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May 25, 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 984 - BNE Energy Inc., Winsted-Norfolk Road, Colebrook, CT

Dear Ms. Roberts:

As you are aware, the Siting Council's December 16, 2011 D&M Plan approval with respect to the above-referenced Petition of BNE Energy Inc., ("BNE") requires BNE to formalize and submit to the Council a conservation restriction 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 restriction between BNE and its landlord, Rock Hall Associates, LLC. Upon receiving the Council's approval of this draft conservation restriction, BNE and Rock Hall Associates 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 984
Melanie A. Bachman (via electronic mail)

CONSERVATION RESTRICTION

THIS CONSERVATION RESTRICTION (this "Restriction") is made this __ day of May, 2012, by and between Rock Hall Associates, LLC ("Lessor"), and BNE Energy Inc. ("Lessee").

WITNESSETH:

WHEREAS, the Lessor is the sole owner in fee simple of certain real property consisting of approximately 124.92 acres of land located at Route No. 44 and Rock Hall 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. entered into a long-term lease agreement with Lessor dated July 15, 2010 (the "Lease Agreement") for the purposes of developing, constructing, operating and maintaining a wind powered electrical generating facility for the conversion of wind energy into electrical energy on the Property;

WHEREAS, Lessee has obtained approval from the Connecticut Siting Council ("CSC") in a decision dated June 9, 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 North (the "Project"). The Project will produce clean renewable electricity with zero emissions and no water consumption resulting in significant environmental benefits;

WHEREAS, Lessor and Lessee have agreed to amend the Lease Agreement to incorporate this Restriction and make the Lease Agreement subject to the terms of this Restriction as provided for herein;

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

WHEREAS, the property protected by this Restriction consists of 38.94 acres or 31.2% of the total 125 acres on the site consisting of wetlands (24.41 acres) and uplands (14.53 acres) (the "Protected Property"). There is also a minimum buffer of 50 feet from the wetlands which extends to 100 feet in areas. The entire Mill Brook, wetlands areas adjacent to Mill Brook and all of the Mill Brook Flood Plain are included in the Protected Property. 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 Lessor, 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; and

WHEREAS, Lessor and Lessee have the common purpose of conserving the conservation values of the Protected Property and intend that this Restriction 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 984 (the "Conservation Plan"), and pursuant to C.G.S. Chapter 822 Easements and Restrictions, Sections 47-42a through 47-42d, Lessor and Lessee hereby voluntarily agree to this Restriction over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. **Purpose.** It is the purpose of this Restriction 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. Lessee intends that this Restriction will confine the use of the Protected Property to such activities described herein, as are consistent with the purpose of this Restriction.
2. **Rights of Lessor.** To accomplish the purpose of this Restriction the following rights are conveyed to Lessor by this Restriction:
 - (a) To preserve and protect the conservation values of the Protected Property; and
 - (b) To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Restriction 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 Lessee.
3. **Prohibited Uses.** Any activity on or use of the Protected Property inconsistent with the purpose of this Restriction 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 of Lessee.** Lessee reserves to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from the Lease Agreement and 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 Restriction. 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 with the consent of Lessor, 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 with the consent of Lessor for permitted recreational activities on the Protected Property.
- (d) The right to own, construct, operate and maintain the Project on the Property pursuant to the terms of the Lease.
- (e) The right with the consent of Lessor to undertake or continue any activity or use of the Protected Property not prohibited by the Lease or this Restriction.

5. **Reserved Rights of Lessor.** Lessor reserves to themselves, and to their personal representatives, heirs, successors, and assigns 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 Restriction. 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 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).
- (b) The right to use, repair and maintain, trails for permitted recreational activities on the Protected Property.
- (c) The right to undertake or continue any activity or use of the Protected Property not prohibited by this Restriction.
- (d) The right to sell, assign, mortgage, lease, or otherwise convey the Protected Property provided such conveyance is subject to the terms of this Restriction.

6. Lessor's Remedies.

- (a) *Notice of Violation; Corrective Action.* If Lessor determines that a violation of the terms of this Restriction has occurred or is threatened, then Lessor shall give written notice to Lessee 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 Lessee fails to cure the violation within 60 days after receipt of notice thereof from Lessor, 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 Lessor may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Restriction, 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 Lessee's Control.* Nothing contained in this Restriction shall be construed to entitle Lessor to bring any action against Lessee for any injury to or change in the Protected Property resulting from causes beyond Lessee's control, including, without limitation, fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons, or from any prudent action taken by Lessee under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

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

8. Costs, Liabilities, Taxes, and Environmental Compliance.

- (a) *Costs, Legal Requirements, and Liabilities.* Lessee retains 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 in accordance with the Lease Agreement. Lessee remains solely responsible for obtaining any applicable governmental

permits and approvals for any activity or use permitted by this Restriction, and all such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

- (b) *Taxes.* Lessee agrees to pay any real estate taxes or other assessments levied on the Protected Property in accordance with the terms of the Lease Agreement.
- (c) *Representations and Warranties.* Lessee represents and warrant that to the best of its 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. Hold Harmless.* Lessee hereby release and agree to hold harmless, indemnify, and defend Lessor 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.

9. Extinguishment. This Restriction and the terms 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 Restriction 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 Restriction. If circumstances arise in the future that render the purpose of this Restriction impossible to accomplish, then this Restriction 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 Restriction is deemed to grant any rights whatsoever to Lessor over the Project.

10. Assignment. This Restriction is transferable by Lessee, and by Lessor with the prior written consent of Lessee such consent not to be unreasonably withheld, but Lessor may

assign its rights and obligations under this Restriction 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 or restriction under state law or under the laws of the United States. As a condition of such transfer, Lessor shall require that the conservation purpose that this grant is intended to advance continue to be carried out.

11. **Estoppel Certificates.** Upon request by Lessee, Lessor shall, within 30 days, execute and deliver to Lessee a certificate which certifies Lessee's compliance with the obligations of Lessee contained in this Restriction and otherwise evidences the status of this Restriction.

12. **Notices.** Any notices required in this Restriction 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 Lessee:

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

To Lessor:

David E. Battistoni, Rock Hall Associates, LLC, One Torrington Office Plaza, Suite 307, Torrington, CT 06790

13. **Lease Agreement.** Lessor and Lessee shall amend the Lease Agreement in a timely fashion to incorporate this Restriction and make the Lease Agreement subject to the terms of this Restriction.

14. **General Provisions.**

- (a) *Controlling Law.* The interpretation and performance of this Restriction shall be governed by the laws of the State of Connecticut.
- (b) *Severability.* If any provision of this Restriction, or the application thereof to any person or circumstance, is found to be invalid, then the remainder of the provisions of this Restriction, 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) *No Alterations.* No alteration or variation of this instrument shall be valid or binding unless contained in writing and signed by both Lessor and Lessee.
- (d) *No Forfeiture.* Nothing contained herein will result in a forfeiture or reversion of Lessor's title in any respect.
- (e) *Joint Obligation.* The obligations imposed by this Restriction upon Lessee shall be joint and several.
- (f) *Successors.* The covenants, terms, conditions, and restrictions of this Restriction shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns. The terms

“Lessor” and “Lessee” wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Lessor and their personal representatives, heirs, successors, and assigns, and the above-named Lessee and its successors and assigns.

- (g) *Termination of Rights and Obligations.* A party's rights and obligations under this Restriction terminate upon transfer of the party's interest in this Restriction 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 Lessor, its successors, and assigns for the duration of the Project.

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

Lessor – Rock Hall Associates, LLC

David E. Battistoni
Managing Member

Lessee – BNE Energy Inc.

Gregory J. Zupkus
President & CEO

Acknowledgments to be added

EXHIBIT A

DESCRIPTION OF THE PROPERTY

EXHIBIT A

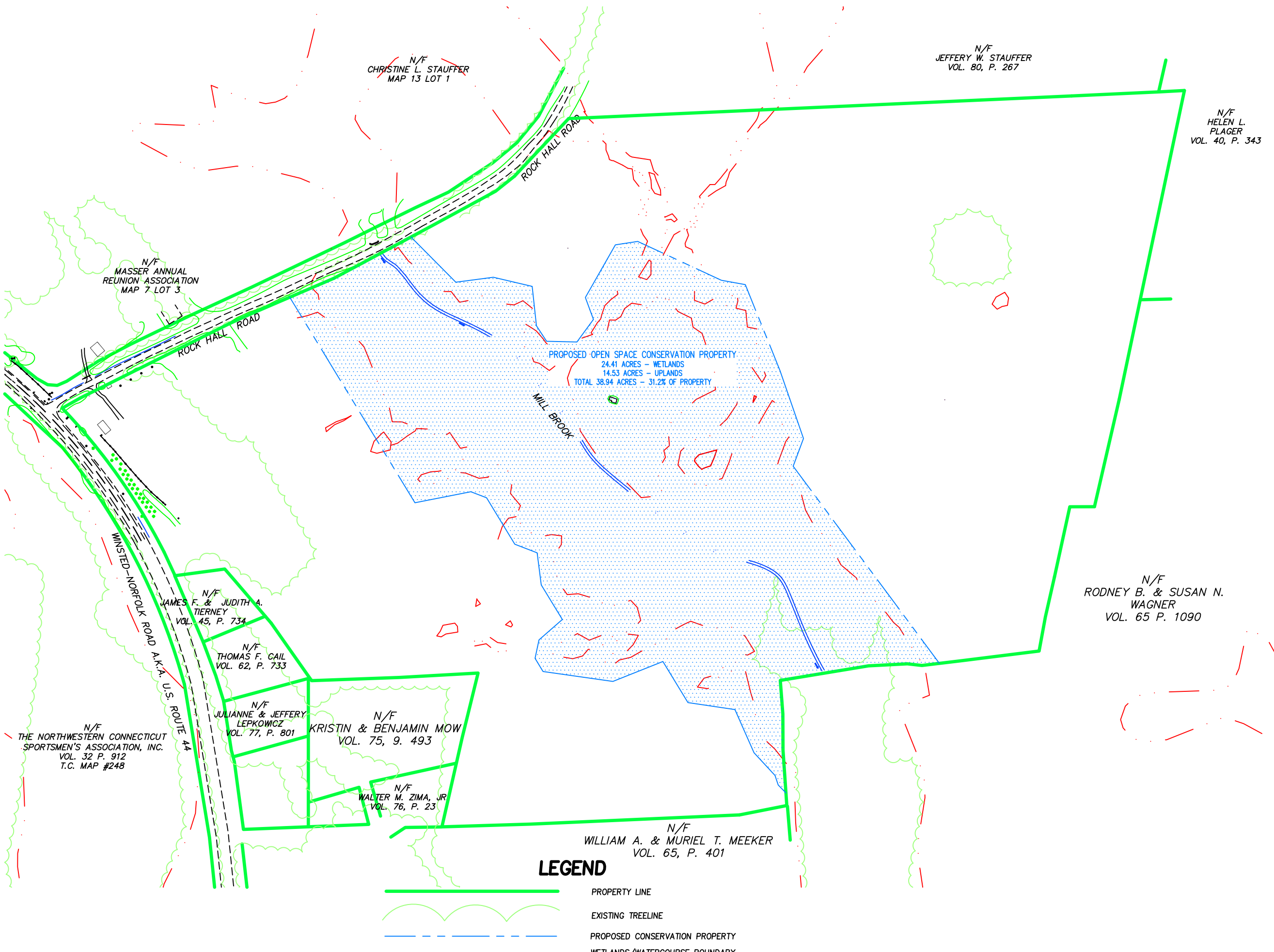
A portion as depicted on Exhibit B of that certain piece or parcel of land located in the Town of Colebrook, County of Litchfield and State of Connecticut, on the state road leading from Winsted to Norfolk and bounded:

- NORTHERLY and
NORTHWESTERLY:** on the highway leading from said state road toward Colebrook Center;
- SOUTHEASTERLY:** on land formerly of Lewis Barnard, land formerly of Asaph O. Pinney, on land formerly of J. Marcus Grant and on land formerly of William P. Lawrence; and
- SOUTHWESTERLY:** on said state road known as Route 33 and in part on land formerly of William P. Lawrence and land formerly of Charles N. Cook.

The premises are shown on a map entitled “Map of Land Owned by Frances S. and David E. Battistoni located on Route 44 and Rock Hall Road, Colebrook, CT” prepared by Charles Hurley, dated April, 1983, which map is filed with the Colebrook Town Clerk’s office.

EXHIBIT B

MAP OF THE PROTECTED PROPERTY



N/F
CHRISTINE L. STAUFFER
MAP 13 LOT 1

N/F
JEFFERY W. STAUFFER
VOL. 80, P. 267

N/F
HELEN L. PLAGER
VOL. 40, P. 343

N/F
MASSER ANNUAL
REUNION ASSOCIATION
MAP 7 LOT 3

PROPOSED OPEN SPACE CONSERVATION PROPERTY
24.41 ACRES - WETLANDS
14.53 ACRES - UPLANDS
TOTAL 38.94 ACRES - 31.2% OF PROPERTY

N/F
JAMES F. & JUDITH A.
TIERNEY
VOL. 45, P. 734

N/F
THOMAS F. GAIL
VOL. 62, P. 733

N/F
JULIANNE & JEFFERY
LEPKOWICZ
VOL. 77, P. 801

N/F
KRISTIN & BENJAMIN MOW
VOL. 75, 9. 493





N/F
WALTER M. ZIMA, JR.
VOL. 76, P. 23

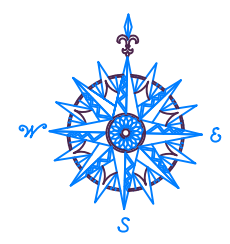
N/F
THE NORTHWESTERN CONNECTICUT
SPORTSMEN'S ASSOCIATION, INC.
VOL. 32 P. 912
T.C. MAP #248

N/F
RODNEY B. & SUSAN N.
WAGNER
VOL. 65 P. 1090

N/F
WILLIAM A. & MURIEL T. MEEKER
VOL. 65, P. 401

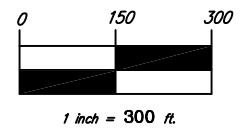
LEGEND

-  PROPERTY LINE
-  EXISTING TREELINE
-  PROPOSED CONSERVATION PROPERTY
-  WETLANDS/WATERCOURSE BOUNDARY



NO.	REVISION	DATE
1	CONS. EASEMENT REVISED	23 MAY 12

Previous Editions Obsolete



BNE ENERGY, INC.
29 SOUTH MAIN STREET
TOWN CENTER SUITE 200
WEST HARTFORD, CT 06107

PROPERTY SURVEY

**WIND COLEBROOK
NORTH**
ROCK HALL ROAD

COLEBROOK CONNECTICUT



CORNERSTONE PROFESSIONAL PARK, SUITE D-101
43 SHERMAN HILL ROAD
WOODBURY (203) 266-0778 CONNECTICUT

DRAWN BY	BB	APPROVED BY	CJ
SCALE	1" = 300'		
DATE	23 SEP 11		
PROJECT NO.	3093		
CADD FILE NAME	3093		
DRAWING NO.			

C-001