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March 30, 2012

VIA ELECTRONIC MAIL AND U.S. MAIL

Linda L. Roberts
Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

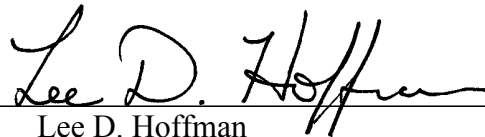
Re: Petition 983 - BNE Energy Inc., Flagg Hill Road, Colebrook, CT

Dear Ms. Roberts:

As you are aware, the Siting Council's Decision and Order with respect to the above-referenced Petition of BNE Energy Inc., ("BNE") requires BNE to formalize and submit to the Council a conservation easement that conforms to the requirements found in Connecticut General Statutes Chapter 822, Easements and Restrictions. Enclosed for the Council's approval is a final draft conservation easement between BNE and the Northwestern Connecticut Sportsmen's Association ("NWCSA"). Upon receiving the Council's approval of this draft conservation easement, BNE and NWCSA will fully execute the easement and BNE will file an executed copy with the Council.

If you have any questions concerning this submittal, then please contact the undersigned at your convenience. Please return a date-stamped copy of this filing in the enclosed envelope. Thank you in advance for your assistance.

Respectfully submitted
BNE ENERGY INC.

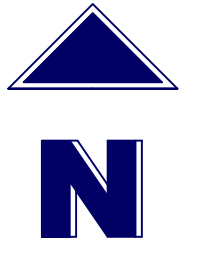
By: 
Lee D. Hoffman
Its Attorney

cc: Service List for Petition 983
Melanie A. Bachman (via electronic mail)
Michael A. Perrone (via electronic mail)

N/F
THE NORTHWESTERN CONNECTICUT SPORTSMAN'S ASSOCIATION, INC.
VOL. 62, P. 912
T.C. MAP # 248

N/F
TOWN OF NORFOLK

NAD 83 DATUM



FLAGG HILL ROAD

LOT 1
177,248 sq. ft. = 4.069 acres

LOT 2
3,296,403 sq. ft. = 75.675 acres

OPEN SPACE CONSERVATION PROPERTY AREA
1,157,893 square feet = 26.582 acres (33.33 %)

N/F
CAROLE MARCHETTI
VOL. 48, P. 714
LOT 1, T.C. MAP # D/D5

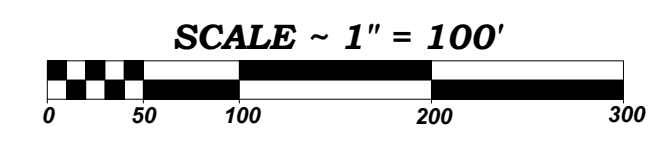
N/F
ROBERT K. & ROBIN L. DZIEDZIC
VOL. 79, P. 843
LOT 3, T.C. MAP # D/D5

N/F
MARK & MARY MATARAINEN
VOL. 46, P. 192
T.C. MAP # C/C1

PERIMETER SURVEY
PREPARED FOR
WIND COLEBROOK, LLC
FLAGG HILL ROAD
COLEBROOK, CONNECTICUT

AREA = 3,473,652 SQUARE FEET
= 79.744 ACRES
TAX MAP 1, LOTS 6 & 6-1

AUG. 13, 2010
REVISED MARCH 15, 2012
(ADD CONSERVATION AREA)



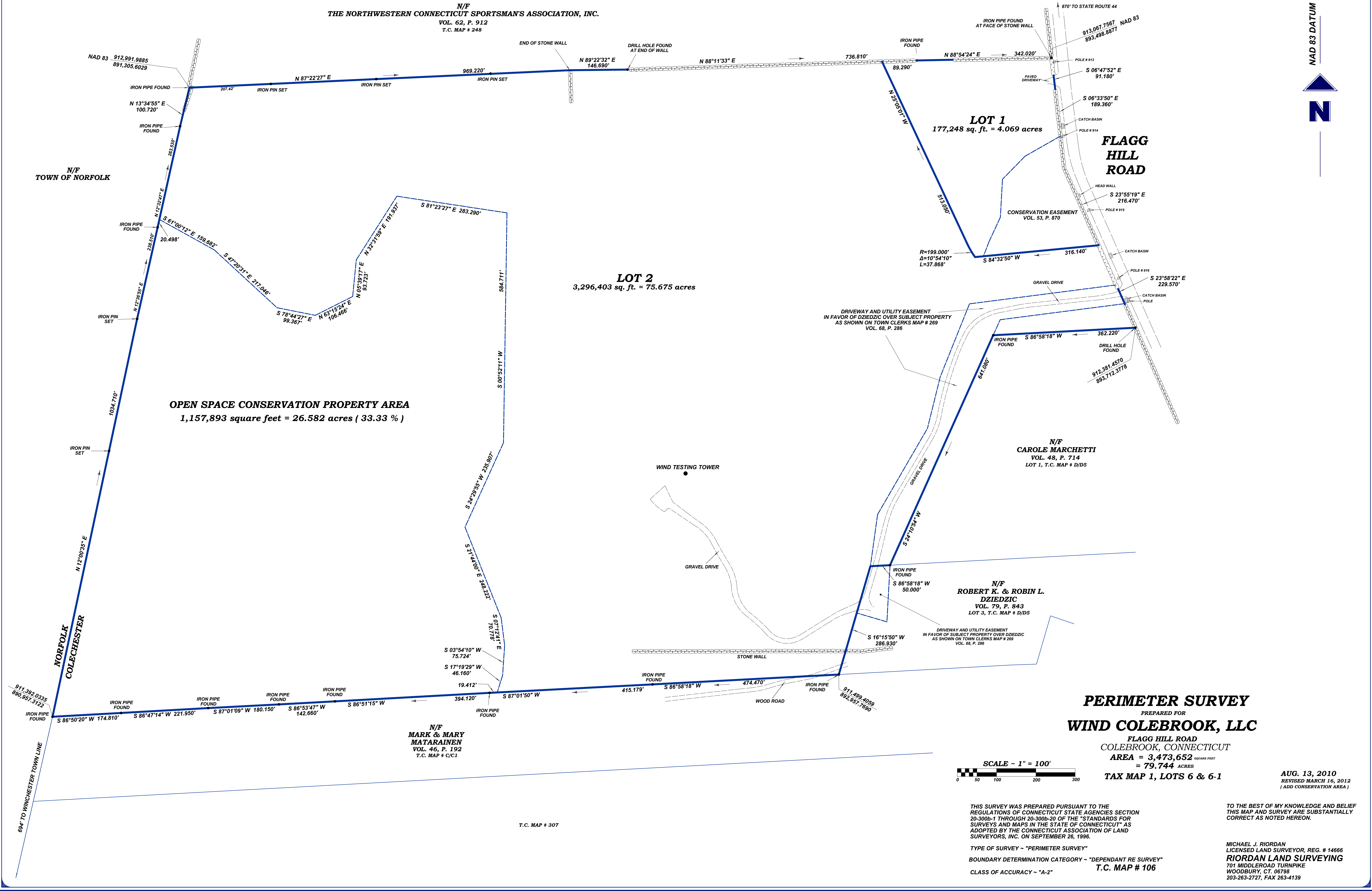
THIS SURVEY WAS PREPARED PURSUANT TO THE REGULATIONS OF CONNECTICUT STATE AGENCIES SECTION 20-300b-1 THROUGH 20-300b-20 OF THE "STANDARDS FOR SURVEYS AND MAPS IN THE STATE OF CONNECTICUT" AS ADOPTED BY THE CONNECTICUT ASSOCIATION OF LAND SURVEYORS, INC. ON SEPTEMBER 26, 1996.

TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS MAP AND SURVEY ARE SUBSTANTIALLY CORRECT AS NOTED HEREON.

TYPE OF SURVEY ~ "PERIMETER SURVEY"
BOUNDARY DETERMINATION CATEGORY ~ "DEPENDANT RE SURVEY"
CLASS OF ACCURACY ~ "A-2" **T.C. MAP # 106**

MICHAEL J. RIORDAN
LICENSED LAND SURVEYOR, REG. # 14666
RIORDAN LAND SURVEYING
701 MIDDLE ROAD TURNPIKE
WOODBURY, CT. 06798
203-263-2727, FAX 263-4139

T.C. MAP # 307



DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (this "Easement") is made this ___ day of April, 2012, by GREGORY J. ZUPKUS and PAUL J. COREY ("Grantors"), in favor of THE NORTHWESTERN CONNECTICUT SPORTSMAN'S ASSOCIATION a nonprofit Connecticut association, having an address at 177 Norfolk Road (Route 44), Colebrook, CT 06021 ("Grantee").

WITNESSETH:

WHEREAS, the Grantors are the sole owners in fee simple of certain real property consisting of approximately 79.74 acres located at 17 and 29 Flagg Hill Road in Colebrook, Connecticut in Litchfield County, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property");

WHEREAS, BNE Energy Inc. has obtained approval from the Connecticut Siting Council ("CSC") in a decision dated June 2, 2011, for the construction, operation and maintenance of a wind generation project consisting of three 1.6 MW wind turbines on the Property known as Wind Colebrook South (the "Project"). The Project will produce clean renewable electricity with zero emissions and no water consumption resulting in significant environmental benefits;

WHEREAS, the purpose of this Easement is to enhance the environmental benefits of Wind Colebrook South for the State of Connecticut, the Town of Colebrook, its residents, and for members of the public. This Easement will preserve open space and provide additional protections for wetlands, natural resources and wildlife habitat;

WHEREAS, the property protected by this Easement is a portion of the Property that consists of 26.58 acres or 33% of the total 79.74 acres on the site consisting of a pond (11.24 acres), wetlands (4.21 acres) and uplands (11.13 acres) (the "Protected Property"). There is also a minimum buffer of 50 feet from the wetlands which extends to 100 feet in areas and encompasses all of the land that is within 100 feet of the vernal pools in accordance with the Metropolitan Conservation Alliance Technical Paper No. 5 (Calhoun and Klemens, 2002). A map delineating the Protected Property is attached hereto as Exhibit B;

WHEREAS, the specific conservation values of the Protected Property are documented in an inventory of relevant features of the Protected Property to be filed at the office of the Grantee, incorporated by this reference ("Baseline Documentation"), which consists of reports, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Protected Property at the time of this grant and which are intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant;

WHEREAS, the Grantors and the Grantee have the common purpose of conserving the conservation values of the Protected Property and intend that this Easement will confine the use

of the Protected Property to such activities as are consistent with the purpose set forth herein while allowing opportunities for passive recreational use of the Protected Property.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and in particular in accordance with the conservation plan that was filed with and approved by the CSC in Petition 983 (the "Conservation Plan"), and pursuant to C.G.S. Chapter 822 Easements and Restrictions, Sections 47-42a through 47-42d, Grantors hereby voluntarily grant and convey to Grantee this Easement over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. **Purpose.** It is the purpose of this Easement to assure that the Protected Property will be retained for the duration of the Project in its natural, scenic, forested, and/or open space condition and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property. Grantors intend that this Easement will confine the use of the Protected Property to such activities described herein, as are consistent with the purpose of this Easement.
2. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:
 - (a) To preserve and protect the conservation values of the Protected Property;
 - (b) To enter upon the Protected Property at reasonable times and with prior notice in order to monitor compliance with and otherwise enforce the terms of this Easement, provided, however, that Grantee shall not in any case unreasonably interfere with Grantors' use and quiet enjoyment of the Protected Property; and
 - (c) To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use by Grantors.
3. **Prohibited Uses.** Any activity on or use of the Protected Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
 - (a) No residential, commercial, industrial, or mining activities shall be permitted, and no building, structure, telecommunications facility, or like improvement, shall be constructed, created, installed, erected or moved onto the Protected Property.
 - (b) Except as otherwise permitted herein, or as may currently exist, no rights-of-way, easements of ingress or egress, driveways, roads, or utility lines or easements shall be constructed, developed or maintained into, on, over, under, or across the Protected Property.
 - (c) Except for any natural disturbance or acts of God, there shall be no disturbance of the surface, including but not limited to filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner, except as may be reasonably

necessary to carry out the uses permitted on the Protected Property under the terms herein. In no case shall subsurface mining of oil, gas or other minerals be permitted.

- (d) There shall be no manipulation of natural watercourses, marshes, or other water bodies, nor shall there be activities conducted on the Protected Property which would be detrimental to water quality, or which could alter natural water level or flow, except as reasonably necessary to carry out the permitted uses provided herein.
- (e) There shall be no billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that reasonable signs may be erected and maintained including but not limited to signs designating the Protected Property, indicating the name of the Protected Property and its ownership, boundary markers, directional signs, informational and interpretive signs, and signs limiting access or use.
- (f) There shall be no trash cans, bins, or other improvements for the collection or storage of trash, human waste, or any other unsightly or offensive material placed on the Protected Property.

4. **Reserved Rights.** Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, and subject to the terms of Section 3, the following rights are expressly reserved:

- (a) The right to implement wildlife habitat improvement practices that are consistent with the purpose of the Conservation Plan.
- (b) The right to conduct and enjoy recreational activities, such as, without limitation, walking, cross-country skiing, snowshoeing, camping and wildlife-based recreational activities (e.g. bird watching, hunting, trapping, and fishing).
- (c) The right to use, repair and maintain, trails for permitted recreational activities on the Protected Property.
- (d) The right to own, construct, operate and maintain the Project on the Property.
- (e) The right to undertake or continue any activity or use of the Protected Property not prohibited by this Easement.
- (f) The right to sell, assign, mortgage, lease, or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Easement.

5. **Grantee's Remedies.**

- (a) *Notice of Violation; Corrective Action.* If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, then Grantee shall give written notice to Grantors of such violation and request corrective action

sufficient to cure the violation and restore the Protected Property to its prior condition.

(b) *Injunctive Relief.* If Grantors fail to cure the violation within 60 days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 60 day period, fail to begin curing such violation within the 60 day period, or fail to continue diligently to cure such violation until finally cured, then Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Protected Property to its prior condition.

(c) *Acts Beyond Grantors' Control.* Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Protected Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

6. **Access.** Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof.

7. **Costs, Liabilities, Taxes, and Environmental Compliance.**

(a) *Costs, Legal Requirements, and Liabilities.* Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement, and all such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

(b) *Taxes.* Grantors agree to pay any real estate taxes or other assessments levied on the Protected Property.

(c) *Representations and Warranties.* Grantors represent and warrant that to the best of their knowledge:

i. 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 on the Protected Property; and

ii. No violation of any federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use exists as of the date hereof.

(d) *Control.* Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical

or managerial control over the day-to-day operations of Protected Property or any of Grantors' activities on the Protected Property.

- (e) *Hold Harmless.* Grantors hereby release and agree to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence, bad faith or willful misconduct of any of the Indemnified Parties.

8. Extinguishment and Condemnation.

- (a) *Extinguishment.* This Easement and the restrictions stated herein shall be effective as of commencement of construction activities in connection with the Project (the "Commencement Date") and shall be in effect for the duration of the Project including its ongoing operations until such time as the Project is decommissioned and no longer used as a wind powered electrical generation facility. Any changes, modifications or amendments to this Easement are subject to the prior approval of the CSC, and the parties agree that the CSC or its successor reserves the right upon petition to amend, modify and/or change any of the terms herein from time to time, and the parties agree to incorporate such changes into this Easement. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, then this Easement can be terminated or extinguished, whether in whole or in part, by the CSC or its successor, or by judicial proceedings in a court of competent jurisdiction. Notwithstanding any provisions herein to the contrary, nothing in this Easement is deemed to grant any rights whatsoever to Grantee over the Project.
- (b) *Valuation.* The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. For the purposes of this paragraph, the ratio of the value of this Easement to the value of the Property unencumbered by this Easement shall remain constant.

- 9. Assignment.** This Easement is transferable by Grantors, and by Grantee with the prior written consent of Grantors such consent not to be unreasonably withheld, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state law or under the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out.

10. **Estoppel Certificates.** Upon request by Grantors, Grantee shall, within 30 days, execute and deliver to Grantors a certificate which certifies Grantors' compliance with the obligations of Grantors contained in this Easement and otherwise evidences the status of this Easement.

11. **Notices.** Any notices required in this Easement shall be in writing and either served personally, or sent by certified mail to the following address or to such other address as either party from time to time shall designate by written notice to the other:

To Grantors:

Paul J. Corey, BNE Energy, 17 Flagg Hill Road, Colebrook, CT 06021

To Grantee:

Jason Marshall, Northwestern Connecticut Sportsman's Association, 177 Norfolk Road (Route 44), Colebrook, CT 06021

12. **Recordation.** Grantors shall record this instrument in timely fashion in the land records of the Town of Colebrook.

13. **General Provisions.**

- (a) *Controlling Law.* The interpretation and performance of this Easement shall be governed by the laws of the State of Connecticut.
- (b) *Severability.* If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, then the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- (c) *Entire Agreement.* This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in writing and signed by both Grantors and Grantee.
- (d) *No Forfeiture.* Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.
- (e) *Joint Obligation.* The obligations imposed by this Easement upon Grantors shall be joint and several.
- (f) *Successors.* The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns. The terms "Grantors" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

- (g) *Termination of Rights and Obligations.* A party's rights and obligations under this Easement terminate upon transfer of the party's interest in this Easement or the Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- (h) *Captions.* The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- (i) *Counterparts.* The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns for the duration of the Project.

IN WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above written.

Grantor – Gregory J. Zupkus

Grantor- Paul J. Corey

Grantee – The Northwestern Connecticut Sportsman’s Association

by

Jason Marshall
its President

Acknowledgments to be added

EXHIBIT A

17 Flagg Hill Road, Colebrook:

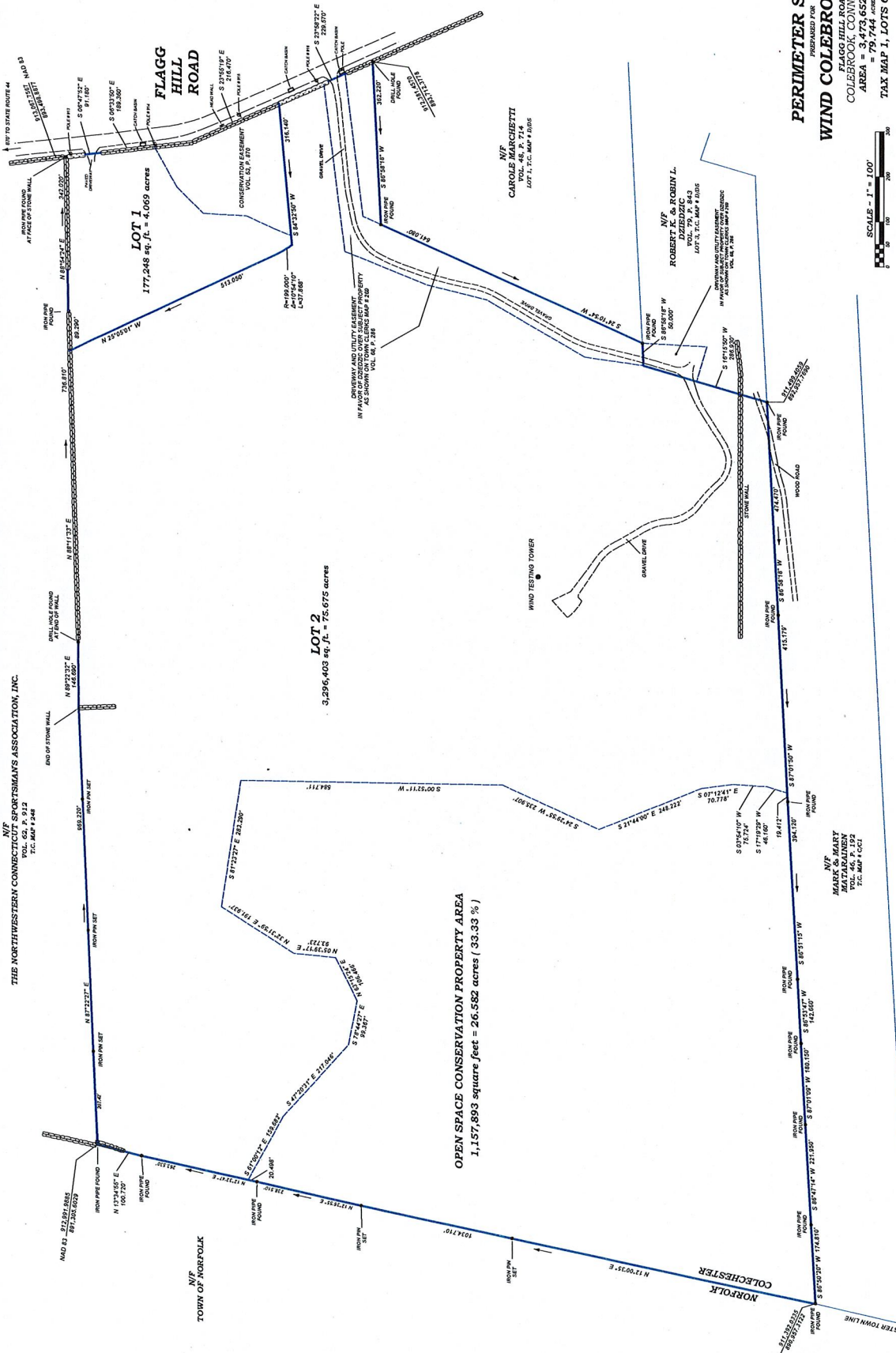
All that certain piece or parcel of land with all the improvements thereon, situated on the westerly side of Flagg Hill Road, in the said Town of Colebrook containing 4.07 acres, more or less, being shown and designated as **Lot 1** on a certain map or plan entitled "Resubdivision 'Flagg Hill Road' Prepared for Winchester Ridge Associates, Flagg Hill Rd., Colebrook, CT dated 7-9-90 and revised to 1-2-91" by DiCara Land Surveying Services, which map is on file in the Colebrook Town Clerk's Office in Map Drawer One - #106, to which map reference may be had for a more particular description.

29 Flagg Hill Road, Colebrook:

All that certain piece or parcel of land with all the improvements thereon, situated on the westerly side of Flagg Hill Road, in said Town of Colebrook, County of Litchfield and State of Connecticut, shown and designated as Lot 2 on a certain map or plan entitled "Resubdivision 'Flagg Hill Road' Prepared for Winchester Ridge Associates, Flagg Hill Rd., Colebrook, CT dated 7-9-90 and revised 1-2-91" by DiCara Land Surveying Services, which map is on file in the Colebrook Town Clerk's Office in Map Drawer One - #106, to which map reference may be had for a more particular description. Together with the benefits and subject to the obligations as set forth in Driveway and Utility Easement Agreement by and between Theodore V. Wilber and Robin L. Dziedzic and Robert K. Dziedzic dated 12-20-2002, recorded 2-11-2003 in Colebrook Land Records, Volume 68, Page 286-289



N/T
THE NORTHWESTERN CONNECTICUT SPORTSMEN'S ASSOCIATION, INC.
VOL. 62, P. 9, 12
T.C. MAP # 248



PERIMETER SURVEY
WIND COLEBROOK, LLC
FLAGG HILL ROAD
COLEBROOK, CONNECTICUT
AREA = 79,744 sq. ft.
TAX MAP 1, LOTS 6 & 6-1



THIS SURVEY WAS PREPARED PURSUANT TO THE STANDARDS FOR PROFESSIONAL SURVEYING IN THE STATE OF CONNECTICUT, AS ADOPTED BY THE CONNECTICUT ASSOCIATION OF SURVEYORS, INC. ON SEPTEMBER 26, 1996.

TYPE OF SURVEY - "PERIMETER SURVEY"
BOUNDARY DETERMINATION CATEGORY - "DEFINITIVE SURVEY"
CLASS OF ACCURACY - "A-1"

AUG. 13, 2010
(AND COMPLETION DATE)

TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS SURVEY IS ACCURATE AND COMPLETELY CORRECT AS NOTED HEREON.

MICHAEL J. BORDAN
LICENSED LAND SURVEYOR, REG. # 14668
170 WOODLAND AVENUE
WOODBRIDGE, CT 06595
WOODBRIDGE, CT 06595-1019

T.C. MAP # 207