has been appealed to the superior court; P.A. 92-218 added provision re consideration of information on passive solar energy techniques; P.A. 93-124 eliminated the statutory fee schedule and authorized planning commissions to establish a fee schedule sufficient to cover the cost of processing applications; May 25 Sp. Sess. P.A. 94-1 made technical changes, effective July 1, 1994; P.A. 03-177 replaced provisions re publication of notice of public hearing and notice to adjacent landowners with requirement that the public hearing be held in accordance with Sec. 8-7d, effective October 1, 2003, and applicable to applications filed on or after that date; P.A. 07-102 added provision re acceptance and processing of subdivision or resubdivision involving inland wetlands and watercourses and replaced provision re due consideration of report of inland wetlands agency with provision re consideration of report of inland wetlands agency and statement on the record of terms and conditions consistent with final decision of inland