Killingworth Advocates for Responsible Solar
45 Hemlock Dr
Killingworth, CT 06419

CT Siting Council
10 Franklin Square
New Britain, CT

February 14, 2019

Dear Sirs:

Notice of intent to file as a party to Petition 1354, Chatfield Solar Fund, LLC, with comments relevant to said petition below. Each of the enumerated items below should be considered to be interrogatories.

SUMMARY

It would be difficult to locate a more environmentally objectionable location than this parcel. **The only reason for the proposed location would appear to be its proximity to three-phase power lines on Route 80**, saving the applicant the cost of tying in to a distant hook up. If this petition is approved, the question arises as to what locations could then possibly be deemed off limits for solar farms. There are right and wrong locations for solar installations. This location is the latter.

As required by statute, once a municipal consultation has occurred, a petitioner must not simply designate one property, but must (in consultation with the town) offer up three additional locations so these then four locations can be placed upon the environmental balance and weighed independently. If this has occurred, the public has not been so informed nor provided specifics on such alternate locations in a timely manner, permitting an open and informed examination of the alternatives.

The multiple **procedural** objections itemized below could (and likely would) add significantly to the **substantive** objections outlined here, but with the numerous material omissions from the petition the public (and the Council) has no basis for fully and knowingly considering this petition to determine if the project meets air and water quality standards of the Department of Energy and Environmental Protection. The criteria a petitioner used for site selection is a core statutory obligation to disclose during the municipal consultation. Apparently, the site selection was made by the owner of the property, Rajvilla LLC, when it was purchased in 2016. How and when this property then came to the attention of the applicant are core questions requiring answers to fully comprehend the site selection process.

SUBSTANTIVE OBJECTIONS

The cumulative weight of the objections raised by the DEEP analysis, *inter alia*, leads to a conclusion of a substantial adverse environmental effect. All of these objections need not be again itemized here.

1. The majority of the parcel contains core forest, as mapped in the state's 2018-2023 draft Plan of Conservation and Development. Said plan also maps the same footprint on the parcel as being conservation lands. See attached maps. There is no compelling need to remove core forest acreage and no alternative locations have been offered (see below).

2. Page 22 of the filing: "Prior to and throughout the duration of construction, sedimentation and erosion controls will be installed and maintained in accordance with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control[1]." This is same cavalier approach which has led to serious runoff and silting issues experienced in previous Connecticut solar farms. The problem has become so apparent that DEEP has tasked all five of the state's Conservation Districts with conducting erosion and sediment control plan reviews and conducting oversight during construction and post-construction of solar projects to make sure developers have adequate controls in their plans and are implementing sufficient control measures **during** and **after** construction. The 2002 Guidelines do not include any mention of the special problems introduced by solar installations. Based on past experience, solar developers should be required to post bond to cover the costs of potential stormwater issues.

3. As DEEP noted in their comments, the construction timeline is in conflict with the seasonal requirements for establishing stabilizing ground cover to prevent stormwater runoff. The Council is being rushed by the applicant for the sake of its contract with Eversource. This deadline should be of no concern to the Council, only statutory deadlines should be adhered to. The alternative is to set a poor precedent, encourage half-baked applications, and allow applicants to dictate to the Council and rush the Council's mission.

4. As required by statute, the Council must determine "whether the proposed facility would be located in an area of the state which the council, in consultation with the Department of Energy and Environmental Protection and any affected municipalities, finds to be a **relatively undisturbed area** that possesses scenic quality of local, regional or state-wide significance, and . . . may deny an application for a certificate if it determines that . . . the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood and no public safety concerns require that the proposed facility be constructed in such a location." (see below regarding the scenic highway designation for Route 80). From the Killingworth Plan of Conservation and Development: http://www.townofkillingworth.com/documents/2008/Kill_Town_Plan_2008_Final.pdf

[1]Available at https://www.ct.gov/deep/cwp/view.asp?a=2720&q=325660&deepNav_GID=1654

Scenic roads. A scenic road ordinance was adopted by the Town of Killingworth in 1985. The purpose of the ordinance is to help preserve Killingworth's rural character and beauty by enabling property owners to preserve scenic rural roads abutting their property.

5. The applicant will post bond only for $375,000 for costs associated with decommissioning. This is a pittance compared with their potential liability should some natural or electrical disaster befall the site, including a fire, and toxic chemicals and/or significant siliting contaminates the fragile Hammonasset River watershed to which the site drains. The Fire Marshall's concerns are especially relevant to this issue. Since the applicant and property owner are both structured as an LLC, who will have to cover the costs of cleanup, state or local taxpayers? How much cost would the worst case scenario entail?

PROCEDURAL OBJECTIONS

1. Material omission: The site plans made public display no stone walls within the interior of the proposed location. LIDAR imagery (attached) clearly displays numerous such walls in the interior, which form part of the archaeological record for the site. What will become of the stone walls, will they be preserved or destroyed?

2. Material omission: Nowhere in the petition is it mentioned that the applicant is a subsidiary of a Canadian multinational corporation. Standard Solar, Inc. operates as a subsidiary of Énergir, formerly Société en commandite Gaz Métro, with assets exceeding $7 billion. Yet Énergir saw fit to establish a Delaware shell LLC to avoid liability for this undertaking. If this proposal is so environmentally innocuous as the applicant maintains, where does their potential liability reside? Certainly stormwater runoff and subsequent siliting issues are one source of potential liability. Another is the contents of the solar panels and other components of the project. Disclosure of the ultimate identities of **both** the applicant and the property owner is an essential requirement of any application so an investigation can be made as to the track record of both with similar projects. To fail to require such full disclosure invites creation of numerous project-specific LLCs in an effort to potentially conceal past abusive and irresponsible practices. The identities of all principals involved with a project must be made public. What is the participation here of BeFree Solar, referenced in at least one of the public documents, an entity that has a checkered record in this town and state[2]?

   As evidenced by #99 in the second set of interrogatories, even the Council staff is

[2] https://www.norwichbulletin.com/news/20161203/woodstock-solar-panel-savings-questioned
https://www.nbcconnecticut.com/investigations/Dispute-Between-State-Solar-Program-and-Installer-Continues-415932333.html

The Connecticut Green Bank explained the solar installation in Killingworth was just one of a host of problems.

It is beyond dispute, that BeFree improperly submitted packing slips to receive a working capital loan that they were not entitled to. In fact, they did this 66 times, . . . BeFree signed a settlement, agreeing not to participate in any more Green Bank programs. It also voluntarily surrendered its home improvement license last fall . . .

confused by the ownership when it inquires as to whether Chatfield Solar Fund has used a specific technique successfully elsewhere in New England. Chatfield has never conducted any project elsewhere.

3. Material omission: Do the PV panels and other components of the project contain lead or other toxic substances? What toxic compounds are released in the event of a fire or natural disaster, including lightning strikes, wildfires, hurricanes and tornadoes? Without this information there is no basis for a determination that the project meets air and water quality standards of the Department of Energy and Environmental Protection. The **substantial objections raised by the Killingworth Fire Marshall** suggest but some of the reasons why a $7 billion multinational corporation saw fit to limit its liability exposure on this project.

4. Material omission: The public has not been provided specifics of the three alternate locations required once a municipal consultation has transpired. Indeed, the public has not even been informed of said consultation, and must infer it has taken place based upon the notice of a public informational meeting.

5. Material omission: The issue of the scenic impact on the abutting Route 80 is not explored in the petition. When asked regarding this in the initial interrogatories, the applicant avoided a direct answer. Here is the specific question: during the leaf-off season will the project be visible not just from abutting properties but also from Route 80?

> Q-CSC-1-19: Petition page 12 states a vegetative barrier would exist between the solar arrays and the surrounding area. During leaf-off conditions, would the Project be visible from abutting properties, residences, or Route 80?
>
> A-CSC-1-19: Yes, it is expected that in leaf-off conditions abutting properties may be able to see the project.

6. Material omission: The concerns raised by Dr. Michael Klemens in his December 4, 2018 email to the Council have not been fully explored, nor can not be known by the hearing date.

7. Procedural violation: There does not appear to have been the requisite 15 days public notice provided for the February 18, 2019 public informational meeting. If there was the required legal notice in a newspaper of general circulation within the municipality, Google is ignorant of such. Nor does this consolidated listing of all Connecticut public legal notices contain any evidence such a legal notice was provided: http://ct.mypublicnotices.com/PublicNotice.asp

8. Potential procedural violation: Since a public meeting was scheduled, it is incumbent upon the applicant to send notice of such to abutting property owners of not only the

primary site, **but also of the alternate sites**. Proof of service is required to know if this obligation has been enforced.

9. Potential procedural violation: It is unclear if any legal notices regarding this petition have been published in any newspaper.

10. Public disinformation: In a posting published on a website[3] and dated December 20, 2018, the Killingworth First Selectman states "The town cannot relocate it to another site." Yet the governing statute requires the town to provide three alternative locations for the project. She further states ". . . I have been exploring the possibility of leasing some town-owned property for this purpose." She apparently is unaware of her statutory obligations in this regard. As a side note, it is puzzling why she would endorse this project when she states in this posting that she has no idea what the tax yield would be, the purported reason for her endorsement.

11. Falsehood: Page 9 of the filing: ". . . the Project is consistent with local, state, and federal land use plans, including the Killingworth 2018 Plan of Conservation and Development." As outlined above in the first enumerated substantive objection, the project is certainly inconsistent with the state plan alone. As for the Killingworth plan, this is a commercial project prohibited in the R-2 zone where it is located. As noted below, the scenic nature of Route 80 is also at issue.

12. Falsehood: In both the original documentation and their response to the interrogatories, the applicant has stated the property is zoned commercial, when it is in an R-2 zone.

Q-CSC-1-13:	What type of development and minimum lot size is permitted per the zoning designation?
A-CSC-1-13:	The property is zoned "commercial" and the following is permitted in a commercial district: (1) professional and other business offices and financial institutions; (2) retail service establishments and retail stores not requiring a site plan review or special exception; (3) bakeries and confectionery stores; (4) post office and postal services. The minimum lot area in a commercial district is 1 acre.

This transparent falsehood can easily be revealed by referencing both the town zoning map (http://www.townofkillingworth.com/documents/2018/K0028_WetlandsMapping20110310.pdf) or the town GIS. The council might direct the attention of the applicant to the relevant portion of the statute:

> Upon a motion of a party or intervenor or a council determination that any party or intervenor relating to a facility described in subdivision (5) or (6) of

[3] https://www.zip06.com/news/20181220/iino-public-comments-sought-for-solar-farm

subsection (a) of section 16-50i has **intentionally omitted or misrepresented a material fact** in the course of a council proceeding, the council may, by majority vote, request the Attorney General to bring a civil action against such party or intervenor. In any such action, the Attorney General may seek **any** legal or equitable relief the Superior Court deems appropriate, **including, but not limited to**, injunctive relief or a civil penalty of not more than ten thousand dollars and reasonable attorney fees and related costs. (*emphases added*)

13. Material omission: Page 12 of the filing purports to address the scenic impact of the project but fails to make mention of the scenic impact from the abbuting Route 80. Much of the Madison portion of Route 80, up to the Killingworth town line, is state designated as a scenic route[4]. This is one of only 74 state roads so designated and only a handful of which are within Middlesex County. As the project property is located only about a half mile east of the Madison border along that same route, it follows that the Killingworth portion of the road is every bit as scenic. Since there is only a tiny amount of commercial activity in Killingworth, it is a safe assumption the rural, forested character of the town is of significant concern to residents, as is the scenic integrity of our roads.

    As further evidence of cherished nature of the neighborhood, one need look no further than the sign on Chestnut Hill Rd. at the Route 80 intersection, *i.e.*, at the proposed project location:

[4] https://www.ct.gov/dot/lib/dot/documents/dscenicroads/scenic_roads-revised_october_1_2018.pdf
See also http://kurumi.com/roads/ct/ct80.html

Scenic road designation sought in Madison

Route 80 has some scenic ledges in the area and should be a "no-brainer" for the designation, in the words of a town Planning and Zoning Commission alternate.

14. Material omission: The date and all documentation associated with the required municipal consultation have been withheld from the public. It is essential that the public learn these details to determine if the statutorily mandated timeline has been adhered to and to be able to read any technical reports regarding the **site selection process**.

15. Material omission: There has been no effort to comply with CT Gen Stat § 10-390 nor to notice the Native American Heritage Advisory Council or regional federally recognized tribes of the proposal. Fifteen years ago, the Killingworth Planning and Zoning Commission, with the participation of the state archaeologist and federal tribal input, acted to require permanent protection of components of a significant Native American sacred site located within the same neighborhood as the proposed project. Violation of 10-390 is a Class D felony.

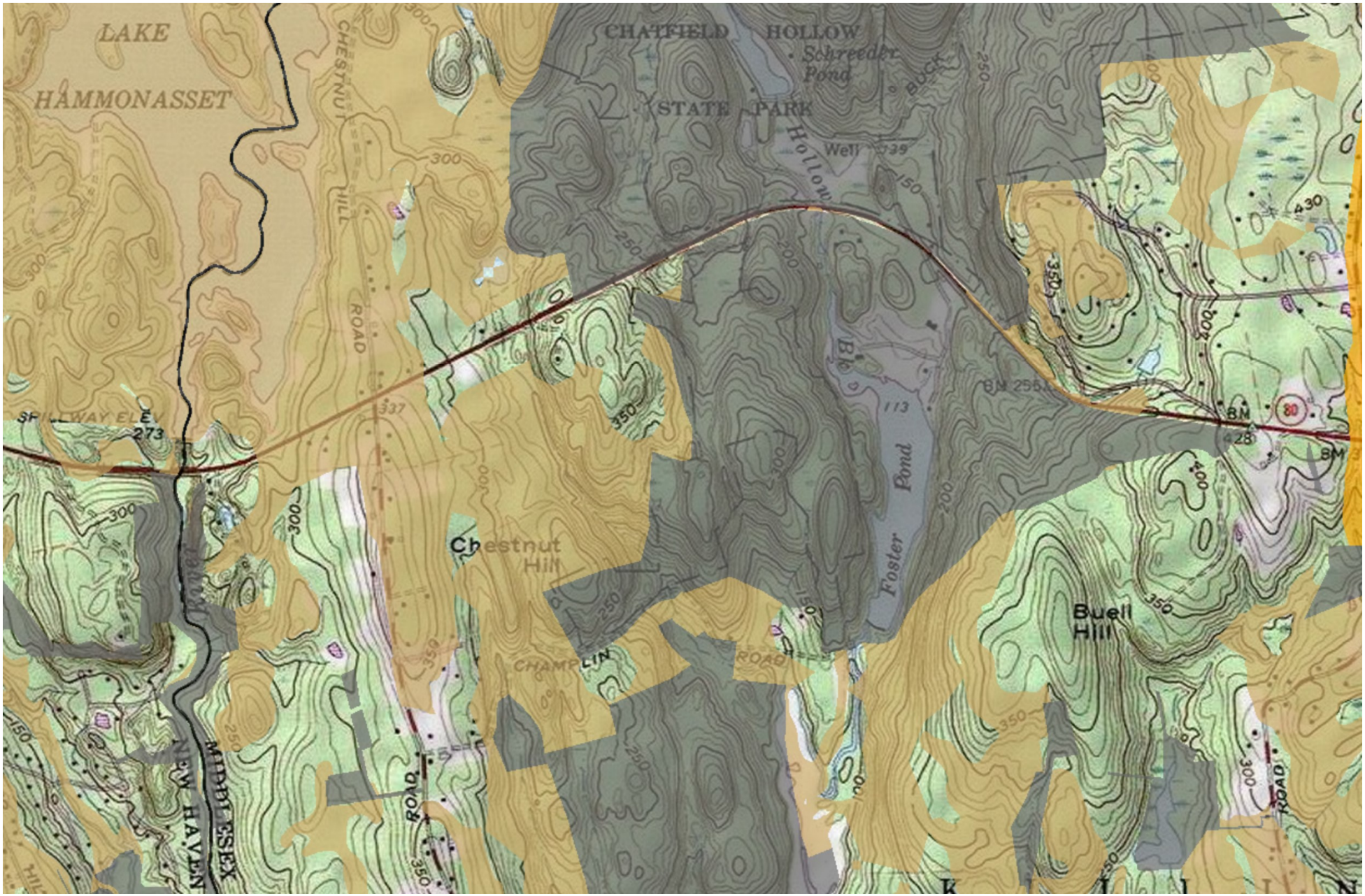
16. DEEP strongly advised the use of a longer construction phase to correctly address the significant storm water issues present at this location.

17. Herbicides

KARS Mapping Addendum

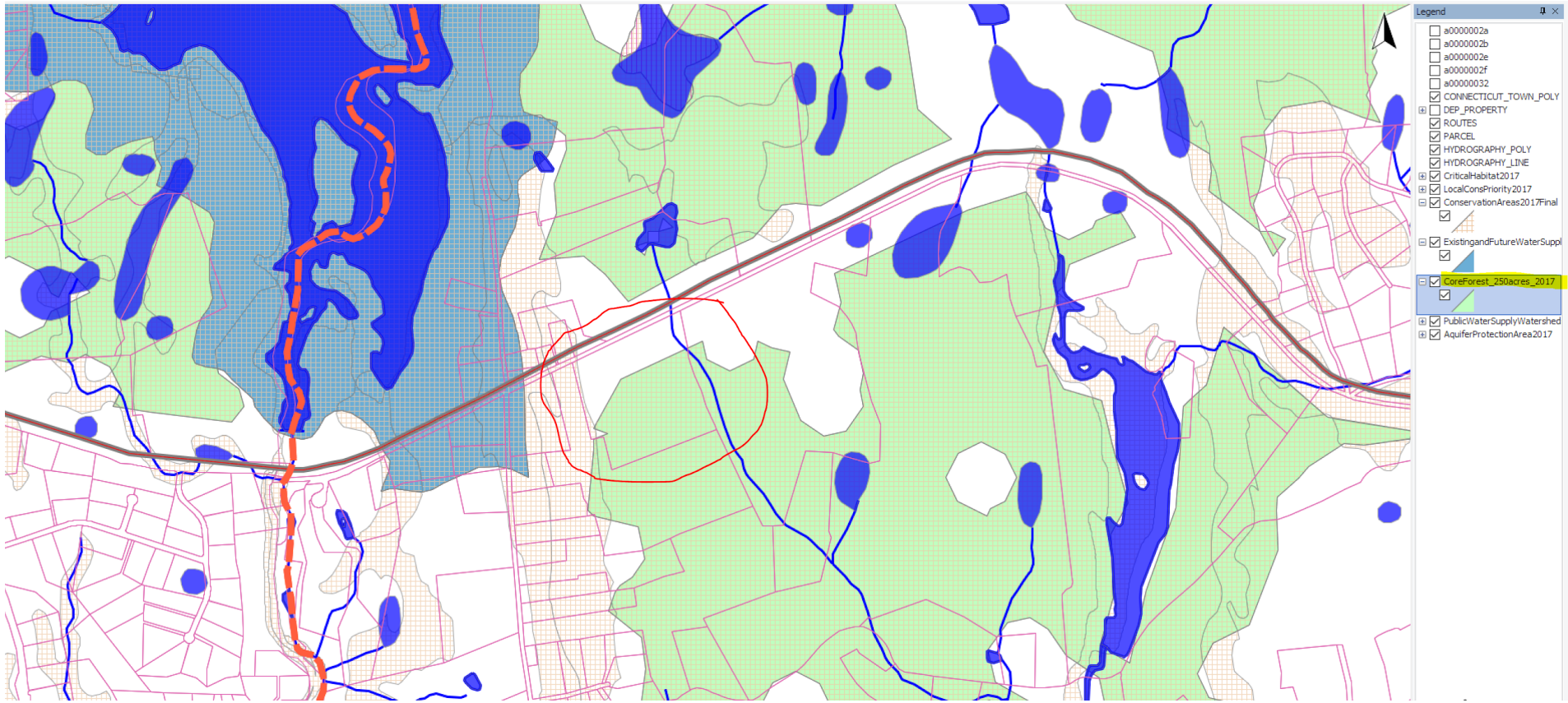
Overview of core forest areas, shaded orange, from the 2018-2023 CT Plan of Conservation & Development.

Gray shading indicates open space holdings under state and other ownership.



Green shaded areas depict core forest, from the draft

2018-2023 CT Plan of Conservation & Development



LIDAR imagery showing complex of array of stone walls on the project property