

EAST LYME PLANNING COMMISSION

Regular Meeting, January 14, 2025. 7:00 PM

CHAIRMAN: Richard Gordon
VICE CHAIRMAN: Kirk Scott
SECRETARY: Brian Bohmbach

PLANNING DIRECTOR: Gary Goeschel II
RECORDING SECRETARY: Sue Spang

CALL TO ORDER 7:00

I. ROLL CALL

Present: Richard Gordon, Brian Bohmbach, Nick Menapace, Timothy LaDucer, Alt.,
Absent: Thomas Fitting, Kirk Scott, Sandy Gignac Alt., Sam Sims, Alt., Cindy Collins,
Also Present: G. Goeschel, Planner, Don MacKenzie, BOS, Sue Spang, Recording Secretary.

The Pledge was recited.

T. LaDucer was seated

II. CALL FOR ADDITIONS TO THE AGENDA

MOTION:(Menapace/Bohmbach) to add, edible buffers, POCD coordination discussion and Upper Kensington/East Lyme Land Trust (ELLT) to New Business.
Vote: APPROVED. In favor-Menapace, Bohmbach, Gordon. Opposed-LaDucer

Abstaining:none

III. CALL FOR PUBLIC DELEGATIONS-none.

III. REPORTS

C. Communications:

D. Zoning Representative: no report

E. Ex-Officio: D. MacKenzie reported on an abandoned boat in Giants Neck that the town is now responsible for.

F. Planning Director:

G. Subcommittees

- **Plan of Conservation and Development**-no report

H. Chairman: Sandy Gignac submitted her resignation

VI. APPROVAL OF THE MINUTES

A. Regular Meeting minutes of December 9, 2024

MOTION: (Menapace/LaDucer) to approve the Meeting minutes of December 9, 2024, as presented. **Vote:** APPROVED unanimously

VII. PUBLIC HEARINGS: none

VIII. SUBDIVISIONS/RE-SUBDIVISIONS-none

IX. ZONING REFERRALS [Connecticut General Statue (CGS) 8-3a]-none

RECEIVED FOR RECORD
EAST LYME, CT
2025 JAN 21 A 10:40
Caryll M. Bohmbach
TOWN CLERK

X. MUNICIPAL REFERRALS [Connecticut General Statutes (CGS)8-24]-none

XI. OLD BUSINESS:

A. The Orchards at East Lyme Subdivision; Request for Bond Reduction

G. Goeschel read his memo [(1/14/2025) attached] explaining the various bonds and letter of credit. The Town Engineer said the amount left is adequate to cover the town for any expenses that may occur

MOTION: (Menapace/LaDucer) to hold the public bond amount of the public improvement associated with Pumpkin Grove and a portion of Arbor Crossing extended to the first intersection of Plum Hill to the intersection of Partridge Court of \$555,919.

G. Goeschel noted that \$125,000 is for E&S controls, \$430,919 is for public improvements. The bond is being reduced by \$1,725,333.

Vote: APPROVED unanimously

B. Subdivision Regulations-Section 4; Application Submission Procedure

Attorney Zamarka who was working on the regulations has retired and a new attorney will be taking over.

C. Conveyance of Open Space;

B. Nathan Hale Drive Subdivision, parcels Owner Nathan Hale Comm Assoc Inc, Assessor's Map #24.0, Lot #76-17 and Assessor's Map #24.0, Lot #76-18

C. Catbird Lane Subdivision, parcel Owner KSK Associates, LLC, Assessor's Map #36.0, Lot #31

D. Ichabod Lane Subdivision, Parcel Owners Coastal Savings Bank FSB, Assessor's Map #21.4, lot # 27

More investigation is needed

G. Goeschel also noted material included in the nights packet from Attorney Gearhaty looking to abandon a parcel on Catbird Lane which he claims should be open space.

XII. NEW BUSINESS:

A. Edible Riparian Buffers

N. Menapace discussed how edible buffers can be good advertising for homeowners and agriculture. He said the town and even the state does not have language addressing edible buffers. He asked if it was addressed in the POCD and said it should be explored for the next POCD.

B. POCD Coordination

N. Menapace said it feels like many of the other boards and commissions are not aware of the recommendations and goals that are in the POCD. He said the Planning Commission should be providing guidance to other boards and commissions.

G. Goeschel suggesting communications to boards and commissions asking where

they are in the recommendations from the POCD.

C. Upper Kensington/East Lyme Land Trust (ELLT)

N. Menapace said he was discussing with Matthew Sardo, 15 Upper Kensington with an issue of his property line with the ELLT. Sardo said it is an issue with a number of properties in that area. Menapace said he was surprised to hear that it is an issue with a few properties. He spoke to the First Selectman and G. Goeschel and was told it was a quick claim solution.

G. Goeschel gave a history of the subdivision. It was his recollection that there were issues with back taxes and that the ELLT should convey the piece to 15 Upper Kensington. G. Goeschel said he believes it is in violation of the approval. He was not aware of any other properties with the same issues.

T. LaDucer said he thought a lot of the Commissions time is being misused for inquires and discussion of things that are not on the agenda and a simple email or discussion with our representative rather than bringing it up in a meeting where people are volunteering their time would be appreciated.

XIII. ADJOURNMENT:

MOTION: (LaDucer/Bohmbach) to adjourn at 7:49. Vote: APPROVED Unanimously.

Respectfully Submitted,
Sue Spang,
Recording Secretary

Town of

P.O. Drawer 519
Department of Planning &
Inland Wetlands


*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357
Phone: (860) 691-4114
Fax: (860) 860-691-0351

MEMORANDUM

To: East Lyme Planning Commission
From: Gary A. Goeschel II, Director of Planning 
Date: January 14, 2025
RE: Orchards Subdivision – Request of J.P. Mereen on behalf of Orchards of East Lyme Development, Inc.; Bond Reduction Request

The Town of East Lyme Planning Commission holds two cash bonds totaling \$243,289.00 and a Letter of Credit in the amount of \$1,482,044.00 for following:

Erosion & Sedimentation Bond	\$125,000.00 CASH
Public Improvement Bond	\$118,289.00 CASH
Public Improvement Bond	\$1,482,044.00 LETTER OF CREDIT
TOTAL	\$1,725,333.00

Upon my review of the Orchards Bond and its status, the Letter of Credit from Liberty Bank was scheduled to expire on August 11, 2022 with the condition it be extended for an additional period of one (1) year from the present or future expiration date, unless the Liberty Bank notifies the Town 60-days prior to the expiration they no longer elect to renew the Letter which, I have not received any such notice. As one (1) year from August 11, 2022 is August 11, 2023, it appears the Letter of Credit in the amount of \$1,482,044.00 dollars is expired. However, the Planning Commission has not received any notice of non-renewal.

On November 25, 2024, J.P. Mereen, L.S. of Gerwick-Mereen, LLC on behalf of The Orchards of East Lyme Development, Inc. requested the Letter of Credit in the amount of \$1,482,044 and a portion of the Public Improvement bond in the amount of \$243,289.00 be released bringing the total Public Improvement Bond to \$430, 919.00 for the completion of Pumpkin Grove and Arbor Crossing.

The Deputy Director of Public Works and Town Engineer, Alex Klose, P.E. has reviewed the proposed plan of development for the above referenced subdivision. In e-mail correspondence from Mr. Klose to myself dated December 3, 2024, Mr. Klose indicates a Public Improvement bond in the amount of \$430,919.00 dollars would be sufficient to cover the public improvements associated with Pumpkin Grove that still remain to be completed by the applicant/developer. This amount would also include the remaining improvements to be completed on Arbor Crossing from the intersection of Plum Hill to the intersection of Partridge Court.

As such, the Orchards of East Lyme Development Inc., posted an additional cash in the amount of \$312,630.00 dollars on December 4, 2024, bringing the Total cash bond to \$430, 919.00 which, is sufficient to cover the remaining public improvements associated with the completion of Pumpkin Grove.

Therefore, the Planning Commission will hold the following bonds for the completion of the Public Improvements associated with Pumkin Grove and the portion of Arbor Crossing extending from the intersection of Plumb Hill to the first intersection of Partridge Court.

Erosion & Sedimentation Bond (cash)	\$125,000.00
Public Improvement Bond (cash)	\$430,919.00
TOTAL	\$555,919.00

PROPOSED MOTION/RESOLUTION:

I hereby move to reduce the Public Improvement Bond by \$1,725, 333.00 dollars thereby releasing the Letter of Credit and bringing the total Public Improvement Bond to \$430, 919.00 dollars.

Cc: Kevin Gervais, Director of Finance
Alex Klose P.E., Deputy Director of Public Works & Town Engineer
Tim Bleasdale, Esq.
J.P. Mereen, L.S., Gerwick Mereen
Tony Carrier, Carrier Enterprises, Inc.
File

11791



CARRIER ENTERPRISES, INC.

117 BIRCH STREET
SOUTHINGTON, CT 06489
860-793-9626

LIBERTY
BANK

51-7028/2111



12/4/2024

Security features. Details on back.

PAY TO THE ORDER OF Town of East Lyme

\$ ****312,630.00**

Three Hundred Twelve Thousand Six Hundred Thirty and 00/100*****

DOLLARS

Town of East Lyme
PO Box 108
Niantic, CT 06357

VOID AFTER 90 DAYS



[Handwritten Signature]
AUTHORIZED SIGNATURE



MEMO Cash Bond



WOUNDED WARRIORS
FAMILY SUPPORT

⑈011791⑈ ⑆211170282⑆ 001 87380 9 ⑈

CARRIER ENTERPRISES, INC.

Town of East Lyme

Public Improvement Bond - Cash bond

12/4/2024

312,630.00

11791

Liberty Bank

Cash Bond

312,630.00

Gerwick - Merein, L.L.C.

Land Surveying & Land Planning

P.O. Box 565

860.442.2201

East Lyme, CT 06333

November 25, 2024

Gary Goeschel, Director of Planning
Town of East Lyme
PO Box 519
108 Pennsylvania Avenue
Niantic, CT. 06357

Alex Kose, P.E., Town Engineer
Town of East Lyme
PO Box 519
108 Pennsylvania Avenue
Niantic, CT 06357

RE: Orchards Bond Estimate

Dear Gary and Alex;

I am writing to confirm our discussions regarding the Bond Estimate for The Orchards at East Lyme to complete the build-out of existing subdivision.

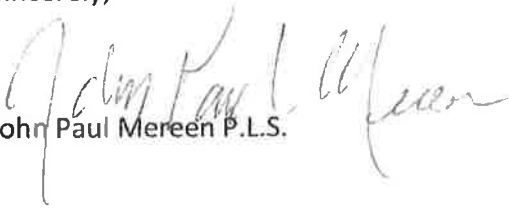
The documents include quantity estimates to complete the remaining section of the project with unit pricing for related work that has been agreed upon by this office as well as the Town.

It is my understanding that the Town is currently holding \$674,208 as a cash bond and an additional \$1,482,044 supplied as a Letter of Credit by the owner.

If you could please, at your earliest convenience, review the attached and let us know if you agree with the numbers presented, it would be appreciated. The owner is requesting the

release of the Letter of Credit Bond of \$1,482,044 as well as a reduction of the cash bond by \$243,289 to \$430,919.

Sincerely,


John Paul Mereen P.L.S.

Town of

P.O. Drawer 519
**Department of Planning &
Inland Wetlands**

*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*




East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

Phone: (860) 691-4114
Fax: (860) 860-691-0351

MEMORANDUM

To: East Lyme Planning Commission
From: Gary A. Goeschel II, Director of Planning 
Date: July 17, 2015
RE: Orchards Subdivision – Request of Attorney Robert Ziegler on behalf of Orchards of East Lyme Development, Inc.; Letter of Credit for Specific Improvements and Release of the Declaration of Restrictions and Covenants regarding Sale or Transfer of Lots

As you know, Attorney Ziegler has requested to provide a Letter of Credit to insure the completion of the public improvements in the amount of \$1,339,364.00 and the Commission execute a Release of the Declaration of Restrictions and Covenants regarding the Sale or Transfer of Subdivision Lots recorded in Volume 674 Page 286 of the East Lyme Land Records.

The Town of East Lyme Planning Commission currently holds three cash bonds totaling \$885,000.00 for the following:

Erosion & Sedimentation Bond	\$340,000.00
Public Improvement Bond	\$370,000.00
Erosion and Remediation Bond	\$175,000.00
TOTAL	\$885,000.00

The Town Engineer, Victor Benni, PE has reviewed the proposed plan of development for the above referenced subdivision. In correspondence from Mr. Benni to myself dated May 9, 2015, Mr. Benni indicates a Public Improvement bond in the amount of \$2,274,364 dollars would be sufficient to cover the public improvements that still remain to be completed by the applicant/developer. In addition, the developer proposes to reduce the Remediation Bond to \$100,000.00 dollars.

With a Letter of Credit in the amount of \$1,830,000.00 dollars the Planning commission would hold well over the \$2,274, 364.00 dollars suggested by the Town Engineer.

Erosion & Sedimentation Bond (cash)	\$340,000.00
Public Improvement Bond (cash)	\$370,000.00
Erosion and Remediation Bond (cash)	\$100,000.00
Letter of Credit	\$1,830,000.00
TOTAL	\$2,640,000.00

As such, In addition to continuing to hold the above referenced cash bonds, with the exception of reducing the Remediation bond to \$100,000.00 dollars, I would recommend the Planning Commission accept a Letter of Credit in the amount of \$1,830,000.00 dollars.

PROPOSED MOTION/RESOLUTION:

Upon submission of a properly executed Letter of Credit in the amount of \$1,830,000.00 in a form satisfactory to the Town Attorney, the Declaration of Covenants and Restrictions recorded in Volume 674, Page 286 of the East Lyme Land Records shall be released.

Cc: Victor Benni, PE, Town Engineer
Ed O'Connell, Esq.
Don Gerwick, PE

June 28, 2017

Gary Goeschel, Director of Planning
Town of East Lyme
PO Box 519
108 Pennsylvania Avenue
Niantic, CT. 06357

Victor Benni, P.E., Town Engineer
Town of East Lyme
PO Box 519
108 Pennsylvania Avenue
Niantic, CT 06357

RE: Orchards Bond Estimate

Dear Gary and Victor;

I am writing to confirm our discussions regarding the Bond Estimate for The Orchards at East Lyme to complete the build out of existing subdivision.

The documents include, quantity estimates to complete the remaining section of the project with unit pricing for related work that has been agreed upon by this office as well as the Town.

The total "basic" bond estimate for the related work was then increased by 15% for any related contingency items and/or work that might be related to the work. The total estimate for the "basic" bond was \$1,861,360.00.

In addition to the "basic" bond estimate, there has been an amount of \$340,000 carried from phase to phase for repair and/or restoration of disturbed areas as an Erosion and Sedimentation Control bond. With the majority of the roads completed and E&S measures in place for remaining roadway construction we are requesting a reduction in the Erosion and Sedimentation Bond to \$70,000. Finally, there has been an additional amount of \$100,000

carried forward for lot remediation, which is to be reduced to \$0 due to the fact that all lots have been remediated to date.

The total bond estimate based on the above should be \$1,861,360 plus the Erosion and Sedimentation Control bond reduction estimate of \$70,000 for a total Bond Estimate of \$1,931,360.

It is my understanding that the Town is currently holding \$885,000 as a cash bond and additional \$1,830,000 supplied as a Letter of Credit by the owner.

If you could please review and let us know if you are in agreement with the above numbers at your earliest convenience. The owner is requesting a reduction in the cash bond of \$783,640.

Sincerely,

John Paul Mereen L.S.

Town of

P.O. Drawer 519

Department of Planning &
Inland Wetlands

Gary A. Goeschel II, Director of Planning /
Wetlands Enforcement Officer



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

MEMORANDUM

TO: Anna Johnson, Finance Director

FROM: Gary A. Goeschel II, Director of Planning

DATE: October 13, 2017


RE: **The Orchards – Request for Road Acceptance and Partial Bond Release;** Request to release a portion of the Public Improvement Bond in the amount of \$566,711.00 dollars for the completion of public improvements associated with a Holly Lane and a portion of Arbor Crossing extending from the southerly intersection of Peach Lane to its northerly intersection with Peach Lane and to release a portion of the Erosion and Sedimentation Control Bond in the amount of \$ 190,000.00.

The East Lyme Planning Commission, at its regular meeting of Tuesday, October 3, 2017, voted to reduce the Orchards Bonds by \$566,711.00 as follows:

Description	Bond Type	Existing Balance	Reduction	Balance
Public Improvement Bond	Cash	\$370,000.00	\$251,711.00	\$118,289.00
Public Improvement Bond	LOC	\$1,830,000.00	\$0.00	\$1,830,000.00
Erosion & Sedimentation Control	Cash	\$340,000.00	\$215,000.00	\$125,000.00
Remediation (E&S)	Cash	\$100,000.00	\$100,000.00	\$0.00
Totals		\$2,640,000.00	\$566,711.00	\$2,073,289.00

Please provide a bank check in the amount of \$566,711.00 payable to Attorney Robert A. Ziegler, Trustee. As requested by the Orchards of East Lyme Development, Inc., these funds will be sent by bank check, to Attorney Robert A. Ziegler, Trustee, 58 East Main Street, Plainville, CT 06062.

THIS DOCUMENT HAS A COLORED BACKGROUND AND MICROPRINT SIGNATURE LINE • ADDITIONAL SECURITY FEATURES ON BACK • MISSING A FEATURE INDICATES A COPY

	TOWN OF EAST LYME	WEBSTER BANK	No. 557544
	GENERAL FUND	WATERBURY, CT 06702	
	P.O. BOX 510, NIANATIC, CT 06357	61-7010/2111	
	DATE	CHECK NO.	AMOUNT
	10/19/17	557544	\$****566,711.00

Five Hundred Sixty Six Thousand Seven Hundred Eleven AND 00/100 Dollars

TO THE ORDER OF Attorney Robert A. Ziegler,
Trustee,
58 East Main Street
Plainville, CT 06062

Robert E. Ziegler
TREASURER

557544 # 1 2 1 1 1 7 0 1 0 1 1 6 0 0 1 0 3 7 3 2 5 7

ENDORSE HERE

FOR DEPOSIT ONLY
ROBERT A. ZIEGLER
ATTORNEY AT LAW
LIBERTY BANK
ILTA ACCOUNT
6574612272

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVE FOR FINANCIAL INSTITUTION USE

The security features listed below are not for use on all the paper and listed, please refer to the security features on the front of the paper.

Security Features: R 10/19/17

FEDERAL RESERVE BOARD OF GOVERNORS

10/20/2017 01259576 >> 211170262 <<

Posting Date 2017 Oct 23
 Block 7114
 Seq 5211454085
 Amount \$566,711.00
 Account 0000000010373257
 Check 000000557544

Orchards Bonds:

Bond #1:

East Lyme Planning Commission Erosion & Restoration Bond – “set a bond for the proposed road construction on Arbor Crossing stations 94+50 to 102+60, including the storm water outlet and pump station area for Phase II and Phase IV”.

This bond amount originally was posted was CASH for \$175,000.00 on May 3, 2011. This amount was reduced by the Planning Commission on July 17, 2015 by \$75,000.00, and its current value is \$100,000.00.

On October 3, 2017 the East Lyme Planning Commission released this bond. The amount was included in a check #557544 dated 10/19/2017 to Attorney Robert Ziegler, Trustee. This check cleared the bank on October 23, 2017. The current bond amount is \$0.00.

Bond #2:

East Lyme Planning Commission Erosion and Sedimentation Control Bond – “set a bond for installation and maintenance of erosion and sediment controls and site restoration associated with the construction of public improvements for said subdivision”.

This bond amount originally was posted for CASH for \$340,000.00 on April 25, 2011. This amount has never been reduced, and the current bond value is \$340,000.00.

As noted in a letter from JP Mereen to V Benni and G Goeschel dated June 28, 2017 this bond is “carried from phase to phase for repair and/or restoration of disturbed areas as an E&S Control bond.

On October 3, 2017 the East Lyme Planning Commission reduced this bond by \$215,000.00. The amount was included in a check #557544 dated 10/19/2017 to Attorney Robert Ziegler, Trustee. This check cleared the bank on October 23, 2017. The remaining bond amount is \$125,000.00.

Bond #3:

East Lyme Planning Commission Completion Bond – Public Improvements – “set a bond for completion of public improvements in said subdivision”.

This bond amount originally was posted for CASH for \$370,000.00 on April 25, 2011. This amount has never been reduced and the current bond value is \$370,000.00.

On October 3, 2017 the East Lyme Planning Commission reduced this bond by \$251,711.00. The amount was included in a check #557544 dated 10/19/2017 to Attorney Robert Ziegler, Trustee. This check cleared the bank on October 23, 2017. The remaining bond amount is \$118,289.00.

Bond #4:

East Lyme Planning Commission Public Improvement Bond – this bond stemmed from a Memo from the Town Engineer to the Planning Director dated May 9, 2015 in which the Town Engineer noted a bond in the amount of \$2,274,364.00 would be sufficient to cover the public improvements that remained to be completed by the developer. With the letter of credit for the public improvements Mr. Benni noted, (\$1,830,000.00) and the Erosion and Restoration Bond (\$100,000.00) and the Public Improvement Bond for completion of the Public Improvements (\$370,000.00) and the E&S/Restoration Bond that carries over from phase to phase (\$340,000.00) this total \$2,640,000.00, exceeds the amount noted in the memo of 2015 by \$365,636.

Further, as noted in a letter dated June 28, 2017 from JP Mereen, LS, to V Benni and G Goeschel, this bond estimate constitutes the “basic” bond for “related work” which includes the “quantity estimates to complete the remaining section of the project with unit pricing for related work that has been agreed upon by this office as well as the Town.”

This bond amount was posted via a Letter of Credit from Simsbury Bank on August 14, 2015. This amount was reduced by the Planning Commission on April 13, 2021 based on acceptance of Partridge Court as a Town Road. The reduction of \$397,956.00 brings this bond amount to \$1,482,044.00.

Based on this reduction, the total bonds held are \$1,725,333.00.



**LIBERTY
BANK**

September 30, 2021

Town of East Lyme, Connecticut
108 Pennsylvania Avenue
Nanticoke, CT 06357

To Whom It May Concern:

On the instructions and for account of The Orchards of East Lyme Development, Inc., we hereby establish our Irrevocable Standby Letter of Credit No. 1876152 in your favor available by your drafts drawn on us at sight, for sum or sums not exceeding the total amount of One Million Four Hundred Eighty Two Thousand Forty-Four and United State Dollars (USD \$1,482,044.00).

Drafts drawn under this credit must be accompanied by the original of this Letter of Credit, and:

1. A statement purportedly signed by the Town Manager or duly acting executive officer of the Town of East Lyme ("Town) stating that The Orchards of East Lyme Development, Inc. has failed to satisfactorily complete the required improvements at The Orchards of East Lyme, Connecticut.

In respect to the written statement above, Liberty Bank is authorized to accept it as binding and correct without investigation or responsibility for the accuracy, veracity, correctness or validity of the same or any part thereof.

Partial Drawings are permitted.

All drafts drawn under this Letter of Credit must bear on their Face the clause "Drawn under Liberty Bank Letter of Credit No. 1876152 dated September 30, 2021."

We engage with you that all draft(s) drawn under and in compliance with the terms and conditions of this credit will be duly honored upon presentation and delivery of documents, as specific, to Liberty Bank, 315 Main Street, Middletown, CT 06457 on or before August 11, 2022, subject to the conditions in the next paragraph.

It is a condition of this credit that it shall be deemed automatically extended and the date set forth in the immediately preceding paragraph shall be extended, without amendment, for additional periods of one (1) year from the present or future expiration date hereof subject to the condition in the next paragraph, unless sixty (60) days prior to the then prevailing expiration date we notify you in writing via express, registered or certified mail to the above address that we elect not to renew this Letter of Credit for such additional period. Upon receipt by you of such notice, you may draw hereunder without having

Jennifer Rodriguez
Vice President, Commercial Real Estate Lending
jrodriguez@liberty-bank.com



LIBERTY
BANK

incurred liability by means of your draft(s) on us at sight accompanied by your written statement that this Letter of Credit has not been extended by the issuer hereof.

However, notwithstanding the above, no extension will be granted beyond August 11, 2022 which is the final expiration date of this credit.

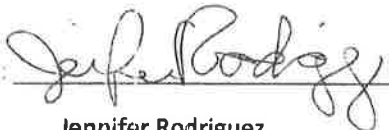
This Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, amplified or limited by reference to any documents instruments or agreements referred to herein or in which this Letter of Credit is referred to or which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any documents, instruments or agreements.

Please Note: In the event this Letter of Credit is no longer required or is to be cancelled prior to the present or future expiration date, it must be returned along with any amendments thereto to this office for cancellation.

Except so far as otherwise expressly stated, this documentary credit is subject to the "Uniform Customs and Practice for Documentary Credits (2007 Revision), ICC Publication No. 600."

Very truly yours,

LIBERTY BANK

By: 

Jennifer Rodriguez
Its Vice President

Jennifer Rodriguez
Vice President, Commercial Real Estate Lending
jrodriguez@liberty-bank.com

**EAST LYME PLANNING COMMISSION
COMPLETION BOND – PUBLIC IMPROVEMENTS**

KNOW ALL PERSONS BY THESE PRESENTS, THAT, **The Orchards of East Lyme Development Inc**, a Connecticut corporation, as **Principal(s)**, for themselves and their successors and assigns are jointly and severally bound and jointly and severally promise to pay to the order of the TOWN OF EAST LYME, a municipal corporation with an administrative office on Pennsylvania Avenue, Niantic, Connecticut, as **Obligee**, the principal sum of **ONE MILLION, FOUR HUNDRED EIGHTY-TWO THOUSAND, FOURTY-FOUR DOLLARS (\$1,482,044.00)**.

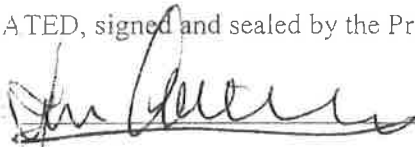
WHEREAS, the East Lyme Planning Commission on **May 18, 1999**, approved a subdivision as shown on a plan entitled: **THE ORCHARDS AT EAST LYME, Boston Post Road, East Lyme, Connecticut**, amended and revised thereafter, all of which has been duly recorded in the Office of the Town Clerk, to which reference may be had, and set a bond for completion of public improvements in said subdivision.

NOW THEREFORE, The Principal shall complete all subdivision improvements shown on said subdivision plan in accordance with the resolutions adopted on the referenced dates and shall perform all of the other obligations imposed by the Connecticut General Statutes and the East Lyme Planning Commission to the reasonable satisfaction of the East Lyme Planning Commission, then this obligation shall be void, otherwise to remain in full force and effect, and

FURTHER, if said work is not well and truly done within the period specified in the vote of said Commission, then the East Lyme Planning Commission may thereupon declare the bond to be in default and require that all improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default.

DATED, signed and sealed by the Principal this 29 day of September, 2021.

Principal

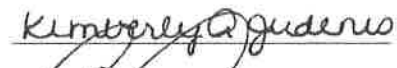


Yvon Carrier

V. President

Its

Witness



Alexis Carrier

For Office Use Only:

Account Number: _____

Date Opened: _____

Amount Deposited: _____

Initials: _____

Geraghty & Bonnano, LLC

Attorneys at Law

MICHAEL S. BONNANO
JOHANNA McCORMICK
PAUL M. GERAGHTY*
MARK A. DUBOIS†
WILLIAM J. RIORDAN

*Also Admitted in New York
† Board Certified, Trial Advocate

January 13, 2025

Hand Delivered
Richard Gordon, Chair
Town of East Lyme Planning Commission
108 Pennsylvania Avenue
Niantic, CT 06357

Via email ggoeschel@eltnh.com
Gary Goeschel
Director of Planning
Town of East Lyme
108 Pennsylvania Avenue
Niantic, CT 06357

Re: Assessors Map 36.0 Lot 31
Catbird Lane

Dear Chairman Gordon and Mr. Goeschel,

Please accept this correspondence on behalf of my client Hathaway Farm LLC who is the owner of the above referenced property formerly owned by KSK Associates LLC.

My client has recently become aware of a December 9, 2024 East Lyme Planning Commission Agenda item identified as "New Business" regarding my clients above referenced property that refers to a purported "Conveyance of Open Space". The claim appears to be that my clients property is somehow obligated to be conveyed as Open Space. This claim is untrue as this property was never formally dedicated as open space as would be required by law due to the fact that other properties formally dedicated resulted in the required open space requirements being met. In fact, nearly 70% of the land in the Heritage Subdivision, 230+ of the 330 acres, has been dedicated as open space.

As stated above and in contradiction of the apparent open space dedication claim I would note that no formal dedication of this property has ever been made, as is required as a matter of law, to be enforceable, a fact that is well known to the Town of East Lyme resulting from similar claims that resulted in litigation against the town. See *Fortunata Maluccio v. Town of East Lyme*

Zoning Board of Appeals (AC 38680) July 18, 2017 attached as Exhibit A and the Connecticut General Statutes 47-33f (no claims having been filed).

In further support that the open space dedication claim is incorrect I enclose the following.

1. Memorandum of Opinion from Mark Block, Esq. to Gary Goeschel Dated February 1, 2010, RE: Open Space Dedication-Heritage at East Lyme Re-Subdivision. See Exhibit B.

As set forth in the memorandum the Open Space required by the East Lyme subdivision regulations at the time equaled 10% of the property which totaled 330 acres of which required 33 acres of Open Space was required. As of the date of the memorandum 39.45 acres had been either identified or dedicated as potential open space, an amount that exceeds the subdivision regulations requirements for a conventional subdivision.

2. As part of a 2010 re-subdivision of one of the remaining existing lots in the Heritage at East Lyme Subdivision a 5.27-acre parcel was dedicated as Open Space to the Town of East Lyme. See; Conservation Easement recorded in Vol. 896 Page 169 of the East Lyme Land Records, Exhibit C, and Map of the Conservation Easement Area recorded at Drawer6 # 594 of the East Lyme land Records, Exhibit D.

3. As evidenced by the Map recorded on October 4, 2016, in Drawer 6 # 796 of the Town of East Lyme Land Records, Exhibit E, in conjunction with the conveyance to New England Forestry Foundation an additional 166.2 acres of the original 330 acre parcel were dedicated as Open Space in Conservation Easements in favor of the State of Connecticut Department of Energy and Environmental Protection. This conservation easement was recorded in Vol. 982 Page 397 of the Town of East Lyme Land Records, Exhibit F. The so called "Catbird Lane" property totaling 4.1 acres is identified on the recorded map as "REMAING LAND OF KSK ASSOCIATES LLC" and was not included in the land subject to the DEEP Conservation Easement. Also of important note is the fact that because the land conveyed to New England Forestry Foundation was for Open Space it was not required, as a matter of Connecticut law, to obtain subdivision approval as such requirements are exempt from the Town of East Lyme Subdivision Regulations pursuant to Conn. General Statute 8-18, Exhibit G.

4. In addition, as is evidenced by the Deed recorded on August 27, 2019, in Vol. 1019 Page 759 of the East Lyme Land Records, Exhibit H, an additional 33 acres was conveyed to the New England Forestry Foundation for Open Space purposes as evidenced by the Conservation and Public Recreation Easement and Agreement recorded at Vol 1014 Page 760 of the East Lyme Land Records. As evidenced by the map recorded in Drawer 8 # 100 of the East Lyme Land Records in conjunction with this open space conveyance, Exhibit I, no portion of the so called "Catbird Lane" property was conveyed as part of this transaction either. As was the case in the initial conveyance the transfer of this open space property was exempt from East Lyme Subdivision Regulations.

In the final analysis the following is true;

1. The so called "Catbird Lane" was never formally dedicated as Open Space as would be required by Connecticut Law for the current claim to be of any force or effect.

2. More than ample land within the subdivision, in excess of 230 of the 330 acres, has been dedicated as open space.

Accordingly given the plethora of contradicting evidence provided I would request the egregiously incorrect claims regarding my clients property be abandoned and or dismissed by this commission.

I am happy to meet with either or both of you and/or the entire Planning Commission to address this matter in further detail.

Sincerely,

Paul M. Geraghty



Cc Shelly Harney
Kristen T. Clarke P.E.

EXHIBIT A

Maluccio v. East Lyme Zoning Board of Appeals

Appellate Court of Connecticut. • July 18, 2017 • 174 Conn.App. 750 • 166 A.3d 69 (Approx. 9 pages)



Original Image of 166 A.3d 69 (PDF)

174 Conn.App. 750
Appellate Court of Connecticut.

Fortunata MALUCCIO
v.
EAST LYME ZONING BOARD OF APPEALS

(AC 38680)
Argued February 7, 2017
Officially released July 18, 2017

Notes
Quick Check

Synopsis

Background: Landowner sought review of decision of town zoning board of appeals denying a building permit to construct a home on a lot that was designated as “recreation area” on the original subdivision plan. The Superior Court, Judicial District of New London, Robert C. Leuba, J., sustained the appeal, 2015 WL 2473175. Board, on the granting of certification, appealed.

Holding: The Appellate Court, Pellegrino, J., held that lot’s “recreation area” designation on original subdivision plan was unenforceable by zoning officer.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (12)

1 Zoning and Planning

A zoning board of appeals is endowed with liberal discretion.

	414	Zoning and Planning
	414VII	Administration in General
	414k1325	Boards and Officers in General
	414k1333	Power and Authority
	414k1333(2)	Discretion in general

2 Zoning and Planning

Actions of a zoning board of appeals are subject to review by the courts only to determine whether the actions were unreasonable, arbitrary, or illegal.

3 Cases that cite this headnote

	414	Zoning and Planning
	414X	Judicial Review or Relief
	414X(C)	Scope of Review
	414X(C)1	In General



414k1627 Arbitrary, Capricious, or Unreasonable Action

414k1631 Decisions of boards or officers in general

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)1 In General

414k1635 Illegality

3 Zoning and Planning

The burden of proof to demonstrate that the zoning board of appeals acted improperly is upon the party seeking to overturn the board's decision.

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)3 Presumptions and Burdens

414k1684 Burden of Showing Grounds for Review

414k1685 In general

4 Zoning and Planning

Upon appeal from zoning board of appeals, the court's function is to determine on the basis of the record whether substantial evidence has been presented to the board to support its findings.

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)4 Questions of Fact

414k1698 Substantial evidence in general

5 Zoning and Planning

Upon an appeal from the judgment of the trial court in a zoning matter, the Appellate Court reviews the record to see if there is factual support for the zoning board of appeals' decision, not for the contentions of the applicant, to determine whether the judgment was clearly erroneous or contrary to law.

414 Zoning and Planning

414X Judicial Review or Relief

414X(E) Further Review

414k1744 Scope and Extent of Review

414k1747 Questions or errors of law

414 Zoning and Planning

414X Judicial Review or Relief

414X(E) Further Review

414k1744 Scope and Extent of Review

414k1754 Questions of fact; findings

6 Zoning and Planning

414 Zoning and Planning



When a zoning agency has stated its reasons for its actions, a court should not reach beyond those stated purposes to search the record for other reasons supporting the zoning agency's decision.

3 Cases that cite this headnote

414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)1 In General
414k1624 Decisions of boards or officers in general

7 Zoning and Planning

When a zoning agency has stated its reasons for its actions, a court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations.

3 Cases that cite this headnote

414 Zoning and Planning
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)1 In General
414k1624 Decisions of boards or officers in general

8 Zoning and Planning

A zoning enforcement officer acting on an application for a zoning permit has a purely ministerial function.

4 Cases that cite this headnote

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1350 Right to Permission, and Discretion
414k1351 In general

9 Zoning and Planning

If the application for a zoning permit conforms to the requirements of the regulations, a zoning enforcement officer acting on the application has no discretion but to issue a permit.

3 Cases that cite this headnote

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1350 Right to Permission, and Discretion
414k1351 In general

10 Zoning and Planning

Designation of lot as "recreation area" on original subdivision map created, if anything, a private right or restriction unenforceable by town zoning enforcement officer, where zoning regulations did not require an open space parcel and, even if regulations required an open space parcel, the designation of "recreation area" did not fall within the explicit confines of regulation.

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(C) Uses and Use Districts
414V(C)1 In General
414k1262 Maps, plats, and plans; subdivision regulations

11 Zoning and Planning

A zoning board of appeals can exercise only such powers as are expressly granted to it by statute.

414 Zoning and Planning
414VII Administration in General
414k1325 Boards and Officers in General
414k1333 Power and Authority
414k1333(1) In general



12 Covenants

Zoning and Planning

Restrictive covenants in a deed as to use of property are distinct and separate from the provisions of a zoning law and have no influence or part in the administration of a zoning law.

108

Covenants

108II

Construction and Operation

108II(C)

Covenants as to Use of Real Property

108k49

Nature and operation in general

414

Zoning and Planning

414I

In General

414k1016

Factors considered

Attorneys and Law Firms

**70 Mark S. Zamarka, with whom, on the brief, was Edward B. O'Connell, for the appellant (defendant).

Eugene C. Cushman, for the appellee (plaintiff).

Sheldon, Mullins and Pellegrino, Js.

Opinion

**71 PELLEGRINO, J.

*752 This appeal is brought by the defendant, the East Lyme Zoning Board of Appeals (board), from a decision of the trial court sustaining an appeal from the board's decision denying a building permit for a parcel of land owned by the plaintiff, Fortunata Maluccio, that was designated as a "recreation area" on an original subdivision plan. The defendant claims that the trial court improperly found that the designation of the parcel as a "recreation area" did not preclude the development of that parcel for residential use. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The plaintiff purchased a lot with the address of 6 Red Fox Road (parcel) in the Green Valley Lakes subdivision in East Lyme (town) at a tax sale on May 26, 2006. The Green Valley Lakes subdivision was originally approved on July 13, 1970, by the East Lyme Planning Commission (commission). The East Lyme Subdivision Regulations (regulations), as they existed in 1970, gave the commission discretion to require developers to provide land to the town for "open space for parks and playgrounds as it may deem proper" East Lyme Subdivision Regs. (Rev. to June 5, 1967), § 3.5. Accordingly, the developer of Green Valley Lakes designated one lot as a "recreation area" on the subdivision plan he submitted for approval to *753 the commission. The lot labeled "recreation area" is the parcel at issue in this appeal.

At its meeting on July 13, 1970, the commission approved the subdivision plan that included the parcel labeled as a "recreation area." The vote on the subdivision, however, did not explicitly mention whether a recreation area would be required. On February 14, 1972, the developer recorded on the land records of the town a "Declaration of Restrictions" relating to the subdivision. No mention was made of the parcel, any special restrictions regarding the parcel, or any rights created for the use of the parcel by any lot owners.

On July 5, 1973, the original developer offered to deed the parcel to the town. The minutes of the town Board of Selectmen meeting state that, following a discussion, the selectmen voted unanimously to reject the offer. Once more, in 1979, a subsequent developer also offered to deed the parcel to the town, but the offer was rejected. The

parcel has remained in its natural state since 1970, has not been classified as open space by the assessor, and does not appear as open space on the town's plan of development or comprehensive plan. No rights in the parcel were deeded to lot purchasers in the development, and no lot owner has filed a notice of claim as to any rights in the parcel pursuant to General Statutes § 47-33f.¹

Following years of unpaid taxes on the parcel, it became the subject of a statutory tax sale by a public auction conducted by the town's tax collector. A public notice regarding the sale was issued on March 10, 2006. The notice indicated that the parcel was to be sold *754 subject to a utility easement and sloping rights, but made no mention of any encumbrance relating to open space for parks and playgrounds. The plaintiff purchased the parcel at the tax sale for \$19,500.

In August, 2012, the plaintiff submitted an application to the town for a zoning **72 permit to build a single family home on the parcel. The application and attached plans conformed to all specific requirements of the zoning regulations of the town.² The zoning enforcement officer, acting on behalf of the East Lyme Zoning Commission, denied the permit application, stating his reasons as follows: "[The] application is denied as property is designated as recreation area open space on the original subdivision plan."

The plaintiff appealed from the denial of her permit application to the defendant, which, following a hearing, upheld the zoning enforcement officer's decision. The defendant stated that the zoning enforcement officer "had properly denied the zoning permit for [the parcel], [and] that designations of the original subdivision map such as recreation area, open space, etc., were purely semantics as they all serve the same function and the opinion of the attorney was that they were synonymous as you are talking about language from 1970 and now. Further, it was recommended that the appropriate method of change for this item is through the [commission]."

Pursuant to General Statutes § 8-8(b), the plaintiff appealed from the decision of the defendant to the Superior Court. The court sustained the plaintiff's *755 appeal, holding that the decision of the defendant was illegal and not supported by the record. Specifically, the court reasoned that the notation of "recreation area" on the original subdivision plans submitted for approval in 1970 created only, if anything, a private right or restriction that cannot be enforced by the zoning enforcement officer or the defendant. Further, the court observed that the town had twice rejected offers from developers to deed the parcel to the town for recreational purposes, and therefore the parcel was never deeded or dedicated to the town as a "recreation area." The court remanded the case to the defendant with direction to reverse the ruling of the zoning enforcement officer. On the granting of certification, this appeal followed. Additional facts will be set forth as necessary.

1 2 3 We begin by setting forth the applicable standard of review. "In reviewing the actions of a zoning board of appeals, we note that the board is endowed with liberal discretion and that its actions are subject to review by the courts only to determine whether [they were] unreasonable, arbitrary or illegal.... The burden of proof to demonstrate that the board acted improperly is upon the party seeking to overturn the board's decision....

4 5 "It is well settled that ... [t]he court's function is to determine on the basis of the record whether substantial evidence has been presented to the board to support its findings.... Upon an appeal from the judgment of the trial court, we review the record to see if there is factual support for the board's decision, not for the contentions of the applicant ... to determine whether the judgment was clearly erroneous or contrary to law." (Citations omitted; internal quotation marks omitted.) *Wing v. Zoning Board of Appeals*, 61 Conn.App. 639, 643-44, 767 A.2d 131, cert. denied, 256 Conn. 908, 772 A.2d 602 (2001).

6 *756

7 "When a zoning agency has stated its reasons for its actions, a court **73 should not reach beyond those stated purposes to search the record for other reasons supporting the commission's decision.... Rather, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations."

(Citations omitted; internal quotation marks omitted.) *Harris v. Zoning Commission*, 259 Conn. 402, 420–21, 788 A.2d 1239 (2002).

⁸ ⁹ A zoning enforcement officer acting on an application for a zoning permit has a purely ministerial function. See *Roraback v. Planning & Zoning Commission*, 32 Conn.App. 409, 412, 628 A.2d 1350, cert. denied, 227 Conn. 927, 632 A.2d 704 (1993); but see *Reardon v. Zoning Board of Appeals*, 311 Conn. 356, 364–65, 87 A.3d 1070 (2014) (enforcement of zoning regulations generally discretionary). If the application conforms to the requirements of the regulations, he has no discretion but to issue a permit. See *Langer v. Planning & Zoning Commission*, 163 Conn. 453, 456, 313 A.2d 44 (1972).

¹⁰ ¹¹ In the present case, we agree with the trial court's conclusion that the action taken by the defendant in upholding the denial of the plaintiff's permit was illegal and unsupported by the record. The defendant can exercise only such powers as are expressly granted to it by statute. *Moscowitz v. Planning & Zoning Commission*, 16 Conn.App. 303, 308, 547 A.2d 569 (1988). General Statutes § 8–6(a) provides in pertinent part: “The zoning board of appeals shall have the following powers and duties: (1) [t]o hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the official charged with the enforcement of this chapter or any bylaw, ordinance or regulation adopted under the provisions of this chapter” General Statutes § 8–7 provides in relevant ^{*757} part: “The board shall hold a public hearing on such appeal Such board may reverse or affirm wholly or partly or may modify any order, requirement or decision appealed from and shall make such order, requirement or decision as in its opinion should be made in the premises and shall have all the powers of the officer from whom the appeal has been taken but only in accordance with the provisions of this section. Whenever a zoning board of appeals ... sustains or reverses wholly or partly any order, requirement or decision appealed from, it shall state upon its records the reason for its decision”

¹² In upholding the decision made by the zoning enforcement officer, the defendant formally stated the reasons for its decision on the record. The reason provided was that the label “recreation area” on the subdivision map precluded the plaintiff from obtaining the building permit. As the trial court aptly noted, however, “[t]he law is well established that restrictive covenants in a deed as to use of property are distinct and separate from the provisions of a zoning law and have no influence or part in the administration of a zoning law *Anniello v. Vernon Planning & Zoning Commission*, Superior Court, judicial district of Tolland, Docket No. CV-93-52916-S [1995 WL 493781, *3] (August 14, 1995).” (Internal quotation marks omitted.); see also Am. Jur. 840, Zoning and Planning, § 1006 (1992). On appeal, the defendant contends that the court erred in determining that the label “recreation area” on the subdivision map created, if anything, a private right or restriction unenforceable by the zoning enforcement officer or the defendant. Instead, the defendant asserts that, because such label was required by the regulations in effect in 1970, the parcel is currently designated as ^{**74} a recreation area, and the zoning enforcement officer therefore has the power to deny a permit to build on the parcel.

^{*758} The defendant's proposition fails in at least two regards. First, the regulations did not *require* an open space parcel, rather, the regulations merely required the developer to allocate a parcel as open space on the subdivision plan submitted for the application. The commission could then decide whether the open space parcel should be required. See *East Lyme Subdivision Regs. (Rev. to June 5, 1967)*, § 3.5. In this case, the commission was silent on the matter, so it cannot be assumed that the commission eventually required the parcel to remain open space. Further, the developers twice offered to deed the parcel to the town but the town denied both offers. Had the town truly wished to ensure that the parcel would remain “open space” indefinitely under the regulations, it could have accepted title to the property. Second, the defendant's argument fails because, even if the regulations actually required the commission to designate the parcel as open space before approving the subdivision application, the designation of “recreation area” did not fall within the explicit confines of the regulations. Instead, the regulations allowed the commission the discretion to mandate that a developer provide land to the town for “open space *for parks and playgrounds* as it may deem proper” (Emphasis added.) *East Lyme Subdivision Regs. (Rev. to June 5, 1967)*, § 3.5. The regulations made no mention of the commission's power to require the developer to set aside land for a “recreation area.” Thus, because the commission lacked the

authority to require the developer to designate a “recreation area,” it follows that the zoning enforcement officer and the defendant could not deny the plaintiff a building permit for the parcel on the basis of its original “recreation area” designation on the subdivision plan.

The defendant's second claim on appeal, namely, that the court erred in determining that the town was ⁷⁵⁹ required to accept title to the property in order to effectuate the recreation area designation, also fails. The defendant's argument is based on a misguided reading of the court's decision. Although the court stated that the parcel was not deeded and perpetually dedicated to the town for recreation, the court was responding to the defendant's argument that § 1.61 of the November 22, 2013 revision of the East Lyme Zoning Regulations applied to the parcel. ³ Nowhere in its memorandum of decision did the court state that the town was *required* to accept title to the parcel to effectuate the recreation area designation. On the contrary, the court's review of the defendant's decision was not based on what action the town could have taken to effectuate the recreation area designation, but rather on the illegality of the action taken by the zoning enforcement officer and the defendant in denying the plaintiff a building permit. Accordingly, the court did not err, and the defendant's second claim fails.

We conclude that the court properly sustained the plaintiff's appeal and remanded the case to the defendant with direction to ⁷⁵ reverse the ruling of the zoning enforcement officer.

The judgment is affirmed.

In this opinion the other judges concurred.

All Citations

174 Conn.App. 750, 166 A.3d 69

Footnotes

- 1 General Statutes § 47-33f(a) provides in pertinent part: “Any person claiming an interest of any kind in land may preserve and keep effective that interest by recording, during the forty-year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing, duly verified by oath, setting forth the nature of the claim....”
- 2 Section 24.3B of the November 22, 2013 revision of the East Lyme Zoning Regulations provides in pertinent part: “The [z]oning [e]nforcement [o]fficer, acting on behalf of the [c]ommission, shall review applications to determine conformity with the [z]oning [r]egulations.... The [z]oning [e]nforcement [o]fficer will review the site plan to ensure compliance with the [z]oning [r]egulations and shall issue a permit within 30 days of receipt if all other applicable requirements of these regulations have been met....”
- 3 In its October 31, 2014 trial court brief, the defendant had argued that § 1.61 of the November 22, 2013 revision of the East Lyme Zoning Regulations applied to the parcel and restricted its use, which provides in relevant part: “Land area within a subdivision deeded as a parcel or parcels separate from Building Lots and Streets and Perpetually dedicated for Conservation and/or Recreational purposes. The ownership and purpose of subdivision open space is specified by the Planning Commission in approving a Subdivision, and only recreational facilities, underground utility facility, or other improvements consistent with the approved purpose shall be permitted within subdivision open space.”

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Zoning and Planning
Judicial Review or Relief

Statutory Certiorari Review of Zoning Decision of County Board of Adjustment
Commonwealth Court Scope of Review of Trial Court Affirmance of Decision of Township
Zoning Hearing Board
Town Subdivision Zoning Regulation

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EXHIBIT B

MEMORANDUM

TO: GARY GOESCHEL, DIRECTOR OF PLANNING
FROM: MARK E. BLOCK, ESQ.
DATE: FEBRUARY 1, 2010
RE: OPEN SPACE DEDICATION - HERITAGE AT EAST LYME RESUBDIVISION

You have asked for an opinion in regards to open space dedication for the proposed resubdivision of Heritage at East Lyme. (the "Resubdivision")

The facts as related to me are that Heritage at East Lyme was, when first subdivided ("Original Subdivision"), an estimated 330 acre tract of land ("Original Tract"). The Original Subdivision contained one lot comprised of a 19⁸ acre tract, which is the subject of the resubdivision application ("Subject Parcel"). At the time of the approval of the Original Subdivision, there was approximately 39.45 acres dedicated as open space as a condition of that approval.

The question presented is can the Planning Commission require a dedication of additional open space as part of the approval of the Resubdivision.

Conn. Gen. Stat. §8-25 provides that the Town's subdivision regulations may require the applicant by deed, payment of a fee or combination of the two, to provide the Town with open space of a value not to exceed 10% of the fair market value of the land to be subdivided "prior to the approval of the subdivision".

Section 10-5 of the Subdivision regulations is consistent with the General Statutes, and says that in arriving at the fee in lieu of the dedication of the land, the fee cannot equal more than 10% of the "fair market value of the land to be subdivided "prior to approval of the subdivision."

Further, Section 10-2-2 of the Subdivision Regulations says that if a parcel "is subdivided in stages, the open space dedication attributable to the subdivision of a portion of the entire tract" may be deferred to a later date. The critical language in this section is the reference to the subdivision being in stages and calculating open space based upon the entire tract.

There are no cases on this precise issue, so one must look to the language of the statute and the regulations. In this case the Original Tract that was submitted to the Commission for subdivision approval comprised 330 acres. The Commission required, per its regulations, that the Developer set aside open space calculated on the number of acres in the Original Tract, i.e., 300 acres. Both the Statute and the Regulations speak of the dedication for open space to be from the land to be subdivided. The Town's regulations also speak of a subdivision developed in stages, with provision for deferral of the open space.

In my opinion, since with original developer met the open space requirements at the time of the

Original Subdivision, and made that dedication out of the Original Tract, the Commission cannot require an additional dedication from the Subject Parcel, which is a resubdivision of a portion of the Original Tract/Subdivision.

M:\users\MEB\East Lyme\open space memo.wpd

EXHIBIT C

CONSERVATION EASEMENT

2747

KNOW ALL PERSONS BY THESE PRESENTS, that KSK Associates, LLC, a Connecticut limited liability corporation ("Grantors"), for the consideration of One Dollar (\$1.00) and other valuable consideration received to our full satisfaction of the Town of East Lyme, a municipal corporation, ("Grantee"), 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 an area of 229,556.31 S.F., 5.27 Ac." on a map entitled "BOUNDARY SURVEY & NATURAL & CULTURAL RESOURCES MAP HERITAGE AT EAST LYME RESUBDIVISION PHASE 2 GOLDFINCH TERRACE & EGRET ROAD EAST LYME, CT", prepared by James Bernardo Land Surveying, LLC, and dated October 2, 2009 revised on January 4, 2010, January 10, 2010, February 1, 2010 and October 22, 2010 to be filed in the East Lyme Land Records.

Within the said Conservation Area Easement, without prior express written consent from the Grantee or unless an alternative easement boundary is proposed and approved by the Planning Commission, or its successor in interest, as part of an application for a permit:

1. There shall be no construction or 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 or 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 or change in the natural habitat in any manner, except as specifically permitted below;
4. There shall be no dumping of ashes, trash, garbage, or 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 or alteration of natural water courses, shores, marshes, or other water bodies or activities or uses detrimental to water purity, except as specifically permitted below;

CONVEYANCE TAXES COLLECTED

Leah A. Blais
TOWN CLERK OF EAST LYME

NO

- 10-0091 b PAGE 170
6. There shall be no operation of motorized vehicles, including snowmobiles, dunebuggies and all terrain vehicles; and
 7. There shall be no construction, improvement, or upgrading of roads, driveways, parking areas, cartpaths, or footpaths except as necessary to maintain existing footpaths in the current condition or as 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 shall 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 damaged 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) Activities or improvements as specifically approved by the Planning Commission and shown on the approved subdivision map.
- d) Access for, and the installation and maintenance of, subsurface sewage disposal systems constructed in accordance with the specifications of the State of Connecticut Department of Environmental Protection and/or the Department of Health.

Except for such restriction, such Conservation Easement areas may be used without hindrance by the owners of the servient tenements.

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 within the terms and conditions herein set forth, the Grantee shall give notice of such event or circumstance 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 reasonably required to abate such event or circumstance 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 this 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 recovered 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.

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 recorded 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 provision of clause of this instrument conflicts with any applicable law, such conflict shall not effect other provision of this instrument that 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 8th day of November, 2010.

Lesley A. Blais
Lesley A. Blais

KSK Associates, LLC

By Stephen F. Harney
Stephen F. Harney Its Member

Anna M. Johnson
Anna M. Johnson

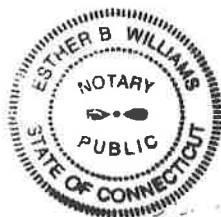
STATE OF CONNECTICUT)
)
COUNTY OF NEW LONDON)

SS Niantic

November 8, 2010

Personally appeared Stephen F. Harney, Member of KSK Associates, LLC, duly authorized, signer and sealer of the foregoing instrument, and who acknowledged the same to be his free act and deed and the free act and deed of said limited liability company, before me,

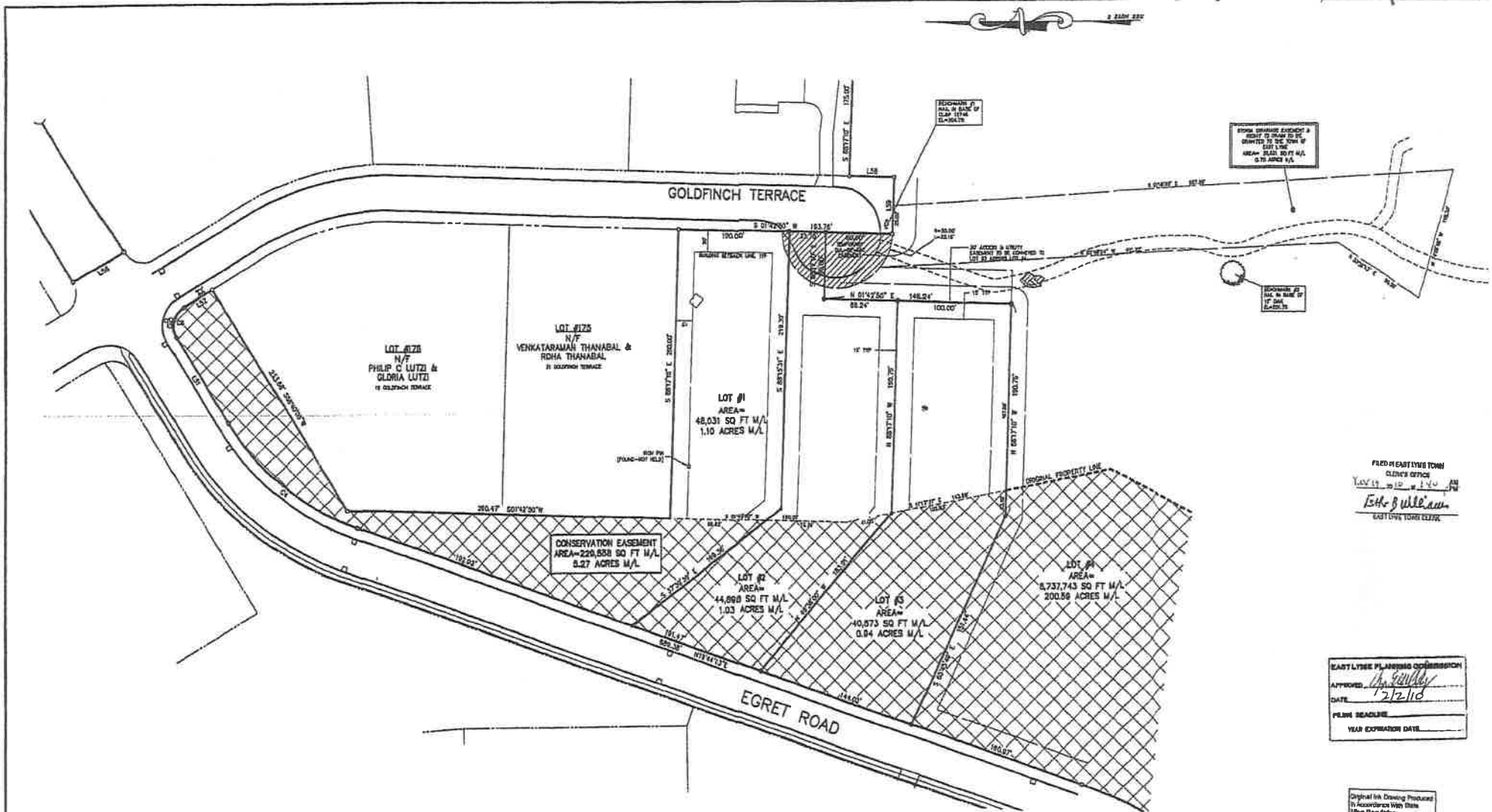
Esther B. Williams
Commissioner of Superior Court
Notary Public
My Commission Expires:



Esther B. Williams
NOTARY PUBLIC
State of Connecticut
My Commission Expires
February 26, 2013

Recorded August 14 20 12
AM
9:00 PM Lesley A. Blais
East Lyme Town Clerk

EXHIBIT D



FILED IN EAST LYME TOWN
CLERK'S OFFICE
12/2/10
E. G. BULLOCK
EAST LYME TOWN CLERK

EAST LYME PLANNING COMMISSION
APPROVED: [Signature]
DATE: 12/2/10
PLANS READY: []
YEAR EXPIRES: []

Original In Drawing Produced
In Accordance With State
Filing Regulations
James Bernardo, LS 870121

RECORD SUBDIVISION PLAN
HERITAGE AT EAST LYME
RESUBDIVISION PHASE 2
GOLDFINCH TERRACE & EGRET RD
EAST LYME, CONNECTICUT
APPLICANT/OWNER:
KSK ASSOCIATES, LLC

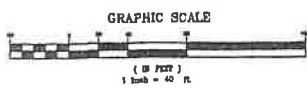
DATE: **OCTOBER 2, 2009** SCALE: **1"=40'**
DRAWN BY: **JB** DRAWING NO: **08049-4** SHEET NO: **3 OF 5**



THIS PLAN WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED LAND SURVEYOR IN THE STATE OF CONNECTICUT.

Date: 12/2/10
JAMES BERNARDO, LS 870121

JAMES BERNARDO LAND SURVEYING, LLC
102A SPITHEAD ROAD
WATERFORD, CONNECTICUT 06385
(860) 447-0236



NO.	DATE	DESCRIPTION	BY
1	10/22/2009	CONSERVATION EASEMENT & RIGHTS TO DEAR JOJO	JB
2	1/10/2010	NO REVISIONS TO THIS SHEET	JB
3	5/27/2010	NO REVISIONS TO THIS SHEET	JB
4	10/22/2009	REVISION FOR PLANNING BOARD MEETING	JB

EXHIBIT E

EXHIBIT F

1571

CONSERVATION AND PUBLIC RECREATION ^{NO}
EASEMENT AND AGREEMENT ^{CONVEYANCE TAXES COLLECTED}

NEW ENGLAND FORESTRY FOUNDATION, INC.
GURLEY BROOK PRESERVE OSWA 448 *Lesley A. Blais*
TOWN CLERK OF EAST LYME

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, The New England Forestry Foundation, Inc., holds title to 166.2± acres of real property located in the territorial limit of the Town of East Lyme, formerly owned by KSK Associates, LLC of East Lyme, Connecticut.

WHEREAS, in addition to its value as a natural area, said property is also a scenic resource of the State of Connecticut;

WHEREAS, the preservation of the above-mentioned land will yield a significant public benefit for passive recreation and open space protection;

WHEREAS, the anticipated use of the land by New England Forestry Foundation, Inc., is consistent with the Department of Energy and Environmental Protection's (DEEP) conservation and preservation interests, including management for wildlife habitat and the sustainable production of wood products and New England Forestry Foundation, Inc., has a shared interest with DEEP in seeing that these conservation-minded practices continue;

WHEREAS, the State of Connecticut has established The Open Space and Watershed Land Acquisition Grant Program to provide grants to municipalities and nonprofit land conservation organizations to acquire land or permanent interests in land for open space and watershed protection and to water companies, as defined in Connecticut General Statutes (CGS) Section 25-32a, to acquire and protect land which is eligible to be classified as Class I or Class II land, as defined in CGS Section 25-37c, after acquisition;

WHEREAS, all lands or interests in land acquired under The Open Space and Watershed Land Acquisition Grant Program shall be preserved in perpetuity predominantly in their natural and scenic and open condition for the protection of natural resources while allowing for recreation consistent with such protection.;

WHEREAS, a permanent Conservation Easement, as defined in CGS Section 47-42a, shall be executed for any property purchased with grant funds through The Open Space and Watershed Land Acquisition Grant Program and which Conservation Easement shall provide that the property shall remain forever predominantly in its natural and open condition for the specific conservation, open space or water supply purpose for which it was acquired;

WHEREAS, the Conservation Easement shall be in favor of the State acting through its Commissioner of Energy and Environmental Protection;

WHEREAS, such Conservation Easement shall include a requirement that the property be made available to the general public for appropriate recreational purposes, the maintenance of which recreational access shall be the responsibility of New England Forestry Foundation, Inc.;

WHEREAS, New England Forestry Foundation, Inc., and the State of Connecticut agree that limited public recreation on said property can be provided without significant impact to the natural resources on said property, conservation of those resources having been the primary reason for its acquisition by New England Forestry Foundation, Inc.;

NOW, THEREFORE, the New England Forestry Foundation, Inc. a Massachusetts nonprofit corporation having an address at 32 Foster Street, Littleton, Massachusetts 01460 (the "Grantor"), for One (\$1.00) Dollar and other good and valuable consideration received to its full satisfaction of the STATE OF CONNECTICUT, a sovereign, (the "Holder") and in consideration of the mutual covenants, terms, conditions and restrictions herein contained, GRANTOR, its successors and assigns, does hereby give, grant, bargain, sell, convey and confirm in perpetuity unto the HOLDER and its successors or assigns forever with Warranty Covenants, a Conservation and Public Recreation Easement ("Conservation Easement") in perpetuity, of the nature and character and to the extent hereinafter set forth, over property situated in the Town of East Lyme, County of New London, State of Connecticut, (the "Protected Property"), as described in Schedule A.

1. **Purpose.** It is the purpose of this Conservation and Public Recreation Easement to assure that the Protected Property will be retained forever predominantly in its natural, scenic, forested, and/or open space condition, and to provide opportunities for public recreation on the Protected Property, while preventing any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property, described above. It is the intent of this Conservation Easement that any management activities or alterations of the natural landscape or provision for access or recreation shall be consistent with the conservation purposes above.

2. **Development Rights and Restrictions.** No building, residential dwelling, structure, parking lot, driveway, road or other temporary or permanent structure or improvement requiring construction shall be placed upon the Protected Property except as provided hereinbelow, the following reservations to be consistent with the conservation and public recreation purposes above:

a) Grantor reserves the right to maintain existing unpaved driveways, footpaths and other minor surface alterations; to excavate and fill as necessary to accomplish permitted building, recreational and silvicultural activities; and to construct, maintain and reconstruct additional unpaved footpaths or minor, roofless rustic improvements necessary or appropriate to assure safe passage, prevent erosion, or to enhance or protect the natural habitat.

b) All rights reserved herein by the Grantor may only be exercised subject to all applicable governmental permits and approvals required by law. Nothing herein shall commit the Holder to grant any such approval or permit.

c) Grantor reserves the right to manage and monitor the Protected Property for rare and endangered species, such activities including, but not limited to:

- 1) The rerouting or closing of trail segments or public access points that pose a substantial threat to protected species, provided that a system of public access trails remains open to the public at all times;
- 2) The right to grant access to the site for research;
- 3) Use of the Protected Property for educational and outreach purposes, including limited attendance walks and on-site stewardship training programs.

Grantor agrees that the activities or uses contemplated above shall not unreasonably interfere with the use of the Protected Property by the general public. All rights not specifically granted are hereby reserved by Grantor.

3. Provision of Public Recreation. The Grantor agrees to allow the public access to the Protected Property for passive recreational purposes and to use such trails or other facilities as they may exist or be developed, or where such use is permitted by the Department of Health on Class I and Class II Watershed Land. The public shall be defined as any resident of any municipality, state, country or nation. The Grantor may develop passive recreational facilities and support facilities for those passive activities on the Protected Property if none exists. Passive recreation shall be defined as recreational trail usage (non-motorized), recreational activities which do not require a formalized delineated playing field or area, picnicking, fishing, hunting (only by individuals with valid hunting licenses and permits who have permission of the Grantor), non-motorized boating and environmental education.

4. Other Activities. No commercial, industrial, quarrying, or mining activities are permitted on the Protected Property.

5. Forest Management. The Grantor reserves the right to remove trees, shrubs, and other vegetation as part of a Forest Management Plan ("Plan"). The Plan shall be designed to protect the Conservation Values or Interests of the Protected Property, with best management practices in accordance with the guidelines of the State of Connecticut Department of Energy and Environmental Protection, or its successor agency; shall be designed to minimize erosion or sedimentation of the Protected Property; and shall be approved in writing by the State Forester or his or her designee. If Grantor does not receive approval of the Plan within sixty (60) days of its delivery to the State Forester the Grantor may deem the plan to have been approved. The Plan shall be prepared by a professional forester licensed to practice forestry in Connecticut. The preparer of the Plan shall certify in writing that the Plan and all amendments and updates comply with the terms of this Conservation Easement. The Plan also shall provide for sustainable management of the Property in a manner consistent with generally accepted "Best Management Practices" to protect soil resources and water quality, as those practices may be identified from time to time by programs recognized as appropriate by state agency authorities, and in a manner not wasteful of soil resources or detrimental to water quality or to the conservation purposes listed in Section 1 hereof. The Plan may be updated periodically, particularly if new information or new knowledge is obtained that promotes or enhances the conservation values and sound forest management of the Property. A Plan for the Property shall be completed within two (2) years from the date this Conservation Easement is recorded, or before any harvest of forest products occurs on the Property, whichever shall occur first. The Grantor shall update the Plan at least every ten years thereafter to the extent that the Grantor desires to continue to conduct forestry activities on the Property. All forest product-harvesting operations shall be conducted in accordance with applicable law.

6. Water Protection and Waste Disposal. The use of chemical herbicides, pesticides, fungicides, fertilizers and other agents must be limited to prevent any demonstrable adverse effect on wildlife, waters, and other important conservation interests to be protected by this Conservation Easement.

It is forbidden to dispose of or to store rubbish, garbage, debris, abandoned equipment, parts thereof, or other unsightly, offensive, toxic or hazardous waste material on the Protected Property except that vegetative waste may be composted, and other waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate containment for removal at reasonable intervals, subject to all applicable local, state, and federal laws and regulations.

The Grantor covenants and represents that, to the best of Grantor's knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

7. Costs and Taxes. Grantor acknowledges that the Holder has no possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property. Grantor is responsible to pay and discharge when due all property taxes and assessments and to avoid the imposition of any liens that may impact Holder's rights hereunder. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property and will, to the fullest extent permitted by law, defend, release, relieve, hold harmless, and indemnify Holder, its officers, directors, agents, and employees therefrom and from any claims for damages which arise therefrom, except for harm caused by the negligent act or misconduct of Holder, or as may arise out of its workers' compensation obligations. This provision shall not be construed as a waiver of sovereign immunity.

Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Holder with satisfactory evidence of payment upon request. In order to assure the continued enforceability of this Conservation Easement, the Holder is authorized, but in no event obligated, to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of two (2) percentage points over the prime rate of interest from time to time announced by JP Morgan Chase Bank or the maximum rate allowed by law. Holder shall have the right to place a lien on property of the Grantor in the event that the payment is not reimbursed to Holder within thirty (30) days.

8. Subdivision Limitation and Subsequent Transfers. The Protected Property must remain as an entity in a single ownership, and may not be divided, subdivided, partitioned or otherwise separated into parcels or lots, whether or not said Protected Property may be described herein, or have been described in any prior deed, as more than one piece or parcel of land.

Grantor agrees that the terms, conditions, restrictions, and purposes of this grant or reference thereto will be inserted by

Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or possessory interest in the Protected Property, and Grantor further agrees to notify Holder of any transfer at least thirty (30) days in advance thereof.

9. Miscellaneous.

a) Grantor represents that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property. The rights of the Holder to enforce the terms, restrictions and covenants created under this Conservation Easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien, regardless of any subsequently placed mortgage or lien.

b) If any provision(s) of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

c) Any uncertainty in the interpretation of this Conservation Easement should be resolved in favor of conserving the Protected Property in its natural and scenic state.

d) If this Conservation Easement is extinguished by court order, or the powers of eminent domain, the proceeds of any taking or sale of the unrestricted property shall be divided between Grantor and Holder in the same proportion as the value of their respective interests, so calculated, as of the date of this grant, excepting any part of such proceeds attributable to improvements to the Protected Property made after the date of this grant. Holder will use such proceeds for its conservation purposes.

10. Remedies and Enforcement.

a) This Conservation Easement granted hereby constitutes a Conservation Restriction on the Protected Property in favor of the Holder and its successors and assigns pursuant to CGS Section 47-42a, as amended. Pursuant to CGS Section 47-42b, as amended, this Conservation Easement shall not be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land. Pursuant to CGS Section 47-42c, this Conservation Easement may be enforced by injunction or proceedings in equity, or in any other manner permitted by law. It is further agreed by the parties that the Conservation Easement granted hereby may be enforced at law or in equity.

b) The failure or delay of the Holder, for any reason whatsoever, to enforce this Conservation Easement shall not constitute a waiver of its rights and Grantor hereby waives any defense of laches, prescription, or estoppel.

c) Grantor is not responsible for injury to or change in the Protected Property resulting from "acts of God" so called, such as, but not limited to, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If a Court (or other decision maker chosen by mutual consent of the parties) determines that this Conservation Easement has been breached, Grantor will reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorneys' fees, and any other payments ordered by such Court.

d) The terms and conditions of said Conservation Easement hereinabove set forth shall be binding upon and inure to the benefit of the Holder and its successors or assigns. However, said Conservation Easement shall not entitle the Holder or its successors or assigns to any right of entry or use of the Protected Property except as provided herein and for periodic inspections in a reasonable manner and at reasonable times to ensure compliance with the conservation and recreation purposes above.

e) The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

11. Notices. Any notice to Holder required hereunder must be made by certified mail, return receipt requested, addressed to:

State of Connecticut
Department of Energy and Environmental Protection
Office of the Commissioner
79 Elm Street
Hartford, CT 06106

or such other address as may be furnished in writing.

Any notice to Grantor required hereunder must be made by certified mail, return receipt requested, addressed to:

Executive Director
New England Forestry Foundation, Inc.
32 Foster Street - P.O. Box 1346
Littleton, MA 01460-1346

or such other address as may be furnished in writing.

Any notices to Holder or requests for Holder consent, required or contemplated hereunder, must include, at a minimum, sufficient information to enable the Holder to determine whether proposed plans are consistent with the terms of this Conservation Easement and the conservation and recreation purposes hereof.

TO HAVE AND TO HOLD the above granted and bargained Conservation Easement unto the said Holder and its successors and assigns forever.

AND THE GRANTOR, its successors and assigns, does COVENANT with the Holder that it will WARRANT AND DEFEND the Protected Property to the said Holder and its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under it.

IN WITNESS WHEREOF, the parties hereto have set their hands.

NEW ENGLAND FORESTRY FOUNDATION, INC.

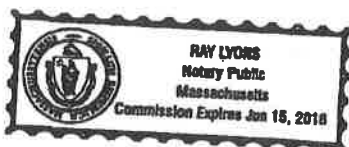
Philip Y. DeNormandie 3/21/17
Philip Y. DeNormandie, President Date
Duly Authorized

WITNESSES Signature Name in print
Ron Rory McCain
Name
John A. Blawie
Name

COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF MIDDLESEX)

SS. TOWN OF LITTLETON

The foregoing instrument was acknowledged before me this 21st day of March, 2017, by Philip Y. DeNormandie, President of the New England Forestry Foundation, Inc., a Commonwealth of Massachusetts corporation, on behalf of the corporation.



Ray Lyons
Commissioner of the Superior Court
Notary Public
My Commission Expires 6-15-18



The foregoing Conservation Easement is accepted this 12th day of April, 2017, by Robert J. Klee, Commissioner, Department of Energy and Environmental Protection, Pursuant to Connecticut General Statutes Section 7-131d(e).

STATE OF CONNECTICUT

Robert J. Klee 4/12/2017
Robert J. Klee Date
Commissioner
Department of Energy and Environmental Protection

WITNESSES Signature Name in print
James Colan
Name
Rosalyn Orzywinski
Name

STATE OF CONNECTICUT)
)
COUNTY OF HARTFORD)

SS. CITY OF HARTFORD

The foregoing instrument was acknowledged before me this 12th day of April, 2017, by Robert J. Klee, Commissioner, Department of Energy and Environmental Protection, State of Connecticut for the State of Connecticut.

Mary Ann
Commissioner of the Superior Court
Notary Public
My Commission Expires 2/28/2018



STATUTORY AUTHORITY
Connecticut General Statutes
Section 7-131 d(e)

APPROVED
George Jepsen
Attorney General

Joseph Rubin 4/19/17
By: Joseph Rubin Robert W. Clark Date
Associate Attorney General
A-57

The land upon which New England Forestry Foundation, Inc. is placing a permanent Conservation Easement is described further by means of the following property description.

All that certain piece or parcel of land situate in the Town of East Lyme, in the County of New London, State of Connecticut, labeled "Property Area = 7,241,810 Square Feet M/L 166.2 Acres M/L" as shown on a map entitled "Property Survey Property to be Conveyed to New England Forestry Foundation for Property Located at Governor John Davis Lodge Turnpike Cedarbrook Lane, Catbird Lane & Goldfinch Terrace Town of East Lyme - County of New London - Connecticut" dated May 10, 2016, Revised 6-22-2016, Scale 1"=200', Sheet 1 of 1. Said map is certified substantially correct by James Bernardo, R.L.S. #70121 of James Bernardo Land Surveying, LLC, 102A Spithead Road, Waterford, Connecticut. Said map is on file in Volume 6 Page 796 of the East Lyme Town Clerk's Office to which reference may be had for a more particular description, and which parcel is more particularly bounded and described as follows:

*Drawer 6, Map No. 796

Beginning at a Connecticut Highway Department "REC" located along the northerly street line of Governor John Davis Lodge Turnpike at an easterly corner of land N/F of the State of Connecticut and a southerly corner of the herein described property [said point being identified on the referenced map having the 1983 North Atlantic Datum Coordinates of N69°52'57.93, E1149°528.98] ;

Thence northerly along said land of the State of Connecticut along an irregular line following a stone wall and face of a stone ledge 750 feet more or less to a mag nail, said mag nail can be located on a course of N 16°33'56"W at a distance of 689.30' from said CHD;

Thence along land N/F Tamara Schacher-Tytla and stone wall the following two (2) courses and distances, N01°03'10" W a distance of 71.83' to a point; thence along a stone wall N04°30'37"E a distance of 205.82' to a rebar;

Thence along land N/F of KSK Associates LLC the following seven (7) courses and distances, S88°44'22"E a distance of 363.43' to a rebar; thence N21°10'10"E a distance of 374.16' to a rebar; thence N56°53'37"E a distance of 663.98' to a rebar; thence N03°23'41"W a total distance of 1357.20' to a rebar, this distance is further marked by intermittent distances of 250.20' to a rebar, 272.00' to a rebar, 299.00' to a rebar, 266.00' to a mag nail and 270.00' to the above said rebar; thence N05°42'24"E a distance of 463.59' to a rebar; thence N85°48'19"W a distance of 296.92' to a rebar; thence S84°01'48"W a distance of 377.63' to a rebar;

Thence along the easterly street line of Goldfinch Terrace N02°25'20"W a distance of 53.19' to a concrete monument; thence along the Cedarbrook Lane the following five (5) courses and distance, northeasterly with a curve turning to the right with an arc length of 31.42', with a radius of 20.00'; thence N08°43'15"W a distance of 50.01' to a point; thence westerly with a curve turning to the right with an arc length of 124.98', with a radius of 325.00', with a chord bearing of N 88°19'40" W, with a chord length of 124.21' to a concrete monument; thence N77°18'41"W a distance of 172.24' to a concrete monument; thence westerly with a curve turning to the right with an arc length of 122.83', with a radius of 575.00';

Thence along the easterly street line of Catbird Lane the following two (2) courses and distances, a compound curve turning to the right with an arc length of 33.03', with a radius of 20.00'; thence N 29°33'31" E a distance of 97.12' to a rebar;

Thence along land N/F of QI the following three (3) courses and distances, S60°26'29"E a distance of 170.00' to a point; thence N89°11'23"E a distance of 69.46' to a point; thence N29°26'46"E a distance of 150.00' to a point;

Thence along said land of QI and land N/F of Tong In part by each N50°37'26" E a distance of 193.04' to a point; thence continuing along land of said Tong the following three (3) courses and distances, N09°24'08"E a distance of 70.00' to a point; thence N24°04'41"W a distance of 160.30' to a rebar; thence N63°29'32"W a distance of 111.05' to a concrete monument;

Thence along the cul-de-sac of Catbird Lane with a curve turning to the left with an arc length of 17.24', with a radius of 60.00', with a chord bearing of N 21°46'49" E, with a chord length of 17.18' to a rebar;

Thence along land N/F of Woodward the following five (5) courses and distances; S76°26'59" E a distance of 70.69' to a point; thence S60°31'37"E a distance of 128.92' to a point; thence N09°25'45"E a distance of 113.55' to a point; thence N33°21'23"E a distance of 99.96' to a point; thence N34°59'22"W a distance of 246.98' to a point; thence continuing along said land of Woodward and land N/F of Sisson in part by each N81°27'40"W a distance of 273.62' to a rebar;

Thence along land N/F of KSK Associates N54°53'31"W a distance of 125.87' to a rebar;

Thence along land N/F of Evan D. Gross N23°22'25"E a total distance of 1440.29' to a rebar, this distance is further marked by intermittent distances of 280.29' to a rebar, 300.00' to a rebar, 300.00' to a rebar, 300.00' to a rebar, 260.00' to the noted rebar;

Thence along land N/F John C. Ellis Et Al the following eleven (11) courses and distances, S87°40'26"E a distance of 262.07' to a mag nail set in a drill hole; thence N12°48'09"W a total distance of 545.72' to a mag nail in a pile of stones, this distance is marked further by two intermittent distances of 275.72' to a rebar, 270.00' to the noted mag nail; thence N75°02'51"E a distance of 299.26' to a point; thence N67°37'56"E a distance of 47.97' to a mag nail set in a drill hole; thence S82°54'18"E a distance of 106.99' to a mag nail set in a drill hole; thence S 48°51'28" E a distance of 273.85' to a rebar; thence S50°23'04" E a distance of 73.94' to a point; thence S42°54'16" E a distance of 28.88' to a point; thence S60°27'34" E a distance of 69.28' to a point; thence S44°39'23" E a distance of 160.76' to a point; thence S47°43'40" E a distance of 57.14' to a rebar;

Thence along the town line between the Towns of Waterford and East Lyme and land of N/F Wilson P. Scott & Clara A. Scott the following six (6) courses and distances; S28°52'21" E a total distance of 1399.39' to a rebar and the end of the common Town Line Boundary, this distance is further marked by intermittent distances of 269.39' to a rebar, 300.00' to a rebar, 300.00' to a rebar, 300.00' to a rebar, 230.00' to the noted rebar; thence along a stone wall S03°52'57" E a distance of 85.26' to a point; thence along a stone wall S07°36'28" E a distance of 173.04' to a point; thence along a stone wall S09°40'19" E a distance of 69.24' to a point; thence along a stone wall S02°24'14" E a distance of 24.39' to a point; thence along a stone wall S07°00'39" E a distance of 102.55' to a rebar;

Thence continuing along said land of Scott and land N/F of Jacqueline M. Princeville Trustee in part by each, along a

stone wall S67°17'26" W a distance of 89.97' to a point; thence continuing along said land of Princesville along a stone wall S80°46'42" W a distance of 8.28' to a point; thence continuing along said land of Princesville and land N/F of Thomas J Harman in part by each, along a stone wall S69°39'42" W a distance of 162.36' to a point;

Thence continuing along said land of Harman the following six (6) courses and distances, along a stone wall N89°41'55" W a distance of 64.62' to a rebar; thence along a stone wall S72°17'23" W a distance of 22.43' to a rebar; thence along a stone wall S57°04'13" W a distance of 36.86' to a tree stump with nails; thence S06°30'56" W a total distance of 932.29' to a mag nail set in a drill hole in a heap of stones, this distance is further marked by intermittent distances of 332.29' to a rebar, 300.00' to a rebar, 300.00' to the noted mag nail; thence S05°17'07" W a total distance of 907.50' to a rebar, this distance is further marked by intermitted distances of 306.50' to a rebar, 301.00' to a rebar, 300.00' to the noted rebar pin; thence S16°42'53" E a distance of 655.56' to a rebar;

Thence along the northern street line of Governor John Davis Lodge Turnpike and land N/F the State of Connecticut the following two (2) courses and distances, S42°45'49" W a distance of 54.37' to a Connecticut Highway Department marker; thence S44°53'29" W a distance of 499.60' to a rebar;

Thence along land N/F of R Woodrow Scott the following two (2) courses and distances; a stone wall N46°20'21" W a distance of 61.57' to a point; thence along a stone wall S45°08'23" W a distance of 61.59' to a rebar;

Thence along land N/F of the Town of East Lyme the following two (2) courses and distances along a stone wall; N48°01'53" W a distance of 175.80' to a rebar; thence S39°16'06" W a distance of 359.13' to a rebar;

Thence along land N/F the State of Connecticut the following six(6) courses and distances all along a stone wall, N19°59'48" W a distance of 105.15' to a point; thence N27°54'28" W a distance of 15.02' to a rebar; thence S77°09'38" W a distance of 243.36' to a mag nail in a drill hole; thence S38°49'20" W a distance of 17.98' to a point; thence S09°36'56" W a distance of 230.27' to a mag nail set in a drill hole; thence S05°27'56" E a distance of 211.65' to a rebar;

thence along other land of the State of Connecticut (Governor John Davis Lodge Turnpike) the following three (3) courses and distances, S55°24'35" W a distance of 315.69' to a Connecticut Highway Department marker; thence S38°47'33" W a distance of 504.78' to a Connecticut Highway Department marker; thence S21°06'22" W a distance of 379.75' to a Connecticut Highway Department marker said marker being the point and place of beginning.

Said property is Subject to:

1. A perpetual easement, privilege and right-of-way, one hundred and twenty-five (125) feet in width in favor of the Connecticut Light and Power Company from Fred A. Beckwith and Mary H. Weaver dated June 24, 1943 and recorded July 6, 1943 in Volume 42, Page 368 of the East Lyme Land Records.
2. A waiver of relinquishment of all access rights to and from the relocation of U.S. Route 1 and remaining land of Fred A. Beckwith with Mary H. Weaver as set forth in a deed to the State of Connecticut dated September 27, 1948 and recorded on October 15, 1948 in Volume 52, Page 407 of the East Lyme Land Records.
3. Right of access taken from land owned by Thomas A. Payne, Alice P. Spradowski and Adelaide Follows abutting Boston Post Road, U.S. Route 1, (commonly known as the New London By-Pass) by the State of Connecticut in a Certificate of Taking dated May 5, 1949 and recorded May 6, 1949 in Volume 52, Page 587 of the East Lyme Land Records.
4. A waiver of relinquishment of all access rights to and from the Connecticut Turnpike and remaining land of Frederick H. Southworth as set forth in a deed to the State of Connecticut dated October 15, 1956 and recorded on January 21, 1957 in Volume 69, Page 477 of the East Lyme Land Records.
5. Right of access taken in a Certificate of Taking from Frederick H. Southworth by the State of Connecticut dated September 5, 1956 and recorded on September 20, 1956 in Volume 72 at page 237 of the East Lyme Land Records.
6. Rights of access taken in a Certificate of Taking from Alice M. Payne, Alice P. Cripps, f/k/a Alice J. Payne, and Adelaide Follows by the State of Connecticut dated June 7, 1957 and recorded on June 21, 1957 in Volume 74, Page 223 of the East Lyme Land Records.
7. Rights of access taken in a Certificate of Taking from Alice P. Cripps, f/k/a Alice J. Payne, by the State of Connecticut dated June 7, 1957 and recorded June 21, 1957 in Volume 74 at Page 224 of the East Lyme Land Records.
8. A waiver of relinquishment of all access rights to and from the Connecticut Turnpike and remaining land of Frederick H. Southworth as set forth in a deed to the State of Connecticut dated February 28, 1957 and recorded on July 17, 1957 in Volume 74, Page 403 of the East Lyme Land Records.
9. An easement from Horace L. Crary to Connecticut Light and Power Company dated February 16, 1972 and record on February 23, 1972 in Volume 134 at Page 654 of the East Lyme Land Records.
10. Farm/Forest/Open Space Tax Assessment Certification recorded on December 9, 2008 in Volume 813 at Page 780 of the East Lyme Land Records.
11. Farm/Forest/Open Space Tax Assessment Certification recorded on November 23, 2009 in Volume 879 at Page 387 of the East Lyme Land Records.
12. Farm/Forest/Open Space Tax Assessment Certification recorded on May 20, 2013 in Volume 902 at Page 441 of the East Lyme Land Records.
13. Farm/Forest/Open Space Town of East Lyme Tax Assessors Certification recorded on November 30, 2015 in Volume 956 at Page 177 of the East Lyme Land Records.
14. Notes, restrictions and facts on a map entitled "Property Survey Property to be Conveyed to New England Forestry Foundation for Property Located at Governor John Davis Lodge Turnpike Cedarbrook Lane, Catbird Lane & Goldfinch Terrace Town of East Lyme - County of New London - Connecticut" dated May 10, 2016, Revised 6-22-2016, Scale 1"=200', Sheet 1 of 1. Prepared by James Bernardo, R.L.S. #70121 of James Bernardo Land Surveying, LLC, 102A Spithead Road, Waterford, Connecticut 06385, (860) 447-0236, www.JBSurvey.com. Said map is on file as map number 746 in the land records of the East Lyme Town Clerk.

Drawer 6

Recorded June 21 20 17

AM
1:50 PM Lesley A. Blain
East Lyme Town Clerk

EXHIBIT G

[Go to previous versions of this Section](#)

2020 Connecticut General Statutes

Title 8 - Zoning, Planning, Housing and Economic and Community Development

Chapter 126 - Municipal Planning Commissions

Section 8-18 - Definitions.

Universal Citation: CT Gen Stat § 8-18 (2020)

As used in this chapter: "Commission" means a planning commission; "municipality" includes a city, town or borough or a district establishing a planning commission under section 7-326; "subdivision" means the division of a tract or parcel of land into three or more parts or lots made subsequent to the adoption of subdivision regulations by the commission, for the purpose, whether immediate or future, of sale or building development expressly excluding development for municipal, conservation or agricultural purposes, and includes resubdivision; "resubdivision" means a change in a map of an approved or recorded subdivision or resubdivision if such change (a) affects any street layout shown on such map, (b) affects any area reserved thereon for public use or (c) diminishes the size of any lot shown thereon and creates an additional building lot, if any of the lots shown thereon have been conveyed after the approval or recording of such map; "cluster development" means a building pattern concentrating units on a particular portion of a parcel so that at least one-third of the parcel remains as open space to be used exclusively for recreational, conservation and agricultural purposes except that nothing herein shall prevent any municipality from requiring more than one-third open space in any particular cluster development; "town" and "selectmen" include district and officers of such district, respectively.

(1949 Rev., S. 853; 1953, S. 384d; 1959, P.A. 577, S. 2; 679, S. 1; 1967, P.A. 221; 677, S. 1; P.A. 77-545, S. 1; P.A. 91-395, S. 2, 11.)

History: 1959 acts added district to definition of municipality, added words "parts or" before "lots" in definition of subdivision and added definition of town and selectmen; 1967 acts included changes which create additional building lot or lots in definition of "resubdivision" and excluded development for municipal and conservation purposes from definition of "subdivision"; P.A. 77-545 redefined "subdivision" to specify divisions made after adoption of subdivision regulations by commission; P.A. 91-395 added the definition of "cluster development".

Definition of subdivision and resubdivision discussed. 146 C. 570. Cited. 149 C. 630. There is no authority for commission to adopt as a regulation definition of "subdivision" which modifies, restricts or enlarges upon statutory definition. 151 C. 450. Cited. 172 C. 60; 219 C. 303; 222 C. 216; Id., 294; 227 C. 601. Appropriate inquiry under section is whether one lot has been divided into 3 or more units, not whether topography of lot is maintained or the degree of lot line adjustment. 330 C. 502.

Cited. 5 CA 509; 8 CA 556; 18 CA 159; 20 CA 462; 23 CA 75; 29 CA 28. A map is not a resubdivision unless it alters a "subdivision". 173 CA 256. The mere changing of lot lines or adding additional land to lots, no matter how sizeable, does not constitute a "subdivision"; Legislature intended the word "parts" to refer to separate but whole, not fractional, members of a tract of land, thus, when the word "parts" is read in light of its commonly approved usage and together with the definition of "resubdivision" under this section, its meaning is plain and unambiguous, and is to be read together with the word "lots" so as to clarify the latter's meaning. 199 CA 115.

Cited. 43 CS 508.

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EXHIBIT H

WARRANTY DEED

To All People to Whom These Presents Shall Come, GREETING:

KNOW YE, THAT KSK Associates, LLC, a Connecticut limited liability company with a place of business in the Town of East Lyme, County of New London, and State of CT, for the consideration of **One and No/100 (\$1.00) Dollar** received to its full satisfaction of **New England Forestry Foundation, Inc., a Massachusetts nonprofit organization, with a place of business in Littleton, MA** does give, grant, bargain, sell and confirm unto the said New England Forestry Foundation, Inc., a Massachusetts nonprofit organization, the premises described in Exhibit A attached hereto and made a part hereof (the "Premises").

The Premises is conveyed subject to: (i) the "Conservation and Public Recreation Easement and Agreement" included herein, (ii) the "USDA Community Forest and Open Space Conservation Program Notice of Grant Requirement" attached hereto as Exhibit B and made a part hereof, and (iii) a covenant enforceable by the Town of East Lyme that the Grantee shall refrain from selling, transferring or developing such land in a manner inconsistent with its classification as open space land pursuant to Connecticut General Statutes Sec. 12-107e for a period of not less than eight years from the date of transfer. This covenant is placed in this deed pursuant to Conn. General Statutes Sec. 12-504c.

TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto the said Grantee, its successors and assigns forever, to its and their own proper use and behoof.

And Also, the said Grantor does for its heirs, executors and administrators, covenant with the said Grantee, its successors and assigns, that at and until the ensealing of these presents, it is well seized of the premises as a good indefeasible estate in FEE SIMPLE; and has good right to bargain and sell the same in manner and form as is above written; and that the same is free from all encumbrances whatsoever, except as hereinbefore mentioned.

And Furthermore, the said Grantor does by these presents binds itself and its heirs, executors and administrators forever to WARRANT AND DEFEND the above granted and bargained premises to the said Grantee, its successors and assigns, against all claims and demands whatsoever, except as hereinbefore mentioned.

As referenced above, the Premises are conveyed subject to the following:

**CONSERVATION AND PUBLIC RECREATION EASEMENT AND AGREEMENT
NIANTIC RIVER HEADWATERS OSWA 520**

WHEREAS, KSK Associates, LLC of East Lyme, Connecticut hereby conveys the Premises, subject to this CONSERVATION AND PUBLIC RECREATION EASEMENT AND AGREEMENT, to the New England Forestry Foundation, Inc., (the Premises being the same land described in Exhibit A; i.e. 33.0± acres of real property located in the territorial limit of the Town of East Lyme).

WHEREAS, in addition to its value as a natural area, the Premises is also a scenic resource of the State of Connecticut;

WHEREAS, the preservation of the above-mentioned land will yield a significant public benefit for passive recreation and open space protection;

WHEREAS, the anticipated use of the land by New England Forestry Foundation, Inc., is consistent with the Department of Energy and Environmental Protection's (DEEP) conservation and preservation interests, including management for wildlife habitat and the sustainable production of wood products and New England Forestry Foundation, Inc., has a shared interest with DEEP in seeing that these conservation-minded practices continue;

WHEREAS, the State of Connecticut established The Open Space and Watershed Land Acquisition Grant Program to provide grants to municipalities and nonprofit land conservation organizations to acquire land or permanent interests in land for open space and watershed protection and to water companies, as defined in Connecticut General Statutes (CGS) Section 25-32a, to acquire and protect land which is eligible to be classified as Class I or Class II land, as defined in CGS Section 25-37c, after acquisition;

WHEREAS, all lands or interests in land acquired under The Open Space and Watershed Land Acquisition Grant Program shall be preserved in perpetuity predominantly in their natural and scenic and open condition for the protection of natural resources while allowing for recreation consistent with such protection;

WHEREAS, a permanent Conservation Easement, as defined in CGS Section 47-42a, shall be executed for any property purchased with grant funds through The Open Space and Watershed Land Acquisition Grant Program and which Conservation Easement shall provide that the property shall remain forever predominantly in its natural and open condition for the specific conservation, open space or water supply purpose for which it was acquired;

WHEREAS, the Conservation Easement shall be in favor of the State acting through its Commissioner of Energy and Environmental Protection;

WHEREAS, such Conservation Easement shall include a requirement that the property be made available to the general public for appropriate recreational purposes, the maintenance of which recreational access shall be the responsibility of New England Forestry Foundation, Inc.;

WHEREAS, New England Forestry Foundation, Inc., and the State of Connecticut agree that limited public recreation on the Premises can be provided without significant impact to the natural resources on the Premises, conservation of those resources having been the primary reason for its acquisition by New England Forestry Foundation, Inc.;

NOW, THEREFORE, the New England Forestry Foundation, Inc. a Massachusetts nonprofit corporation having an address at 32 Foster Street, Littleton, Massachusetts 01460 (the "Conservation Grantor"), for One (\$1.00) Dollar and other good and valuable consideration received to its full satisfaction from the STATE OF CONNECTICUT, a sovereign (the "Holder"), and in consideration of the mutual covenants, terms, conditions and restrictions herein contained, Conservation Grantor, its successors and assigns, does hereby accept this deed from KSK Associates, LLC and gives, grants, bargains, sells, conveys and confirms in perpetuity unto the HOLDER and its successors or assigns forever, with Warranty Covenants, this Conservation and Public Recreation Easement ("Conservation Easement") in perpetuity, of the nature and character and to the extent hereinafter set forth, over the Premises (being the real property situated in the Town of East Lyme, County of New London, State of Connecticut, described in Exhibit A).

1. Purpose. It is the purpose of this Conservation and Public Recreation Easement to assure that the Premises will be retained forever predominantly in its natural, scenic, forested, and/or open space condition, and to provide opportunities for public recreation on the Premises, while preventing any use of the Premises that will significantly impair or interfere with the conservation values or interests of the Premises, described above. It is the intent of this Conservation Easement that any management activities or alterations of the natural landscape or provision for access or recreation shall be consistent with the conservation purposes above.

2. Development Rights and Restrictions. No building, residential dwelling, structure, parking lot, driveway, road or other temporary or permanent structure or improvement requiring construction shall be placed upon the Premises except as provided hereinbelow, the following reservations to be consistent with the conservation and public recreation purposes above:

a) Conservation Grantor reserves the right to maintain existing unpaved driveways, footpaths and other minor surface alterations; to excavate and fill as necessary to accomplish permitted building, recreational and silvicultural activities; and to construct, maintain and reconstruct additional unpaved footpaths or minor, roofless rustic improvements necessary or appropriate to assure safe passage, prevent erosion, or to enhance or protect the natural habitat.

b) All rights reserved herein by the Conservation Grantor may only be exercised subject to all applicable governmental permits and approvals required by law. Nothing herein shall commit the Holder to grant any such approval or permit.

c) Conservation Grantor reserves the right to manage and monitor the Premises for rare and endangered species, such activities including, but not limited to:

1) The rerouting or closing of trail segments or public access points that pose a substantial threat to protected species, provided that a system of public access trails remains open to the public at all times;

- 2) The right to grant access to the site for research;
- 3) Use of the Premises for educational and outreach purposes, including limited attendance walks and on-site stewardship training programs.

Conservation Grantor agrees that the activities or uses contemplated above shall not unreasonably interfere with the use of the Premises by the general public. All rights not specifically granted are hereby reserved by Conservation Grantor.

3. Provision of Public Recreation. The Conservation Grantor agrees to allow the public access to the Premises for passive recreational purposes and to use such trails or other facilities as they may exist or be developed, or where such use is permitted by the Department of Health on Class I and Class II Watershed Land. The public shall be defined as any resident of any municipality, state, country or nation. The Conservation Grantor may develop passive recreational facilities and support facilities for those passive activities on the Premises if none exists. Passive recreation shall be defined as recreational trail usage (non-motorized), recreational activities which do not require a formalized delineated playing field or area, picnicking, fishing, hunting (only by individuals with valid hunting licenses and permits who have permission of the Conservation Grantor), non-motorized boating and environmental education.

4. Other Activities. No commercial, industrial, quarrying, or mining activities are permitted on the Premises.

5. Forest Management. The Conservation Grantor reserves the right to remove trees, shrubs, and other vegetation as part of a Forest Management Plan ("Plan"). The Plan shall be designed to protect the Conservation Values or Interests of the Premises, as described in "The Connecticut Comprehensive Open Space Acquisition Strategy" (Green Plan) 2016 - 2020, with best management practices in accordance with the guidelines of the State of Connecticut Department of Energy and Environmental Protection, or its successor agency; shall be designed to minimize erosion or sedimentation of the Premises; and shall be approved in writing by the State Forester, as defined in CGS Section 23-19, or his or her designee. If Conservation Grantor does not receive approval of the Plan within sixty (60) days of its delivery to the State Forester the Conservation Grantor may deem the plan to have been approved. The Plan shall be prepared by a professional forester licensed to practice forestry in Connecticut. The preparer of the Plan shall certify in writing that the Plan and all amendments and updates comply with the terms of this Conservation Easement. The Plan also shall provide for sustainable management of the Premises in a manner consistent with generally accepted "Best Management Practices" to protect soil resources and water quality, as those practices may be identified from time to time by programs recognized as appropriate by state agency authorities, and in a manner not wasteful of soil resources or detrimental to water quality or to the conservation purposes listed in Section 1 hereof. The Plan may be updated periodically, particularly if new information or new knowledge is obtained that promotes or enhances the conservation values and sound forest management of the Premises. A Plan for the Premises shall be completed within two (2) years from the date this deed is recorded, or before any harvest of forest products occurs on the Premises, whichever shall occur first. The Conservation Grantor shall update the Plan at least every ten years thereafter to the extent that the Conservation Grantor desires to continue to conduct forestry activities on the Premises. All forest

product-harvesting operations shall be conducted in accordance with applicable law. All updates to the Plan will be subject to the review and approval of the State Forester.

6. Water Protection and Waste Disposal. The use of chemical herbicides, pesticides, fungicides, fertilizers and other agents must be limited to prevent any demonstrable adverse effect on wildlife, waters, and other important conservation interests to be protected by this Conservation Easement.

It is forbidden to dispose of or to store rubbish, garbage, debris, abandoned equipment, parts thereof, or other unsightly, offensive, toxic or hazardous waste material on the Premises except that vegetative waste may be composted, and other waste generated by permitted uses on the Premises may be stored temporarily in appropriate containment for removal at reasonable intervals, subject to all applicable local, state, and federal laws and regulations.

The Grantor and Conservation Grantor covenant and represent that, to the best of their knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Premises, and that there are not now any underground storage tanks located on the Premises.

7. Costs and Taxes. Conservation Grantor acknowledges that the Holder has no possessory rights in the Premises, nor any responsibility or right to control, maintain, or keep up the Premises. Conservation Grantor is responsible to pay and discharge when due all property taxes and assessments and to avoid the imposition of any liens that may impact Holder's rights herein. Conservation Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Premises and will, to the fullest extent permitted by law, defend, release, relieve, hold harmless, and indemnify Holder, its officers, directors, agents, and employees therefrom and from any claims for damages which arise therefrom, except for harm caused by the negligent act or misconduct of Holder, or as may arise out of its workers' compensation obligations. This provision shall not be construed as a waiver of sovereign immunity.

Conservation Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Premises by competent authority (collectively "taxes"), and shall furnish Holder with satisfactory evidence of payment upon request. In order to assure the continued enforceability of this Conservation Easement, the Holder is authorized, but in no event obligated, to make or advance any payment of taxes, upon three (3) days prior written notice to Conservation Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Conservation Grantor at the lesser of two (2) percentage points over the prime rate of interest from time to time announced by JP Morgan Chase Bank or the maximum rate allowed by law. Holder shall have the right to place a lien on property of the Conservation Grantor in the event that the payment is not reimbursed to Holder within thirty (30) days.

8. Subdivision Limitation and Subsequent Transfers. The Premises must remain as an entity in a single ownership, and may not be divided, subdivided, partitioned or otherwise separated into parcels or lots, whether or not said Premises may be described herein, or have been described in any prior deed, as more than one piece or parcel of land.

Conservation Grantor agrees that the terms, conditions, restrictions, and purposes of this grant or reference thereto will be inserted by Conservation Grantor in any subsequent deed or other legal instrument by which the Conservation Grantor divests either the fee simple title or possessory interest in the Premises, and Conservation Grantor further agrees to notify Holder of any transfer at least thirty (30) days in advance thereof.

9. Miscellaneous.

- a) Grantor and Conservation Grantor represent that as of the date of this grant there are no liens or mortgages outstanding against the Premises. The rights of the Holder to enforce the terms, restrictions and covenants created under this Conservation Easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien, regardless of any subsequently placed mortgage or lien.
- b) If any provision(s) of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- c) Any uncertainty in the interpretation of this Conservation Easement should be resolved in favor of conserving the Premises in its natural and scenic state.
- d) If this Conservation Easement is extinguished by court order, or the powers of eminent domain, the proceeds of any taking or sale of the unrestricted property shall be divided between Conservation Grantor and Holder in the same proportion as the value of their respective interests, so calculated, as of the date of this grant, excepting any part of such proceeds attributable to improvements to the Premises made after the date of this grant. Holder will use such proceeds for its conservation purposes.

10. Remedies and Enforcement.

- a) This Conservation Easement granted hereby constitutes a Conservation Restriction on the Premises in favor of the Holder and its successors and assigns pursuant to CGS Section 47-42a, as amended. Pursuant to CGS Section 47-42b, as amended, this Conservation Easement shall not be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land. Pursuant to CGS Section 47-42c, this Conservation Easement may be enforced by injunction or proceedings in equity, or in any other manner permitted by law. It is further agreed by the parties that the Conservation Easement granted hereby may be enforced at law or in equity.
- b) The failure or delay of the Holder, for any reason whatsoever, to enforce this Conservation Easement shall not constitute a waiver of its rights and Conservation Grantor hereby waives any defense of laches, prescription, or estoppel.
- c) Conservation Grantor is not responsible for injury to or change in the Premises resulting from "acts of God" so called, such as, but not limited to, fire, flood, storm, and earth movement, or from any prudent action taken by Conservation Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. If a Court (or other decision

maker chosen by mutual consent of the parties) determines that this Conservation Easement has been breached, Conservation Grantor will reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorneys' fees, and any other payments ordered by such Court.

d) The terms and conditions of said Conservation Easement hereinabove set forth shall be binding upon and inure to the benefit of the Holder and its successors or assigns. However, said Conservation Easement shall not entitle the Holder or its successors or assigns to any right of entry or use of the Premises except as provided herein and for periodic inspections in a reasonable manner and at reasonable times to ensure compliance with the conservation and recreation purposes above.

e) The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

11. Notices. Any notice to Holder required herein must be made by certified mail, return receipt requested, addressed to:

State of Connecticut
Department of Energy and Environmental Protection
Office of the Commissioner
79 Elm Street
Hartford, CT 06106

or such other address as may be furnished in writing.

Any notice to Conservation Grantor required herein must be made by certified mail, return receipt requested, addressed to:

Executive Director
New England Forestry Foundation, Inc.
32 Foster Street -- P.O. Box 1346
Littleton, MA 01460-1346

or such other address as may be furnished in writing.

Any notices to Holder or requests for Holder consent, required or contemplated herein, must include, at a minimum, sufficient information to enable the Holder to determine whether proposed plans are consistent with the terms of this Conservation Easement and the conservation and recreation purposes hereof.

IN WITNESS WHEREOF, Grantor has hereunto set its hands and seal this 6th day of AUGUST in the year of our Lord Two Thousand Nineteen.

Signed, sealed and delivered in the Presence of:

KSK Associates, LLC

Nikki Swenseid
Nikki Swenseid witness

By: [Signature] (LS)
Stephen F. Harney
Managing Member

Tammie Hand
Tammie Hand witness

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK ss: CITY OF SOUTHPORT

On this, the 6th day of AUGUST, 2019, before me, the undersigned officer, personally appeared Stephen F. Harney, known to me to be the person whose name is subscribed to in this instrument and who acknowledged the same to be his free act and deed as the managing member of KSK Associates, LLC and that he executed this instrument for the purposes therein contained and executed this instrument on behalf of KSK Associates, LLC.

In Witness Whereof, I hereunto set my hand and official seal.

Mallory H. Willis
Commissioner of the Superior Court
Notary Public Mallory H. Willis
My Commission Expires on: Sept. 29, 2021

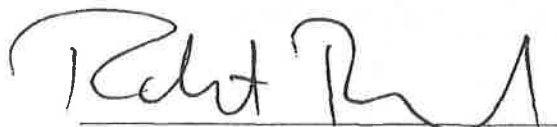


THE NEW ENGLAND FORESTRY FOUNDATION, INC. hereby accepts this deed and covenants that it shall HAVE AND HOLD the above granted and bargained Conservation Easement unto the said Holder and that it will WARRANT AND DEFEND the Premises to the said Holder and its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under it.

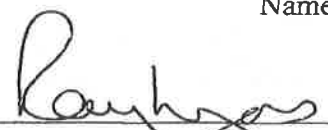
IN WITNESS WHEREOF, the New England Forestry Foundation, Inc. and State of Connecticut hereto have set their hands.

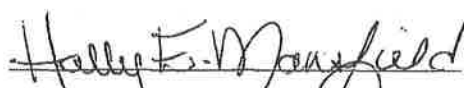
NEW ENGLAND FORESTRY FOUNDATION, INC. WITNESSES

Signature
Name in print



Robert Perschel, Executive Director
Duly Authorized


Name Rayhons


Name Holly Mansfield

COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF MIDDLESEX)

SS. TOWN OF LITTLETON

The foregoing instrument was acknowledged before me this 7th day of August 2019, by Robert Perschel, Executive Director of the New England Forestry Foundation, Inc., a Commonwealth of Massachusetts corporation, on behalf of the corporation.



Notary Public
My Commission Expires _____

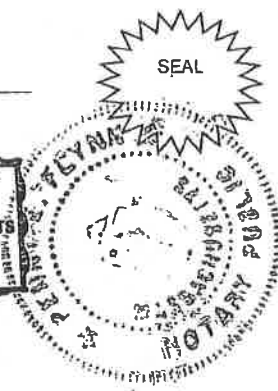
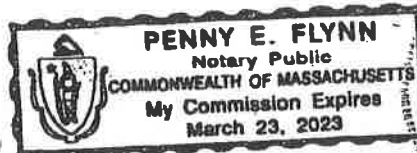


EXHIBIT A

The land being acquired by New England Forestry Foundation, Inc. and upon which a permanent Conservation is being placed is described further by means of the following property description.

All that certain piece or parcel of land with all of the improvements thereon, if any, situated on the eastern highway line of Goldfinch Terrace in the Town of East Lyme, County of New London and State of Connecticut, labeled as "THIS PARCEL TO BE MERGED WITH OTHER LAND OF NEW ENGLAND FORESTRY FOUNDATION, INC. Phase 2 Area = 1,436,092.0 SQ FT M/L 33.0 Acres M/L" on a map entitled "LOT LINE MODIFICATION PROPERTY TO BE CONVEYED TO NEW ENGLAND FORESTRY FOUNDATION FOR PROPERTY LOCATED AT GOLDFINCH TERRACE & EGRET ROAD TOWN OF EAST LYME - COUNTY OF NEW LONDON - CONNECTICUT" October 9, 2017, revised to May 10, 2019, Scale 1"=100'. Said map being certified substantially correct by James Bernardo L.L.S. 70121, Bernardo Land Surveying, LLC 102A Spithead Road, Waterford, Connecticut 06385. Said map being recorded in the Town Clerks Office of the Town of East Lyme as map number 100-00000000 (the "Plan") to which reference may be had for a more particular description, and which parcel is more particularly bounded and described as follows:

Beginning at a point marked by a rebar on the easterly side of Goldfinch Terrace, said point being a southwest corner of land N/F of New England Forestry Foundation, Inc. (NEFF) and a northwest corner of the herein described parcel.

Thence running easterly along land of said NEFF the following two (2) courses and distances: N84°01'48"E a distance of 377.63 feet to a rebar, thence S85°48'19"E a distance of 296.62 feet to a rebar, said point being the northeast corner of the herein described parcel.

Thence southerly along said NEFF the following two (2) courses and distances: S05°42'24"W a distance of 463.59 feet to a rebar, thence S03°23'41"E a total distance of 1357.20 feet to a rebar, this total distance is further marked by intermediate points on the following distances, 270.00 feet, 266.00 feet, 299.00 feet 272.00 feet and 250.20 feet, said point being a southeast corner of the herein described parcel.

Thence along said NEFF S56°53'37"W a total distance of 663.98 feet to a rebar, this total distance is further marked by an intermediate rebar on the following distances, 333.98 feet and 330.30 feet, Thence S21°10'10"W a distance of 374.16 feet to a rebar, said point being a southeast corner of the herein described parcel.

Thence N88°44'22"W a distance of 363.43 feet to a stone wall, thence S04°30'37"W a distance of 1.7 feet to a drill hole.

Thence along land N/F Tamara Schacher-Tytla N90°00'00"W a distance of 224.46' to a rebar, being the southwest corner of the herein described parcel.

Thence along said Schacher-Tytla and Lot #17, in part by each, N06°42'32"E a distance of 337.25 feet to a point.

Thence along Lot #18 N29°49'25"W a distance of 219.56 feet to a concrete monument at the eastern street line of Egret Road.

Thence along said Egret Road the following two (2) courses and distances: along a curve to the left having a Delta of 34°02'06" a radius of 325.00' a chord bearing & distance of N36°46'09"E a distance of 190.23 feet and a length of 193.06' to a concrete monument, thence N19°44'41"E a distance of 160.97 feet to an iron pin.

Thence along land N/F Bonnie L. Speziali, Trustee the following four (4) courses and distances: S65°45'21"E a distance of 203.65 feet to an iron pin, thence S16°57'24"W a distance of 101.50 feet to an iron pin, thence N87°44'51"E a distance of 277.94 feet to a point, thence N01°43'50"E a distance of 86.18 feet to an iron pin.

Thence along a parcel that is to be merged with other land of Bonnie L. Speziali, Trustee shown as "REMAINING LAND OF KSK ASSOCIATES LLC", the following four (4) courses and distances:

S53°33'52"E a distance of 235.19 feet to an iron pin, thence N44°15'22"E a distance of 306.19 feet to an iron pin, thence N00°00'00"W a distance of 254.26 feet to an iron pin and N88°53'20"W a distance of 167.62 feet to a drill hole.

Thence along Lot #148 N01°43'38"E a distance of 249.87 feet to a drill hole.

Thence along Lot #146 the following two (2) courses and distances:

N01°48'45"E a distance of 100.10 feet to an iron pin, thence N37°06'57"W a distance of 250.95 feet passing through a drill hole to an iron pin.

Thence along LAND OF KSK ASSOCIATES LLC TO BE MERGED WITH LAND OF COVE LANDING ASSOCIATES LLC the following seven (7) courses and distances:

N59°27'21"E a distance of 122.71 feet to an iron pin, thence N13°02'27"E a distance of 297.28 feet to an iron pin, thence N69°49'23"W a distance of 188.31 feet to an iron pin, thence

N16°15'37"E a distance of 26.62 feet to an iron pin, thence N25°42'36"E a distance of 159.54 feet to a point, thence N24°21'23"E a distance of 172.98 feet to an iron pin, thence

N73°32'57"W a distance of 209.14 feet to an iron pin on the easterly side of Goldfinch Terrace.

Thence said Goldfinch Terrace the following two (2) courses and distances:

along a curve to the left having a delta of 11°04'50" a radius of 175.00 feet and a length of 33.84 feet to a point, thence N02°25'20"W a distance of 34.34 feet to the point and place of beginning.

Also, an easement for forestry and maintenance purposes over the area shown and identified as "25' Access Easement to be conveyed to New England Forestry Foundation" running from "End of Town Road as per Volume 417, Page 618" from Goldfinch Terrace through the parcel shown and identified as "This Parcel to be merged with other land of Bonnie L. Speziali, Trustee," as shown on the Plan.

The Premises is Subject to:

1. A waiver of relinquishment of all access rights to and from the relocation of U.S. Route 1 and remaining land of Fred A. Beckwith with Mary H. Weaver as set forth in a deed to the State of Connecticut dated September 27, 1948 and recorded on October 15, 1948 in Volume 52, Page 407 of the East Lyme Land Records.
2. Right of access taken from land owned by Thomas A. Payne, Alice P. Spradowski and Adelaide Follows abutting Boston Post Road, U.S. Route 1, (commonly known as the New London By-Pass) by the State of Connecticut in a Certificate of Taking dated May 5, 1949 and recorded May 6, 1949 in Volume 52, Page 587 of the East Lyme Land Records.
3. A waiver of relinquishment of all access rights to and from the Connecticut Turnpike and remaining land of Frederick H. Southworth as set forth in a deed to the State of Connecticut dated October 15, 1956 and recorded on January 21, 1957 in Volume 69, Page 477 of the East Lyme Land Records.
4. Right of access taken in a Certificate of Taking from Frederick H. Southworth by the State of Connecticut dated September 5, 1956 and recorded on September 20, 1956 in Volume 72 at

page 237 of the East Lyme Land Records

5. Rights of access taken in a Certificate of Taking from Alice M. Payne, Alice P. Cripps, f/k/a Alice J. Payne, and Adelaide Follows by the State of Connecticut dated June 7, 1957 and recorded on June 21, 1957 in Volume 74, Page 223 of the East Lyme Land Records.
6. Rights of access taken in a Certificate of Taking from Alice P. Cripps, f/k/a Alice J. Payne, by the State of Connecticut dated June 7, 1957 and recorded June 21, 1957 in Volume 74 at Page 224 of the East Lyme Land Records.
7. A waiver of relinquishment of all access rights to and from the Connecticut Turnpike and remaining land of Frederick H. Southworth as set forth in a deed to the State of Connecticut dated February 28, 1957 and recorded on July 17, 1957 in Volume 74, Page 403 of the East Lyme Land Records.
8. A Utility Easement from Horace L. Crary to Connecticut Light and Power Company dated February 16, 1972 and record on February 23, 1972 in Volume 134 at Page 654 of the East Lyme Land Records,
9. Farm/Forest/Open Space Town of East Lyme Tax Assessors Certification recorded on November 30, 2015 in Volume 956 at Page 177 of the East Lyme Land Records.
10. Forest Designation by the Town of East Lyme ending August 18, 2018 recorded in Volume 956 at Page 180 of the East Lyme Land Records.
11. Notes, restrictions and facts on a map entitled "Lot Line Modification Property to be Conveyed to New England Forestry Foundation for Property Located at Goldfinch Terrace & Egret Road Town of East Lyme - County of New London - Connecticut" dated October 9, 2017, revised to May 10, 2019, Scale 1"=100'. Said map being certified substantially correct by James Bernardo L.L.S. 70121 of Bernardo Land Surveying, 102A Spithead Road, Waterford, Connecticut 06385, (860) 447-0236, www.JBSurvey.com. Said map is on file as map number 100 DEAN in the land records of the East Lyme Town Clerk.
12. A Conservation Easement from KSK Associates LLC to the Town of East Lyme dated August 14, 2012 recorded in Volume 896 at Page 169 of the Est Lyme Land Records.
13. A conservation Easement from KSK Associates to Bonnie L. Speziale Trustee dated August 15, 2014 and recorded I Volume 935 at Page 317 of the East Lyme Land Records. (Said easement consists of 11,104 Sq. Ft.)

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INST: 00002078

14. Forestry and Open Space Assessment from KSK Associates LLC to the Town of East Lyme recorded January 31, 2017 in Volume 976 at Page 243 of the East Lyme Land Records.
15. Forestry and Open Space Assessment from KSK Associates LLC to the Town of East Lyme recorded January 31, 2017 in Volume 990 at Page 382 of the East Lyme Land Records.

EXHIBIT B

USDA Community Forest and Open Space Conservation Program

NOTICE OF GRANT REQUIREMENT

The property described herein in Exhibit A, "Property Description," (Property) was acquired pursuant to a monetary grant awarded to the *New England Forestry Foundation, Inc.*, (Grant Recipient). The purpose of this acquisition is to effect the goals of the U.S. Department of Agriculture (USDA) Forest Service's *Community Forest and Open Space Conservation Program* (Community Forest Program or CFP) in accordance with the provisions of Section 7A of the *Cooperative Forestry Assistance Act (CFAA)* of 1978 as amended. Such purposes are to provide public benefits to communities including economic benefits through sustainable forest management, environmental benefits including clean air, water, and wildlife habitat; benefits from forest-based educational programs; benefits from serving as models of effective forest stewardship; and recreational benefits secured with public access; and to acquire private forest lands that are threatened by conversion to nonforest uses. Program delivery is guided by the Community Forest Program regulations (36 CFR Part 230 Subpart A) (published 10/20/2011; 76 FR 65121). In accordance with these regulations the Grant Recipient acknowledges that:

1. This Property was purchased with Federal funds in accordance with the Community Forest Program (36 CFR Part 230 Subpart A) (published 10/20/2011; 76 FR 65121);
2. The legal description for the Property is as set forth in Exhibit A, "Property Description;"
3. The address of the Grant Recipient and authorized title holder listed above is: New England Forestry Foundation, Inc. PO Box 1346, 32 Foster Street, Littleton, MA 01460.
4. This Property is designated as a 'Community Forest' pursuant to the requirements of the Community Forest Program (CFP);

The Grant Agreement with the USDA Forest Service is agreement number 16-DG-11420004-241 and it is kept on file at:

U.S. Forest Service
Eastern Region State & Private Forestry
626 E. Wisconsin Ave.
Milwaukee, WI 53202

5. The Grant Recipient shall ensure that for all land(s) acquired pursuant to this grant is held in perpetuity by an eligible entity as defined by 36 CFR Part 230 (published 10/20/2011; 76 FR 65121) and that the Community Forest will be (i) managed pursuant to the grant, the Community Forest Plan, and the purpose of the CFP; (ii) will not be conveyed or encumbered, in whole or in part, to another party without written permission and instructions from the awarding agency; (iii) will be managed consistent with the purpose of the CFP;
6. In the event that the Community Forest is sold or converted to nonforest uses or a use inconsistent with the purpose of the CFP, the Grant Recipient or subsequent Community Forest landowner shall: (1) pay the United States an amount equal to the current sale price or the current appraised value of the parcel, whichever is greater; and (2) not be eligible for additional grants under the CFP.

EXHIBIT I

