

PLAINTIFF

**COMMISSIONER OF
ENVIRONMENTAL PROTECTION**

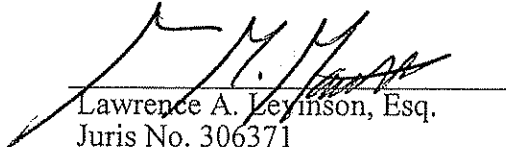
RICHARD BLUMENTHAL
ATTORNEY GENERAL



Sharon M. Seligman
Assistant Attorney General
Juris No. 428731
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel. (860) 808-5250
Fax. (860) 808-5386

DEFENDANTS

**M & J DEVELOPERS, LLC,
MASSIMINO DEVELOPMENT, LLC,
MICHAEL MASSIMINO (a/k/a
MICHAEL R. MASSIMINO), and
MICHAEL MASSIMINO d/b/a
MASSIMINO DEVELOPMENT CORP.**



Lawrence A. Levinson, Esq.
Juris No. 306371
Lawrence A. Levinson, P.C.
66 Anderson Street
New Haven, CT 06511
Tel.: (203) 562-8887
Fax: (203) 562-0686

By Ian G. Gottlieb

ORDER

The foregoing Motion for Order in Accordance with Stipulation having been duly heard
it is hereby: GRANTED/DENIED

Date

Judge of the Superior Court

CERTIFICATION

I hereby certify that, on this date, a copy of the foregoing Joint Motion for Order in Accordance with Stipulation, and the attached Stipulation for Judgment, were sent via first class mail, postage pre-paid and electronic mail to the following:


Larry A. Levinson, Esq.
Ian G. Gottlieb, Esq.
Lawrence A. Levinson, PC
66 Anderson Street
New Haven, Connecticut 06511

Tel : 203-562-8887

Fax : 203-562-0686

E-mail : larry@lawrencelevinsonlaw.com

Ian@lawrencelevinsonlaw.com


Sharon M. Seligman

Docket No. HHD CV09-4042710-S

GINA MCCARTHY,
COMMISSIONER OF
ENVIRONMENTAL PROTECTION
Plaintiff

v.

M & J DEVELOPERS, LLC, ET AL.
Defendants

SUPERIOR COURT

JUDICIAL DISTRICT
OF HARTFORD
AT HARTFORD

NOVEMBER 9, 2010

STIPULATION FOR JUDGMENT

Amey W. Marrella, Commissioner of Environmental Protection, Plaintiff, and M & J Developers, LLC, Massimino Development, LLC, Michael Massimino (a/k/a Michael R. Massimino), and Michael Massimino d/b/a Massimino Development Corp. (collectively, the "Defendants"), parties to the above-captioned action, hereby stipulate and agree that judgment may enter as follows:

WHEREAS, the Plaintiff is the Commissioner of Environmental Protection ("Commissioner") of the State of Connecticut and is charged with the supervision and enforcement of the statutes of the State of Connecticut respecting the environment, including Conn. Gen. Stat. Chapter 446k governing water pollution control, and is generally empowered by virtue of Conn. Gen. Stat. § 22a-6(a)(3) to institute all legal proceedings necessary to enforce statutes, regulations, permits or orders administered, adopted or issued by the Commissioner; and

WHEREAS, the defendant M & J Developers, LLC is a limited liability company formed in Connecticut, with a principal place of business at 15 Hosley Avenue, Branford, Connecticut; and

WHEREAS, the defendant Massimino Development, LLC is a limited liability company formed in Connecticut with a principal place of business at 184 Morgan Avenue, East Haven, Connecticut; and

WHEREAS, the defendant Michael Massimino (a/k/a Michael R. Massimino) resides at 184 Morgan Avenue, East Haven, Connecticut; and

WHEREAS, the defendant Michael Massimino has held himself out as doing business as Massimino Development Corp. (defendant Michael Massimino d/b/a Massimino Development Corp.), with an address of 15 Hosley Avenue, Branford, Connecticut; and

WHEREAS, Michael Massimino is the manager of defendant M & J Developers, LLC and the president of Massimino Development, LLC and does business as Massimino Development Corp.; and

WHEREAS, the defendant M & J Developers, LLC was the owner of approximately 70 acres of property located on the corner of North Maple Street and Mayfield Drive in the town of Enfield, Connecticut (the "site") by virtue of the deed recorded at volume 2242, page 331 of the Town of Enfield Land Records from on or about November 21, 2006 until on or about November 4, 2009; and

WHEREAS, by virtue of the Defendants' construction activities at the site, the Defendants were required to take certain actions and comply with certain conditions, in accordance with the Department of Environmental Protection ("DEP") General Permit for the Discharge of Stormwater

and Dewatering Wastewater from Construction Activities (the "General Permit"), issued on or about October 1, 2002, modified on April 8, 2004, re-issued on October 1, 2007, re-issued on October 1, 2008, and subsequently re-issued on April 9, 2010; and

WHEREAS, the Complaint filed by the Commissioner against the Defendants alleges that the Defendants failed to comply with Chapter 446k of the Connecticut General Statutes governing water pollution control, including various provisions of the General Permit, including but not limited to the General Permit requirement that activity under the permit "must not threaten the continued existence of any species listed pursuant to § 26-306 of the Connecticut General Statutes as endangered or threatened and must not result in the destruction or adverse modification of habitat designated as essential to such species"; and

WHEREAS, the Complaint filed by the Commissioner against the Defendants alleges that the Defendants' activities at the site nearly completely destroyed the populations of *Helianthemum propinquum* (low frostweed), which is a plant listed as a state threatened species, without taking any measures to mitigate impacts to the threatened species; and

WHEREAS, as set forth in the Commissioner's Complaint, low frostweed is a precious natural resource of the State, occurring in habitats characterized by dry, open, sandy soil conditions, which conditions are among the most imperiled natural habitats in the State; and

WHEREAS, the Complaint filed by the Commissioner against the Defendants seeks injunctive relief pursuant to Connecticut's Environmental Protection Act (§§ 22a-14, *et seq.* of the Connecticut General Statutes) on the basis that the Defendants' construction activities at the site, which nearly completely destroyed the populations of low frostweed at the site, caused

unreasonable pollution, impairment or destruction to the public trust in the natural resources of the State; and

WHEREAS, the parties agree that it is in the public interest to resolve these matters without further litigation and that this Judgment fully resolves all matters alleged in the Complaint dated February 10, 2009 and filed March 4, 2009;

NOW THEREFORE, the parties stipulate and agree that Judgment shall and may enter as follows:

I. Jurisdiction

The Court has subject matter jurisdiction over this action.

II. Injunctive Provisions

Mandatory Injunction

A. A permanent injunction is issued requiring the Defendants to (i) use best efforts to obtain the consent of the current owner of the site to allow access to perform the transplant of the State Threatened plant, *Helianthemum propinquum* (low frostweed) (the “transplantation project”) to the area identified as the utility right-of-way (see site map attached as **Exhibit A**), subsequent monitoring activities (the “long-term monitoring”), and soil erosion and sediment control measures and (ii) perform such transplantation project, long-term monitoring and soil erosion and sediment control measures as follows:

1. Site Access.

a. Within forty-five (45) days of entry of Judgment, or such other time as the Commissioner may approve in writing, using best efforts, the

Defendants shall secure reasonable access to the site to perform the transplantation project, long-term monitoring, and soil erosion and sediment control measures and shall, by that date, notify the Commissioner in writing as to whether or not such access to the site has been secured.

- b. Defendants shall ensure that any access agreement negotiated by them provides access for each of the various steps and timeframes contemplated in the transplantation project, long-term monitoring, and soil erosion and sediment control measures protocols as set forth herein.
- c. In the event that such access has not been secured by the applicable deadline, the Defendants shall provide the Commissioner a written explanation of the efforts made to secure access and the reason(s) that they were unable to secure access in the time allowed and shall propose next steps in order to obtain access. The Defendants shall continue to make all reasonable attempts to obtain access as approved by the Commissioner.
- d. If the Defendants believe in good faith that an extension of the deadline in this subparagraph would facilitate reaching an agreement with the current owner as to access, the Defendants shall make such a request in writing to the Commissioner on or before sixty (60) days following entry of Judgment.

2. Retain Biologist. Within ten (10) days of receipt of access to the site, but no later than November 20, 2010, the Defendants shall (i) retain one or more qualified biologists acceptable to the Commissioner to oversee the transplantation project and long-term monitoring as well as submit the required reports to the Commissioner and (ii) notify the Commissioner in writing of the identity of such biologist(s). Defendants shall retain one or more qualified biologists acceptable to the Commissioner until this judgment is fully complied with, and, within ten (10) days after retaining any consultant other than the one originally identified under this paragraph, Defendants shall notify the Commissioner in writing of the identity of such other consultant. Defendants shall submit to the Commissioner a description of a consultant's education, experience and training which is relevant to the work required by this Judgment within ten (10) days after a request for such a description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.

3. Transplantation Project and Long-Term Monitoring. Provided that the Defendants are able to secure reasonable access to the site from the current owner, the transplantation project and long-term monitoring shall be implemented in accordance with the protocol attached hereto and incorporated herein as **Exhibit B**. (In the event that the current owner of the site may choose to implement other, more protective measures for the site, the Defendants may

submit a modified plan incorporating such measures for the Commissioner's review and approval.)

4. Soil Erosion and Sediment Control Measures. Provided that the Defendants are able to secure reasonable access to the site from the current owner, the soil erosion and sediment control measures shall be implemented in accordance with the protocol attached hereto and incorporated herein as **Exhibit C**.

Prohibitory Injunction

- B. A permanent injunction is issued prohibiting the Defendants from violating any of the provisions of Conn. Gen. Stat. Chapter 446k with respect to the site.

III. Civil Penalty

- A. A civil penalty is levied against the Defendants, jointly and severally, in the amount of Fifteen Thousand Dollars (\$15,000.00). The Defendants may satisfy the civil penalty portion of this Judgment by paying Five Thousand Dollars (\$5,000.00) by certified or bank check made payable to "Treasurer, State of Connecticut" and forwarded to the undersigned counsel for the Plaintiff at the Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, Connecticut 06141-0120 upon the Defendants' execution of this Stipulation for Judgment, by November 9, 2010.
- B. The remaining civil penalty of Ten Thousand Dollars (\$10,000.00) shall become immediately due and payable by the Defendants, jointly and severally, only in the event that: (i) the Defendants are unable to secure access to the site from the current owner and/or (ii) the Defendants fail to meet any of the deadlines or the requirements

prescribed in Section II.A above. In the event of any such failure, the Defendants shall pay Ten Thousand Dollars (\$10,000.00) by certified or bank check made payable to "Treasurer, State of Connecticut" and forwarded to the undersigned counsel for the Plaintiff at the Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, Connecticut 06141-0120 within ten (10) days of written demand for such remaining civil penalty by the Commissioner.

IV. General Provisions

1. *Progress Reports.* Unless otherwise specified by the Commissioner, on or before the last day of each month following entry of this Judgment, and continuing until all actions required by this Judgment have been completed as approved by the Commissioner, Defendants shall submit progress reports to the Commissioner describing the actions which the Defendants have taken to comply with the terms of this Judgment to date.
2. *Approvals.* Defendants shall use best efforts to submit to the Commissioner all documents required by this Judgment in a timely manner and in a complete and approvable form. If the Commissioner notifies the Defendants that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and the Defendants shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within thirty (30) days of the Commissioner's notice of deficiencies. In approving any document or other action under this Judgment, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the

Commissioner deems necessary to carry out the purposes of this order. Nothing in this paragraph shall excuse noncompliance or delay.

3. **Definitions.** As used in this Judgment, "Commissioner" means the Commissioner or an agent of the Commissioner.

4. **Dates.** The date of submission to the Commissioner of any document required by this Judgment shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this Judgment, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is personally delivered or the date three days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified herein, the word "day" as used in this Judgment means calendar day. Any document or action which is required by this Judgment to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or Connecticut or federal holiday.

5. **Notification of noncompliance.** In the event that the Defendants, or any person or entity acting on their behalf, becomes aware that they did not or may not comply, or did not or may not comply on time, with any requirement of this Judgment or of any document required hereunder, the Defendants shall immediately notify the Commissioner and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. In so notifying the Commissioner, Defendants shall state in writing the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by

which compliance will be achieved, and the Defendants shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Defendant shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.

6. *Certification of documents.* Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this Judgment shall be signed by the Defendants, and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense."

7. *False statements.* Any false statement in any information submitted pursuant to this Judgment may be punishable as a criminal offense under Conn. Gen. Stat. § 22a-438 or, in accordance with Conn. Gen. Stat. § 22a-6, under Conn. Gen. Stat. § 53a-157b.

8. *Notice of transfer; liability of Defendants and others.* Until Defendants have fully complied with this Judgment, the Defendants shall notify the Commissioner in writing no later than fifteen (15) days after transferring all or any portion of the operations which are the subject of this Judgment, the site or any business thereon, or obtaining a new mailing

or location address. The Defendants' obligations under this Judgment shall not be affected by the passage of title to any property to any other person, entity or municipality.

9. *Commissioner's powers.* Nothing in this Judgment shall affect the Commissioner's authority to institute any proceeding to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for violations of law including but not limited to violations of any permit issued by the Commissioner. If at any time the Commissioner determines that the actions taken by the Defendants, or anyone acting on their behalf, pursuant to this Judgment have not fully characterized the extent and degree of pollution or have not successfully abated or prevented pollution, the Commissioner may institute any proceeding to require the Defendant to undertake further investigation or further action to prevent or abate pollution.

10. *Defendants' obligations under law.* Nothing in this Judgment shall relieve the Defendants of other obligations under applicable federal, state and local law.

11. *No assurance by Commissioner.* No provision of this Judgment and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by the Defendants pursuant to this Judgment will result in compliance or prevent or abate pollution.

12. *Notice to Commissioner of Changes.* Within fifteen (15) days of the date any of the Defendants becomes aware of a change in any information submitted to the Commissioner under this Judgment, or that any such information was inaccurate or misleading or that any relevant information was omitted, the Defendant(s) shall submit the correct or omitted information to the Commissioner.

13. Submission of documents. Any documents required to be submitted to the Commissioner under this Judgment shall, unless otherwise specified in writing by the Commissioner, be directed to:

Neal Williams
Department of Environmental Protection
Bureau of Materials Management and Compliance Assurance
Permitting and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106

and

Nancy Murray
Department of Environmental Protection
Bureau of Natural Resources
Inland Fisheries, Habitat Conservation & Enhancement
Natural History Survey-Natural Diversity Data Base
79 Elm Street
Hartford, CT 06106

14. Further Action By Commissioner. Nothing in this Judgment precludes any other or further action by the Commissioner permitted by law for any violation by the Defendants of the Connecticut General Statutes or the Regulations of Connecticut State Agencies with regard to protection of the environment. If at any time the Commissioner determines that remedial actions taken by the Defendants pursuant to this Judgment have not successfully abated or prevented pollution, the Commissioner may institute any proceeding to require the Defendant to prevent or abate pollution.

15. Resolution. This Judgment fully resolves all violations alleged as to the Defendants which are pleaded in the Complaint dated February 10, 2009 and filed March 4, 2009.

16. This Stipulated Judgment constitutes the entirety of the agreement of the parties and supersedes any prior discussions, agreement or written embodiment of their discussions. It is the intention of the parties that this be an integrated agreement that should be interpreted based upon the four corners of the document. No party shall be able to modify the agreement except in a written document signed by both parties.

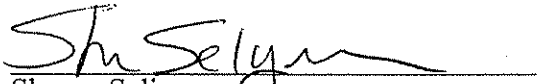
17. *Authority.* Agent(s) or representative(s) of defendants M & J Developers, LLC and Massimino Development, LLC certify that they are fully authorized to enter into this Judgment and to legally bind the Defendants M & J Developers, LLC and Massimino Development, LLC to the terms and conditions of this Judgment.

This Stipulation for Judgment shall be dated as of the last day on which any of the following parties signs the same.

PLAINTIFF
AMEY W. MARRELLA
COMMISSIONER OF
ENVIRONMENTAL PROTECTION

RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY:



Sharon Seligman
Assistant Attorney General
Juris No. 428731
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel. (860) 808-5250
Fax: (860) 808-5386
sharon.seligman@ct.gov

Dated: 11/9/2010

**DEFENDANT
M & J DEVELOPERS, LLC**

BY: _____

Its Attorney
Lawrence A. Levinson, Esq.
Lawrence A. Levinson PC
Juris No. 306317
66 Anderson Street
New Haven, CT 06511
Tel. (203) 562-8887
Fax: (203) 562-0686
larry@lawrencelevinsonlaw.com

Dated: _____

11.8.10

**DEFENDANT
M & J DEVELOPERS, LLC**

BY: _____

Michael Massimino
Its Manager

Dated: _____

11/9/2010

DEFENDANT
MASSIMINO DEVELOPMENT, LLC

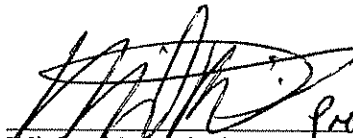
BY: _____

Its Attorney
Lawrence A. Levinson, Esq.
Lawrence A. Levinson PC
Juris No. 306317
66 Anderson Street
New Haven, CT 06511
Tel. (203) 562-8887
Fax: (203) 562-0686
larry@lawrencelevinsonlaw.com

Dated: 11.8.10

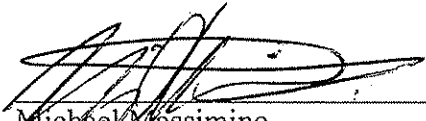
DEFENDANT
MASSIMINO DEVELOPMENT, LLC

BY: _____


Michael Massimino
Its President

Dated: 11/9/2010

DEFENDANTS
MICHAEL MASSIMINO (a/k/a
MICHAEL R. MASSIMINO) and
MICHAEL MASSIMINO d/b/a
MASSIMINO DEVELOPMENT CORP.

BY: 
Michael Massimino
184 Morgan Avenue
East Haven, Connecticut
Tel: (203) 488-3986

Dated: 6/1/2011

EXHIBIT A

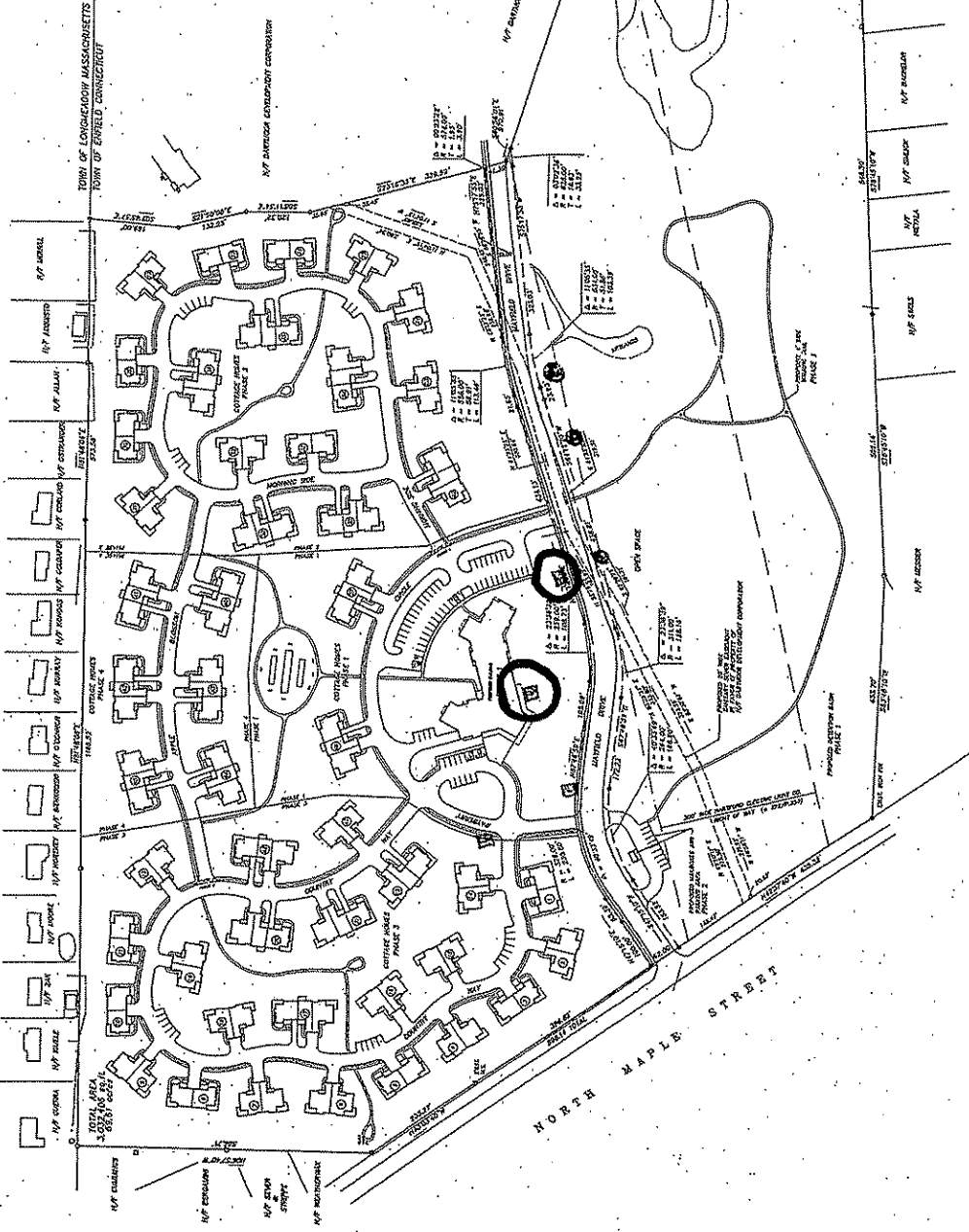
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RETAINERS LEGEND



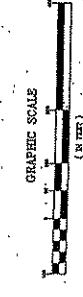
FROSTWEE LOCATIONS (TYP)
TRANSPLANT LOCATIONS (TYP)
2010 LOW FROSTWEE OBSERVATIONS



MAYFIELD PARK

ENFIELD, CONNECTICUT

NO.	DESCRIPTION	DATE	BY
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GRAPHIC SCALE

1 inch = 100 ft.

SHEET 1

U.S. G.S. 1111
 MAYFIELD PARK
 PREPARED FOR
 THE AMERICAN TNY
 OVERALL PLAN
 SHOWING PHASES



PH 2404
 MAYFIELD PARK
 ENFIELD, CONNECTICUT

EXHIBIT B
[TRANSPLANTATION PROJECT AND LONG-TERM MONITORING]

General Provisions

1. All work described herein shall be supervised by a qualified biologist retained by the Defendants.
2. A letter report with photographs shall be submitted to the DEP after each step of the transplantation process.
3. Defendants shall not conduct any activities in the areas from which the existing *Helianthemum* plants will be transplanted to adversely impact the existing plants prior to transplantation.
4. The biologist supervising the transplantation project shall have the authority to modify the precise location of the transplant sites to reflect final conditions as determined in the field, if, in their expert opinion, unforeseen circumstances would jeopardize the success of the transplantation project. Any such alteration shall be communicated to DEP as soon as practical, but no later than 7 days after the need for such alteration is identified.

Step 1: Site Preparation

5. Install construction barrier fencing around existing *Helianthemum* locations which will serve as the source of the transplants, in consultation with Bill Moorehead (who originally located the *Helianthemum*), or the DEP, at the approximate locations as shown on the attached site plan.
6. Stake out three (3) transplantation sites within utility right of way, approximately 20' on a side, as proposed on Exhibit A.
7. Notify DEP of precise transplantation sites within utility right of way, for review and approval of transplantation locations. Areas to be scarified for transplant shall be located outside of the 100' regulated area surrounding the mapped inland wetlands on the property.
8. After DEP approves the transplant recipient areas in the utility right-of-way, the existing native turf within staked out areas shall be removed and the soil in these areas scarified promptly (i.e., during the fall of 2010) to prepare the site for planting. Defendants shall notify Northeast Utilities (NU) of commencement of transplantation project upon implementation of the same, and confirm safety of dig locations with "CALL BEFORE YOU DIG" hotline.

9. If present, collect ripe seed for storage at the New England Wild Flower Society storage facility as a contingency seed source.
10. Install construction barrier fencing around transplantation (recipient) sites, as proposed on Exhibit A.
11. Let transplantation site sit fallow over one (1) winter season (i.e., winter 2010 – 2011).

Step 2: Transplantation

12. In the early spring of 2011, or such other time as the Commissioner may approve in writing, after snow cover and frost are no longer a concern, re-scarify soil at transplantation sites.
13. Transplantation shall occur in the spring of 2011, between March 1, 2011 and April 30, 2011, or such other time as the Commissioner may approve in writing. The transplantation shall occur by removing native turf containing *Helianthemum* with a front end loader or front bucket of a backhoe, and transplanting to transplantation site(s). All *Helianthemum* plants shall be transplanted. A heavy sod salvage bucket should be used to transplant so that sod up to 1' in depth can be removed, so as to reduce loss of plants in transplantation process and move soil habitat intact, with the plants. Work to be supervised by biologist.
14. Place native turf at transplantation site. Tamp turf to insure contact with soil, and water well. Work to be supervised by biologist.
15. Install permanent fencing and signage to protect plants from mechanical damage and herbicide application, as shown on the attached plan.

Step 3: Long term maintenance

16. Transplanted colonies shall be monitored once every four days for two weeks and once a week for the next four weeks following their transplant date. Any drought situations that may arise shall be addressed with additional hand watering. Noting, however, that this plant is adapted to very well drained sand soils and too much watering could be detrimental. Invasive, competitive species shall be removed by hand during this monitoring process.
17. Monitoring shall continue on a monthly basis for four months following transplant date.
18. Additional monitoring shall be done in May, July and September 2012, or at such other intervals and dates that the Commissioner may approve in writing.

19. In the event that the transplantation project is not successful, meaning thirty percent (30%) or more of the transplanted plants does not survive, then the retained biologist shall report to the DEP the reason(s) for such failure and submit revised and/or repeated transplant protocols to be performed by the Defendants and a schedule for the Defendants to implement the same, using the retained seeds. Upon approval by the Commissioner, such approved protocols shall be implemented by the Defendants according to the approved schedule.

EXHIBIT C
[SOIL EROSION AND SEDIMENT CONTROL MEASURES]

In addition to the soil erosion and sediment control measures required by **Exhibit B** (the transplantation project), and pursuant to Section 6(b)(6)(C)(i)(1) of the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities and the 2002 Guidelines for Soil and Sediment Control, as amended, all soil stockpiles shall be (i) surrounded with silt fencing and any other controls necessary to control the discharge of sediment on or before December 15, 2010 and (ii) stabilized with an appropriate seed mixture between April 1, 2011 and April 30, 2011.