

SENT VIA E-MAIL

November 6, 2019

Melanie Bachman, Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

RE: PETITION NO. 1385 – Cobb Road, LLC petition for a declaratory ruling for the proposed construction, maintenance and operation of a solar photovoltaic electric generating facility at 20-1 Short Hills Road, Old Lyme, Connecticut.

Dear Ms. Bachman:

We are writing on behalf of the Town of Old Lyme Open Space Commission. This municipal board was created pursuant to § C.G.S. § 7-131p which “authorizes a municipality to establish a land acquisition authority to acquire open space land [and] ... to maintain, protect, or otherwise conserve such land.”

As such, the Town of Old Lyme in September, 2019 paid \$600,000 for approximately 300 acres of core forest and watershed land (“McCulloch Family Open Space”) located in very close vicinity to the proposed Cobb Road LLC solar project at 20-1 Short Hills Road, Old Lyme.

A major reason the Commission pursued acquisition of this property was its connectivity to the Old Lyme Land Trust’s 185 acre Lay Preserve. The Commission was partly guided in this decision by the Connecticut Department of Energy and Environmental Protection’s (“DEEP”) “Green Plan” which states:

“Conservation lands increase greatly in value when they are interconnected with other conservation lands. One parcel of land lost to development at a critical junction can diminish the conservation value of surrounding lands.”

The combined 485 acres serve as a sizable greenway to protect and preserve wetlands, streams, vernal pools and aquifers and as an important wildlife corridor.

We would further note that in the vicinity of 20-1 Short Hills Road, the Town of Old Lyme owns the 30 acre Upper Three Mile River Open Space; the town holds a conservation easement within the Great Oaks subdivision; the Old Lyme Land Trust owns the 157 acre Upper Three Mile River Preserve; and the town Open Space Commission is discussing potential acquisitions

that would adjoin the proposed project site. Two other family parcels of the original McCulloch Farm – Holland and Vasiloff – remain in private hands, abut the Lay Preserve and are subject to strict Nature Conservancy easements preserving their pristine state.

In sum, there are numerous protected properties with significant ecological value that **directly abut** or are in **close vicinity** to 20-1 Short Hills Road, some of which were acquired with Connecticut State Government financial support. A Town of Old Lyme GIS map is attached to illustrate this adjacency.

The Town of Old Lyme Open Space Commission does not oppose the solar project, but it does have very serious reservations that we believe the Siting Council must address before granting approval.

#### Public Notice

The Petition states “The Town of Old Lyme supports development of the Project in this location.”

We are frankly surprised at this assertion, given the apparent lack of communication and notice for this project. To the best of our knowledge, the First Selectwoman was contacted twice; the land use department informed us they have only recently received information; the Town Open Space Commission, despite its standing as illustrated above, has never been contacted, and the public can hardly “support” a project essentially unknown to it.

In contrast, when the Town Open Space Commission purchased the McCulloch Family Open Space, presentations were made to the Board of Selectmen, the Planning Commission, the Conservation Commission, the Board of Finance, and at a Town Meeting.

#### Core Forest

As noted, the Town of Old Lyme and the Old Lyme Land Trust have made significant investments of limited resources to acquire and protect core forest land, influenced by DEEP’s strong advocacy of such conservation.

While “green” energy is important, this project seems in conflict to DEEP’s core forest “green” goal considering that 18 acres of wooded land will be lost. DEEP, in their “Green Plan” writes “One of the greatest benefits provided by forests is their ability to sequester carbon... [which will] reduce the state’s greenhouse gas emissions.” The mature woodland would provide that benefit for another 150 to 200 years. Alternate sites, such as the brownfield across Four Mile River Road at the transfer station, also near an Eversource transmission line, would not require trade-offs in “green goals.”

Greenways, as noted, are important wildlife corridors, and the construction of a seven-foot chain link fence also seems in conflict with Connecticut's Comprehensive Wildlife Conservation Strategy, now known as the Wildlife Action Plan.

The State of Connecticut, Council on Environmental Quality wrote in their corrected October 28, 2019 letter that "The Petitioner states that the site had been slated for residential development and perc tests performed."

The property in question was part of a subdivision titled "The Oaks" Land n/f George King II, Howard S. Tooker to be acquired by Short Hill Properties, LLC. Phase I, Great Oaks Road, was subdivided by Short Hills Properties, LLC. Although tests were performed on the remaining Tooker property, a subdivision plan was never recorded and any approved areas not developed would have expired.

#### Soil Erosion and Sediment Control

The potential for harmful or destructive storm water runoff from the solar site towards the Lay Preserve and specifically impacting its adjoining McCulloch Family Open Space, and other properties, is of utmost concern. There are four wetlands and a vernal pool in abutting and nearby properties that may be adversely affected.

The McCulloch Family Open Space, in particular, protects a watershed of the Black Hall River which, in turn, is a tributary of the Connecticut River. The language contained in The Nature Conservancy's conservation easement on the McCulloch property (attached) clearly illustrates the significant ecological value of this land (and attests to the great care to which this neighboring property has been and will be subject).

"The protected property is in the watershed of and is contiguous to the Silvio O. Conte National Fish & Wildlife Refuge and the protection of the watershed of the Connecticut River and natural wildlife habitat through private conservation action is a stated goal of the Refuge "Action Plan" and the Protected Property is located within the watershed of a tidal wetland declared to be a wetland of international importance under the RAMSAR treaty..."

The Petitioners cite as their soil erosion and management plan The 2002 Connecticut Guidelines for Soil Erosion and Sediment Control (DEP Bulletin 34). We would note that DEEP is this year upgrading their standards for run-off, and that plan may soon be out of date.

The State of Connecticut, Council on Environmental Quality also noted in the above cited correspondence that "The proposed facility and access road would impact the critical terrestrial habitat for species that use the identified vernal pool located east of the proposed site. As confirmed in the Petition, 'intact forest represents the highest value habitat' within both the

vernal pool envelope and the critical terrestrial habitat 'to support breeding opportunities for the various obligate vernal pool indicator species that rely on forested habitat (e.g., wood frog and spotted salamander).' We agree with their recommendation that the Siting Council carefully consider such potential negative impacts.

If approved, the Petitioner stated post-construction that all disturbed areas will be loamed and hydro-seeded, and a wildflower meadow planted in transition zones. We would note that there have been frequent summer dry spells in southeastern Connecticut in recent years, and if seeding is undertaken during such a spell without watering, it is likely to fail. Provisions should accordingly be made for re-seeding as needed.

The silt run-off issues generated by a similar project in our neighboring town of East Lyme, CT amplify public concern about the potential impacts of this project.

#### Post-Development Monitoring

While walking the site with project representatives, a discussion ensued about monitoring of the site to assure that detention ponds would continue to function as planned over the 25-year project life and that no other issues arose. We were taken aback by statements that there would only be "occasional" monitoring of infiltration basins and outflow, rather than any scheduled or regular site inspection. Such a response fosters a concern over project neglect in out years.

We were further taken aback when we inquired about reporting possible environmental issues discovered by abutting or nearby property owners in the future. No project representative would offer or provide **any** contact information for reporting of such issues, again fostering a concern over out year maintenance/repair.

In addition, we have serious concerns about the project's letter of credit. Oral assurances have been made, but will this be formalized to fund potentially future environmental site repairs? The Site Plan states only that "A bond or letter may be required to be posted with the governing authority for the erosion control installation and maintenance."

#### Emergency Access

When the Town of Old Lyme Open Space Commission acquired the McCulloch Family Open Space, documents were created and recorded in Town Hall so emergency responders might access a private road if necessary. It appears that the Petitioners have not made such emergency response plans for the project site. We were told during the site walk only that the property owner "talked" to a fire official.

In sum, when the Town of Old Lyme Open Space Commission was acquiring the McCulloch Family Open Space, it was told on multiple occasions that Roger Tory Peterson, the town's

world famous ornithologist, believed the property enjoyed exceptional avian diversity. The property has similarly been described as one of the town's jewels, protected since the Great Depression by the family's foresight and commitment to conservation.

The Open Space Commission respects the rights of property owners. But it also has an obligation to all town residents to protect precious natural resources, such as the McCulloch Open Space.


This project may prove a worthwhile addition to the area's generation of clean energy. But it seems imperative that, given the surrounding truly special land, every effort be made to minimize environmental risk.

The State Council on Environmental Quality wrote that the project "proposes a capacity of 1.992 MW or only .008 MW (eight kilowatts) less than the two megawatt threshold above which a review by DEEP of the forest impact would be required."

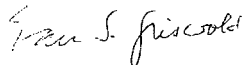
Given that very narrow miss for review, we urge the Siting Council to either call for a DEEP review or to require a fair and independent environmental analysis of the Cobb Road, LLC petition, so that the concerns raised in this letter and by other organizations receive the expert consideration they deserve.

We would also strongly recommend that the Siting Council hold a public hearing on this petition so that the "town's support" of the project be verified. News stories of solar farms catastrophically failing to contain storm runoff engender alarm, a worry that may only be worsened by the potential for more severe storms over the next 25 years due to climate change. A public hearing would be an opportunity for Cobb Road, LLC and their representatives to reassure residents of their commitment to sound environmental practices over the life of this project.

Respectfully,



William Dunbar  
Co-Chair, Commission



Evan Griswold  
Member, Open Space Commission

CC: First Selectwoman Bonnie Reemsnyder  
State Senator Paul Formica  
State Representative Devin Carney

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DEED OF CONSERVATION RESTRICTION

THIS GRANT DEED OF CONSERVATION RESTRICTION is made by DAVID SEARS McCULLOCH and JEAN ADAIR McCULLOCH, residents of Old Lyme, Connecticut, who with their successors in title to all or any portion of the Property, as hereinafter defined, are herein referred to as "Grantor", in favor of the THE NATURE CONSERVANCY OF CONNECTICUT, INC. (hereinafter referred to as "Grantee"), a non-profit charitable corporation incorporated under the laws of the State of Connecticut and in good standing and qualified to do business in the State of Connecticut as with a local address at 55 High Street, Middletown, Connecticut 06457.

PREAMBLE

WHEREAS, Grantor is the owner in fee simple of those parcels of real property on the easterly side of Whippoorwill Road and the northerly side of Flat Rock Hill Road and U.S. Interstate 95, a/k/a Blue Star Highway, in the Town of Old Lyme, Connecticut, totaling 310 acres, more or less, more particularly shown on Sheet 1, Sheet 2, Sheet 3, Sheet 4, Sheet 5, Sheet 6, and Sheet 8 on a plan entitled: "McCULLOCH FARM WHIPPOORWILL ROAD OLD LYME, CT SCALE 1"=100' DATE AUGUST 1, 1997 REVISIONS: DATE 12/9/99 CONSERVATION RESTRICTION AREA ADDED" RICHARD W. GATES LAND SURVEYOR 81 MAIN STREET, CENTERBROOK, CT (hereinafter referred to as the "Plan") and being more particularly described as Parcels 1 through 4 on Exhibit 1, attached hereto and incorporated herein by reference (hereinafter referred as the "Protected Property"); and

WHEREAS, the Seller's Protected Property is a significant area of the upper watershed of the Black Hall River; and

Recorded for Record 12/30/99 at 2:39 p.m.  
Witnessed by Eileen K. Coffey, ATC  
Town Clerk

WHEREAS, the Black Hall River flows into and is a tributary of the Connecticut River; and

"No Conveyance Tax collected

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Eileen K. Coffey, ATC  
Town Clerk of Old Lyme

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**WHEREAS**, protecting the water quality of the Black Hall River and the Connecticut River is of importance to the State of Connecticut's ongoing efforts to restore anadromous fishery to said rivers; and

**WHEREAS**, the Protected Property possesses predominantly undeveloped, natural habitat, with significant scenic, ecological, and open space values of importance to Grantor, to Grantee, to the Town of Old Lyme, and to the people of the State of Connecticut; and

**WHEREAS**, the Protected Property is located within the watershed of the Tidelands of the Connecticut River, which has been declared a "Last Great Place" by The Nature Conservancy; and

**WHEREAS**, Grantee owns other preserves and Conservation Restrictions at the mouth of the Black Hall River that will be benefited by protection of the Protected Property; and

**WHEREAS**, there are threatened and endangered species and species of special concern located within Black Hall River estuary system; and

**WHEREAS**, Grantor and Grantee share a common goal of protecting the watershed of the Black Hall River and the lower Connecticut River; and

**WHEREAS**, Grantee desires to enable additional protection of the area of the Black Hall River watershed in furtherance of its goal of protecting the estuary and tidal marshes of the lower Connecticut River; and

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**WHEREAS**, the protection of the watershed of tributaries of the Connecticut River is in furtherance of numerous clearly identified municipal, state, and federal public policy goals; and

**WHEREAS**, the Protected Property is in the watershed of and is contiguous to the Silvio O. Conte National Fish & Wildlife Refuge and the protection of the watershed of the Connecticut River and natural wildlife habitat through private conservation action is a stated goal of the Refuge "Action Plan"; and

**WHEREAS**, the Protected Property is in the watershed of and contiguous to a special focus area of the Silvio O. Conte National Fish and Wildlife Refuge; and

**WHEREAS**, the Protected Property is located within the watershed of a tidal wetland declared to be a wetland of international importance under the RAMSAR Treaty; and

**WHEREAS**, the Protected Property contains intact areas of forest, the protection of which is in furtherance of clearly delineated state and municipal policies and furthers Grantee's general goal of retaining and enhancing large areas of unfragmented forest within the watersheds of the Tidelands of the Connecticut River region; and

**WHEREAS**, the Protected Property contains actively used agricultural fields, the protection of which is in furtherance of clearly delineated state policies; and

**WHEREAS**, the Protected Property contains intact, naturally functioning inland wetlands, the protection of which is in furtherance of clearly delineated state policies as set forth in §22a-36 et seq. of the Connecticut General Statutes; and



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WHEREAS, the conservation and protection of the Protected Property as open space furthers identified municipal policies; and

WHEREAS, the Black Hall River provides water areas for outdoor recreation by the general public; and

WHEREAS, preservation of the Protected Property will, therefore, yield a significant public benefit; and

WHEREAS, the conservation values of the Protected Property are documented in a report prepared by ECCOS, Inc. to be kept on file at the offices of Grantee, with copies provided to Grantor (hereinafter referred to as the "Baseline Report"). The parties agree the Baseline Documentation provides an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

*copy*

WHEREAS, it is Grantor's and Grantee's goal and objective to protect the above recited conservation values of the Protected Property while permitting the continued private use and enjoyment of the Protected Property; and

WHEREAS, it is further Grantor's goal and objective to continue the traditional uses and practices of managing the timber, grasslands, pastures, and agricultural fields on the Protected Property for wildlife habitat, agriculture, forestry, and outdoor recreational uses that are not inconsistent with the protection of the conservation values of the Protected Property; and

WHEREAS, Grantee agrees that Grantor's goals and objectives are consistent with the Purpose, as defined below, of this Conservation Restriction; and

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**WHEREAS**, Grantee is a publicly-supported, tax-exempt, non-profit organization whose primary purpose is to preserve and conserve natural areas for aesthetic, scientific, charitable, and educational purposes; and

**WHEREAS**, Grantee represents that Grantee is a "**qualified conservation organization**," as that term is defined in Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "**Code**"); and

**WHEREAS**, Grantee has received determination letters from the Internal Revenue Service, on file at the offices of Grantee, to the effect that Grantee is a "**publicly-supported**" organization under Section 170(b)(1)(A)(vi) of the Code and is not a private foundation described in Section 509(a) of the Code; and

**WHEREAS**, Grantor and Grantee recognize the natural, scenic, and special character of the Protected Property, and have the common purpose of its conservation and protection in perpetuity as "a relatively natural habitat of fish, wildlife or plants or similar ecosystem," as that phrase is used in Public Law 96-541, 26 U.S.C. 170(h)(4)(A)(ii) and (iii), by placing voluntary restrictions upon the use of the Protected Property and by providing for the transfer from Grantor to Grantee of affirmative rights for its protection, intending the grant of such restrictions to qualify as a "qualified conservation contribution" as that term is defined under Section 170(h)(2)(C) of the Code; and

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Code and Sections 47 - 42a through 47 - 42c of the laws of the State of Connecticut, Grantor hereby voluntarily **GRANTS and CONVEYS** to Grantee and its successors and permitted assigns a Conservation Restriction (the "**Conservation Restriction**") in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth. Grantor herein declares that the Protected Property shall be held,

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transferred, sold, conveyed, used, and occupied subject to the terms, covenants, conditions, and restrictions hereinafter set forth, which covenants, conditions, and restrictions shall be deemed to run with and burden the Protected Property in perpetuity.

**PURPOSE**

1.0 **Purpose.** It is the purpose ("Purpose") of this Conservation Restriction to ensure that the Protected Property will be forever retained in a predominantly undeveloped, natural, open space, forested, agricultural, or open field condition; to protect plants, animals, and natural communities of environmental concern; to restrict or prohibit activities that will impair or interfere with the ecological integrity and conservation values of the Protected Property recited above, and to protect other "significant conservation interests" as that term is meant under section 170(h) of the Code and regulations promulgated thereunder and as more particularly set forth in the Preamble to this Conservation Restriction. Grantor intends that this Conservation Restriction will limit the use of the Protected Property to activities that are consistent with the foregoing Purpose of this Conservation Restriction.

**RIGHTS OF GRANTEE**

2.0 **Affirmative Rights of Grantee.** Subject to the provisions of paragraph 2.1, Grantor hereby grants the following rights to Grantee, which rights shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee:

(a) to prevent Grantor or third persons (whether or not claiming by, through, or under Grantor) from conducting any activity on or use of the Protected Property that is inconsistent with the Purpose of this Conservation Restriction, and to require of Grantor or third persons the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use;

(b) to enter upon the Protected Property at reasonable times and in a reasonable manner in order to monitor Grantor's compliance with and otherwise enforce the terms of

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this Conservation Restriction, including but not limited to any inspection rights related to required notices for permitted practices as set forth in paragraphs 4 and 9, provided that such entry shall be upon prior reasonable notice to Grantor, and that Grantee, in the exercise of its monitoring rights, shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property as restricted by this Conservation Restriction;

(c) to enforce this Conservation Restriction in the case of breaches by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by appropriate legal proceedings;

(d) to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring removal of offending structures, vegetation, and other restoration of the Protected Property to the condition that existed prior to any such violation (it being agreed that Grantee will have no adequate remedy at law); and

(e) with the approval of Grantor, to develop and implement a management plan (including, without limitation, the use of controlled burning) reasonably required for: the management of important conservation elements on the Protected Property, the protection of any threatened or endangered species or important natural communities which may be found on or adjacent to the Protected Property, and the control and removal invasive species.

**2.1 Grantee's Remedies.**

(a) In the event that Grantee becomes aware of a violation of the terms of this Conservation Restriction, Grantee shall give written notice to Grantor and request corrective action sufficient to abate such violation and restore the Protected Property to a condition substantially similar to that which existed prior thereto. Failure by Grantor to: (i) discontinue or cure such violation within the time period reasonably specified in such notice; (ii) immediately begin good faith efforts to discontinue, abate, or cure such violation where completion of such action cannot be reasonably accomplished within the specified time period and to continue such efforts until completion; or (iii) initiate and

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continue such other corrective action as may be reasonably requested by Grantee, shall entitle Grantee to: (w) bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Restriction; (x) require the restoration of the Protected Property to a condition substantially similar to that which existed prior thereto; (y) enjoin any noncompliance by temporary or permanent injunction; and (z) recover any damages arising from such violation or noncompliance.

(b) If Grantee, in its sole discretion, reasonably exercised, determines that emergency circumstances require immediate action to prevent or mitigate significant damage to the conservation values to be protected by this Conservation Restriction, Grantee may pursue its remedies under this **paragraph 2.1** without prior notice to Grantor or without waiting for the period for cure to expire. Grantee shall provide Grantor with immediate notice of all actions taken by it pursuant to this **subparagraph 2.1(b)**.

2.2 **Forbearance Not a Waiver.** Any forbearance by Grantee in the exercise of its rights under this Conservation Restriction or arising from any breach of any term hereof shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Restriction or of any of Grantee's rights under this Conservation Restriction. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

2.3 **Acts Beyond Grantor's Control.** Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, acts of God, force majeure, acts of government authorities (including but not limited to local fire districts), acts of trespassers or the unauthorized wrongful acts of third persons, fire, flood, storm, and earth movement, or major natural disease, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate injury to the Protected Property resulting from

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such causes. Notwithstanding the foregoing, nothing herein shall limit or preclude Grantor's and Grantee's rights to pursue any third party for damages to the Protected Property from vandalism, trespass, or any other violation of the terms of this Conservation Restriction.

2.4 **Costs.** Grantor agrees to reimburse Grantee for all reasonable costs of suit, including reasonable attorneys' fees, incurred by Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation hereof by Grantor, provided that such violation of this Conservation Restriction is acknowledged by Grantor or determined to have occurred by an arbitrator or court of competent jurisdiction, as the case may be. Grantee agrees to reimburse Grantor for all costs of suit, including reasonable attorneys' fees, incurred by Grantor in defense of any claim or action brought by Grantee in connection with any alleged violation hereof by Grantor, provided that Grantee acknowledges that such claim or action was without merit or if an arbitrator or court of competent jurisdiction, as the case may be, affirmatively determines that Grantor has complied with the terms and conditions of this Conservation Restriction.

**PROHIBITED USES**

3.0 **In General.** The prohibited uses and reserved rights for the Protected Property are based on Grantor's and Grantee's evaluation of the conservation values of the Protected Property and Grantor's goals and objectives of continuing limited private use and enjoyment of the Protected Property while ensuring that the Purpose of this Conservation Restriction is protected in perpetuity.

Grantor and Grantee agree that the Reserved Residential Areas identified in the Baseline Report are located in areas of the Protected Property where future lawfully permitted activities, improvements, or disturbance is not inconsistent with the conservation values of the Protected Property or the Purpose of this Conservation Restriction.

3.1 **Prohibited Uses.** There shall be no use of the Protected Property involving activities inconsistent with or adversely impacting the conservation values of the

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Protected Property or the Purpose of this Conservation Restriction. Except as provided in **paragraph 6**, any division of Parcels 1, 2, & 3 (as described on **Exhibit 1**) of the Protected Property or title to the Protected Property into more than four (4) separate lots or parcels, whether by subdivision, cooperative ownership, condominium ownership, or other form of common ownership that allows separate control and management of more than four (4) different areas of the Protected Property is hereby prohibited. Except as provided in **paragraph 6**, any such division of Parcel 4 of the Protected Property whether by subdivision, cooperative ownership, condominium ownership, or other form of common ownership that allows separate control and management of any portion of said Parcel 4 is hereby prohibited. In addition, except as provided in **paragraphs 4, 5, and 6**, the following activities, acts, or uses are expressly forbidden on, over or under the Protected Property.

3.2 **Prohibited Uses Within The Reserved Residential Area.** Within or associated with the Reserved Residential Areas:

(a) There shall be no planting of species known to have invasive characteristics, which may be identified from time to time by written notice from Grantee. An initial list of such species are identified in the Baseline Report.

(b) Except for the existing common driveway and for private driveways serving the Reserved Residential Areas, as defined in **paragraph 5.2** below, there shall be no construction of roads with impermeable materials, unless required by governmental authorities or reasonably required to prevent harmful runoff, erosion, or sedimentation of wetlands or areas of the Protected Property.

(c) There shall be no use of devices that lure insect species without discrimination for the purpose of killing them, more commonly known as "bug zappers".

(d) Grantor's activities shall be conducted in a manner designed to prevent runoff, erosion, sedimentation, or drainage flows that would have an adverse impact on the Protected Property or be inconsistent with the Purpose of this grant of Conservation Restriction.

3.3 **Prohibited Uses Within Remaining Areas of the Protected Property.**

Except as expressly permitted in paragraphs 4, 5, & 6 below or to bring utilities to the Reserved Residential Area, on the remainder of the Protected Property:

(a) There shall be no construction or placement of any building, tennis or other recreational court, mobile home, swimming pool, fence, or sign (other than those required by Grantee for appropriate land management), asphalt or concrete pavement, billboard or other advertising display, antenna, satellite dish, utility pole, tower, conduit, line, sodium vapor light, or any other temporary or permanent structure or facility.

(b) There shall be no ditching, draining, diking, filling, excavating, dredging, mining, drilling, removal of topsoil, sand, gravel, rock, minerals, or other materials, building of new roads, or change in the topography of the land through placing, moving, or removing soil or other substance or materials.

(c) There shall be no removal, destruction, or cutting of trees, shrubs, or plants, or planting of non-native species with invasive characteristics, shrubs, or plants, or disturbance or change in the natural habitat.

(d) There shall be no use of fertilizers, pesticides or biocides, including, but not limited to insecticides, fungicides, rodenticides, and herbicides, and no use of devices that lure insect species without discrimination for the purpose of killing them.

(e) There shall be no storage, placing, filling, or dumping of ashes, trash, garbage, vehicles or vehicle parts, debris, junk, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks.

(f) There shall be no pollution or sedimentation of surface water, natural watercourses, lakes, ponds, marshes, or any other water bodies, and there shall be no activities which will have an adverse impact on water purity or natural water levels and/or flow.

(g) There shall be no operation of dune buggies, motorcycles, all-terrain vehicles, or any other types of land-based motorized recreational vehicles.

(h) The Protected Property or any portion thereof shall not be included as part of the gross area of any other property not subject to this Conservation Restriction for the

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purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations, or ordinances controlling land use and building density. The development rights which have been encumbered or extinguished by this Conservation Restriction shall not be transferred to any other property pursuant to a transferable development rights plan, cluster development arrangement, or otherwise.

(i) There shall be no hunting or trapping on the Protected Property.

(j) There shall be no commercial recreational activities allowed, other than de minimis activities consistent with the provisions of §2031 of the Code and regulations promulgated thereunder. There shall be no industrial uses of the property allowed.

(k) Any use of the Protected Property which would be inconsistent with or have an adverse impact upon the Purpose of this Conservation Restriction or other significant conservation interests is prohibited, unless such use or activity is deemed necessary by Grantor and Grantee for the protection of the Purpose of this Conservation Restriction, in which case such use or activity shall be subject to notice to and approval of Grantee as provided in paragraph 9.4 hereof.

**RESERVED RIGHTS; OBLIGATIONS**

4.0 **Reserved Rights.** The prohibited uses of paragraph 3 notwithstanding, the following uses and activities of or by Grantor and Grantor's guests and invitees shall be permitted as set forth below. Grantee acknowledges having reviewed Grantor's existing use of the Protected Property and the reserved rights set forth in this paragraphs 4 & 5 and agrees that the exercise of such rights is not inconsistent with the Purpose of this Conservation Restriction and is not restricted hereby.

4.1 **Grantor's Reserved Rights for the Protected Property.**

(a) The right to engage in all acts or uses not expressly prohibited herein that are not inconsistent with the protection of the Purpose of this Conservation Restriction.

*Commercial  
recreational  
activities -  
horses/pasture*

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(b) The right to engage in outdoor recreational activities, including by way of illustration and not limitation, bicycle riding, walking, horseback riding, cross-country skiing, fishing, camping, swimming, and boating (not powered or fueled by petroleum based fuels).

(c) The right to create, maintain and use unpaved woods roads and horse or foot trails with permeable materials, including but not limited to sand, gravel, shell, rock, or crushed stone and including raised footbridges on or over wetlands. The location, intensity and construction of any new horse trails and woods road shall not cause sedimentation or erosion of the Protected Property or be inconsistent with the Purpose of this grant. New horse trails and woods roads shall not be constructed within twenty-five (25) feet of or on or across wetlands and watercourses without notice to and the approval of Grantee pursuant to **paragraph 9.2(b)** hereof.

(d) The right to repair, maintain, replace and improve the existing structures improvements, access roads and woods roads on the Protected Property for the benefit of Grantor and other properties of the Grantor, Catherine Taffy McCulloch Holland, and Mary Jean McCulloch Vasiloff shown in the Baseline Report and served thereby, but not to widen the improved surface of said roads in excess of that required by law for the activities permitted herein, and the right to create, repair, maintain, and improve a new private driveways for the purposes permitted in **paragraph 5** below.

(e) The right to fish and shoot targets and clays; provided that target shooting with shotguns utilizing lead shot shall not occur over wetlands, ponds and water courses. The right to hunt and live trap animals in accordance with law (provided, however, no leg hold traps may be utilized) in order to: (i) prevent the over population of a species, (ii) maintain the health and diversity of flora and fauna on the Protected Property; (iii) protect agricultural crops and fields, (iv) protect the integrity of the dams on or abutting the Protected Property; and (v) remove nuisance animals. Prior to allowing hunting or trapping for the purposes set forth in (i), (ii) or (iii) above, pursuant to **paragraph 9.2(a)** hereof Grantor shall deliver Grantee a written report from a qualified forest ecologist,

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state agricultural agent, or wildlife biologist certifying the existence of such condition and recommending the removal of the wildlife to be hunted or trapped.

(f) The right to post all or a portion of the Protected Property against trespass, unauthorized hunting, or other unauthorized use by others and to exercise all legal rights available to Grantor to prevent such activity.

(g) The right to use the acreage or area of the entire Protected Property to secure regulatory approval to maintain, repair, replace, construct and reconstruct those buildings with living quarters, guest facilities, barns, stables, equipment facilities, and other lawfully permitted accessory structures on Grantor's remaining property not subject to this Conservation Restriction identified as the "Stone Barn Lot" within the "Area Excluded From Conservation Restriction" on the Plan, and on Grantor's Reserved Residential Areas permitted hereunder.

(h) Subject to the restriction set forth in **paragraph 3.1**, the right to sell, gift, mortgage, license, lease, or otherwise convey the Protected Property, or any portion thereof. Any such sale, gift, mortgage, license, lease, or other conveyance shall be subject to this Conservation Restriction in all respects, with written notice thereof provided to Grantee in accordance with the provisions of **paragraph 11** below.

(i) The right to restore, and/or maintain fields, coverts, grasslands, pasture, or meadows for commercial and/or non-commercial agricultural or wildlife management purposes, as more particularly set forth in **paragraph 4.2 (a)** hereof.

(j) The right to cut, harvest, plant, cultivate, and otherwise manage timber, as more particularly set forth in **paragraph 4.2 (b)** hereof.

(k) The right to construct and place accessory structures, as more particularly set forth in **paragraph 4.2(d)** hereof, including by way of illustration and not limitation, temporary roosting, feeding, and nesting shelters for wildlife, benches, observation blinds, interpretive and directional signs, tents and tent platforms, fences, dry stone walls (constructed without cement), and pole sheds or gazebos as reasonably needed to carry out or accomplish the activities permitted to Grantor hereunder; provided however, such

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structures shall be installed and located so as to be consistent with the Purpose of this Conservation Restriction. After notice to and approval of the location by Grantee pursuant to **paragraph 9.2 (b)** hereof, the right to construct one barn for bona-fide agricultural or forestry purposes related to the activities permitted hereunder only; provided, however, there shall be no storage of hazardous materials on the Protected Property, except for fertilizers, herbicides, and pesticides stored and used in conjunction with permitted agricultural activities on the Protected Property in accordance with applicable law.

(l) After notice to Grantee pursuant to **paragraph 9.2(a)**, the right to undertake controlled burning for forestry, grassland management, and wildlife management purposes.

(m) As reasonably necessary in connection with permitted uses, management, and protection of the Protected Property, the right to bring on the Protected Property and operate automobiles, light trucks, off-road vehicles (but not snowmobiles or motorcycles), farm equipment, forestry equipment (including forest product processing equipment), emergency and rescue vehicles, maintenance equipment, materials, supplies, and other vehicles and equipment. Notwithstanding the foregoing, the right to use all terrain vehicles and other off-road vehicles shall not be construed to include their use for recreational purposes.

(n) The right to use selective application of herbicides, in accordance with law, in order to remove or control plant species with invasive characteristics or which are a threat to the health of humans or animals and the right to remove invasive species, including the removal of phragmites from fresh water ponds and wetland habitats. The use of herbicides to remove large areas of invasive species or to remove phragmites or other invasive species from water and wetland habitats shall require notice to Grantee pursuant to **paragraph 9.2(a)** hereof.

(o) The right to compost or burn vegetative and forest waste deriving from activities and uses permitted on the Protected Property by this Conservation Restriction but not within 100 feet of a wetland.

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(p) After notice to and approval of Grantee pursuant to **paragraph 9.2(b)**, the right to drain and restore (including the removal of accumulated sediment) each and all of the man made ponds located on the Protected Property, including (without limitation) the pond located below the spring house adjacent to the electrical transmission line, for aesthetic enjoyment, fire protection, recreation, and wildlife habitat; provided, however, that such activity shall be undertaken in a manner that prevents erosion or sedimentation of the Protected Property and that all excess materials shall be disposed off of the Protected Property or in a manner consistent with the Purpose of this grant.

(q) The right to repair, maintain, and reconstruct existing dams, bridges and culverts on, under, or over wetlands and water courses; provided any such activity shall be undertaken in a manner that minimizes erosion and sedimentation and the impact of such activity on wetlands and water courses on the Protected Property and the right to construct, reconstruct, repair, and maintain temporary and permanent docks on the ponds. Grantee shall receive notice pursuant to **paragraph 9.2(a)** prior to the reconstruction or replacement of bridges and dams.

(r) The right to construct and maintain fish ladders in conjunction with Grantee, the State of Connecticut, or other governmental or non-governmental agency or entity for the purpose of restoring anadromous fish runs to the Black Hall and Connecticut Rivers.

**4.2 Approved Practices and Standards for Identified Permitted Activities.**

Grantor and Grantee agree to cooperate and work together in good faith to realize the multiple goals of preserving landowner uses and values, as expressed in the Preamble and **paragraphs 4.0 and 4.1**, while protecting the Purpose of this Conservation Restriction. The following provisions should be interpreted and utilized to provide a framework for the current and future land use practices permitted herein.

(a) The right reserved under **paragraph 4.1(i)** hereof to create, restore, and/or maintain fields, grasslands, pasture, or meadows for commercial and/or non-commercial agricultural or wildlife management purposes shall include, by way of example and not limitation, the right to: (i) clear forest trees and other growth from forested or overgrown

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areas for the purposes set forth above; (ii) prepare such areas for agricultural, pasture, garden, or open meadow use; (iii) plant, seed, and re-seed (including, by way of example, grasses, grains, orchards, grapevines, and nursery stock), but not species with known invasive characteristics; (iv) trim and cut brush and trees in order to maintain clear borders around or paths within such areas; (v) construct fences in and around such areas; (vi) temporarily store manure for agricultural purposes on a seasonal basis, but not within 100 feet of any wetland or watercourse; and (vii) apply herbicides, pesticides, fungicides, and fertilizers for bona-fide agricultural and garden purposes. The cultivation of row crops requiring applications of fertilizers should be located in areas of slopes and soils suitable for such purposes and not within fifty (50) feet of wetlands or watercourses. An adequate buffer of high grasses, shrubs, or trees should be maintained between the permitted activity and adjacent wetlands and watercourses on the Protected Property in order to ensure the preservation of the quality thereof and to protect the Purpose of the Conservation Restriction. Notice should be given and Grantec's approval received pursuant to **paragraph 9.2(b)** hereof prior to Grantor clearing new areas (other than those areas shown as open on the Baseline Report) larger than three (3) acres, provided that clearing (other than the area of existing pasture and field as shown in the Baseline Report) shall not be allowed within 100 feet of wetlands or watercourses. Applications of herbicides, pesticides, fungicides, and fertilizers under **paragraph 4.1(i)** hereof should be undertaken in accordance with law, ecologically sound agricultural practices, and in light of the actual needs of the crops or cover being grown at any time and the slope, filtration, and run-off characteristics of the site. The use of fields or wooded areas as pasture for animals shall be managed to prevent erosion and sedimentation of the Protected Property and limited in extent so as to prevent detrimental levels of animal waste. The pasturing of animals shall not be undertaken in a manner that allows or results in damage to the stability of the banks of any permanent or seasonal water courses on the Protected Property or erosion and sedimentation of the Protected Property generally.

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(b) The right reserved under **paragraph 4.1(j)** hereof to cut, harvest, plant, cultivate, and otherwise manage timber shall include, by way of example and not limitation, the right to: (i) cut and remove diseased or dead trees, shrubs, or plants, create and maintain firebreaks, and cut firewood; (ii) create and/or maintain cleared brushy areas of up to three (3) acres in an early successional brushy state; (iii) selectively cut trees and shrubs over a defined area or areas for intermediate harvests of immature timber stands or to thin, but not clear, the forest canopy for the improvement of the forest under story, for the natural regeneration of forest growth, for wildlife habitat, to maintain views from a Reserved Residential Area or to allow light into such areas, or for other permitted purposes; (iv) harvest timber commercially or for forest or wildlife management by creation of clear cut, irregularly shaped areas of reasonable size, each not to exceed three (3) acres without the provision of a two hundred (200) foot forest buffer between cleared areas; and (v) plant native forest trees, shrubs, bushes, and plants that do not have invasive characteristics. The foregoing practices necessitate the right to construct, use, and maintain temporary logging roads as necessary for such operations. The activities set forth in (ii), (iii), and (iv) shall be carried out under the supervision of a professional forester, forest ecologist or wildlife biologist in accordance with a written forest and/or wildlife management plan that addresses such issues as wetland crossings, equipment use, forest regeneration and wildlife habitat (specifically providing for regeneration of forested areas in light of a general goal of minimizing long term forest fragmentation and retaining sufficient mature trees, den trees, and standing deadwood in order to re-establish a natural wooded state to the Protected Property and provide for wildlife), and other issues necessary for ecologically sound management of the Protected Property, which report shall be delivered to Grantee pursuant to **paragraph 9.2(a)** hereof. The activities set forth in (ii) and (iv) above shall not occur within fifty (50) feet of a wetland or water course on the Protected Property without notice to and approval of Grantee pursuant to **paragraph 9.2(a)** hereof.

(c) Except for areas that: (i) are now, or (ii) have previously been used as agricultural fields or are identified as appropriate for clearing for agricultural purposes in

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the Baseline Report, in conducting the agricultural and forestry rights permitted herein on Parcel 1, Parcel 2 and Parcel 3, Grantor shall ensure that 75% of the area that is currently forested, as shown in the Baseline Report, shall be maintained in a canopied state of different forest stages unless otherwise approved by Grantee pursuant to **paragraph 9.2(b)** hereof. For the purposes of conducting the agricultural and forestry rights permitted herein on Parcel 4, the foregoing standard shall be 70% .

(d) The right reserved under **paragraph 4.1(k)** hereof to construct temporary and/or accessory structures should be interpreted to include construction and placement of: (i) temporary roosting, watering, and nesting shelters for wildlife; (ii) fences, benches, observation blinds, interpretive and directional signs, tent platforms, or portable sheds; and (iii) accessory structures, including, by way of example, paddocks, pole sheds, and gazebo's used for agricultural, or recreational purposes. Except for the bona-fide agricultural barn permitted hereunder, no such structure shall contain foundation, full footings, or facilities requiring a septic or other underground waste disposal system and, except as reasonably related to Grantor's recreational use of the manmade ponds, no accessory structure described above not be placed within fifty (50) feet of wetlands or watercourses without notice to and approval of Grantee pursuant to **paragraph 9.2(b)** hereof. Except for existing structures and the bona-fide agricultural structure permitted hereunder, accessory structures constructed under the provisions of **paragraph 4.1 (k)**, other than fences and stone walls, should not exceed an aggregate of one thousand (1,000) square feet of impermeable ground coverage and no one structure shall exceed five hundred (500) square feet, without notice to and approval of Grantee pursuant to **paragraph 9.2(b)** hereof.

**4.3 Definitions.**

(a) "Native" plants, trees, shrubs, or plants means plants, trees, or shrubs indigenous to the southern, New England region.

(b) "Trimming" or "pruning" means the selective cutting of branches of trees and shrubs to improve individual specimen form and vigor.



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(c) "Thinning" or "thin" means the selective removal of trees and shrubs for the purpose of opening the canopy and promoting under story growth. The width of the resulting opened area should not generally exceed the average height of the trees in the immediate vicinity.

(d) "Clear cut", "clear", or "clearing" means the removal of all or substantially all trees and shrubs where the width of the cleared area generally exceeds twice the average height of mature trees in the immediate vicinity.

(e) "Pole shed" or "gazebo" means a structure constructed on vertical poles, posts or concrete tubes, but without full footings on a foundation, and which does not require excavation of the land.

(f) "Row crops" means those crops requiring annual tilling of the soil or which do not leave a live root structure and ground cover capable of protecting the soil from erosion after harvest.

(g) "Threatened" and "endangered," when used in reference to plants, animals, or species, shall be deemed to mean those species identified under federal or state law, including the State of Connecticut Natural Heritage Program or any successor list compiled under duly authorized state or federal programs, as endangered, threatened, of special concern, or other category requiring legal protection under such laws.

(h) "Farm" and "Agriculture" for the purpose of this instrument means the use of land for the production of plants and/or animals useful to man in a manner consistent with the Purpose of this Conservation Restriction. Without intending to amend or expand the scope of the activities reserved to Grantor in paragraphs 4.1(f) and 4.2(a), such use may include, by way of illustration and not limitation, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; other livestock and fowl; livestock and fowl products, including the breeding and grazing of any or all such animals; bees and apiary products, fruits and vegetables of all kinds; nursery and floral and greenhouse products; orchards including the raising and harvesting of trees of any type, which do not have invasive characteristics; and the

processing and storage of the agricultural production of the Protected Property, and other similar and compatible uses.

(i) "Selective application of herbicides" means a topical application on individual plant basis and not by any general broadcast method.

(j) "Woods Road" means an unsurfaced road, constructed with permeable, natural materials, suitable for farm and forestry equipment and use related to the activities permitted to Grantor hereunder. Any such road shall not interfere with the natural functioning of wetlands or wildlife habitat on the Protected Property or cause erosion or sedimentation of the Protected Property.

(k) "Commercial" means the purchase and sale or exchange of goods and commodities, other than de minimis amounts that bear no rational relationship to for profit activities, arising from activities permitted to Grantor in this Conservation Restriction.

*DeWain Plot*

**RESERVED RESIDENTIAL AREAS; DWELLING UNITS; ACCESSORY STRUCTURES**

5.0 Reserved Residential Areas. Notwithstanding any other provisions herein to the contrary, Grantor reserves the right to create an aggregate of two (2) Reserved Residential Areas on Parcels 1, 2 or 3 of the Protected Property, each containing no more than one (1) primary residential Dwelling Unit (as hereinafter defined) and one or more Accessory Buildings (as hereinafter defined) with respect to such Dwelling Unit on the Protected Property, and to provide access and utilities thereto. All structures, lawns, courts and other such improvements and improved areas for each such Dwelling Unit and its Accessory Buildings, exclusive of access drives and utilities, shall be located within a contiguous area not to exceed **THREE (3) acres**. Unless otherwise approved by Grantee after notice pursuant to **paragraph 9.2(b)** hereof, a Reserved Residential Area may be located within the area identified on the Baseline Report only. Upon the occurrence of the approval of an alternative Reserved Residential Area, the contiguous building area so designated and approved shall be governed under the terms and conditions of this

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Conservation Restriction as if such site was designated as a Reserved Residential Area. Notwithstanding the foregoing, no Reserved Residential Area or any portion thereof, may be located on Parcel 4 of the Protected Property or within three hundred feet (300 ft.) of the three manmade ponds located on the Protected Property and similarly protected property owned by family members of Grantor and shown on the Plan as running northerly from Whippoorwill Road.

5.1. **Definitions.** The following definitions apply for purposes of this paragraph 5.

(a) **"Dwelling Unit"** means a structure or self-contained portion thereof designed as a single-family dwelling (including associated wells and septic systems). A Dwelling Unit may include household guest and employee quarters and a home occupation or professional offices for the occupant as allowed by law and may have Accessory Buildings as hereinafter defined.

(b) **"Accessory Buildings"** means other buildings, structures, and improvements customarily accessory, incidental and subordinate to the principal building located within the Reserved Residential Area. Such buildings, structures, and improvements may include or contain separate guest and employee quarters, studios, workshops, swimming pools, tennis courts, solar panels, flagpoles, gazebos, barns, stables, and other buildings and facilities for forestry and agriculture activities for the personal use of Grantor and others on the Protected Property, improvements for fresh water supply, utilities, and communications, satellite dishes, septic waste disposal facilities, outbuildings, garages, and outdoor furniture and ornaments, all as allowed by law.

5.2. **Access to the Reserved Residential Areas.** Grantor reserves the right to construct, improve, and maintain private driveways in order to provide a private road and right-of-way to the permitted Dwelling Units and Accessory Buildings within the Reserved Residential Areas. Improvements made under the provisions of this paragraph 5.2, which are located outside of the Reserved Residential Areas, shall be undertaken and maintained in a manner that minimizes erosion and sedimentation of the Protected Property and creates

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the least possible disturbance to the Purpose of this Conservation Restriction (for example, by using the existing common drive located on property of Catherine Taffy McCulloch Holland, existing woods roads and by creating access along unlighted roads. In no event shall such improvements be greater than those imposed by governmental requirements.

6.0 **Special Subdivision Rule.** Notwithstanding any other provision herein to the contrary, Grantor reserves the right to subdivide and convey all or any portion of the Protected Property to any organization that at the time of such conveyance would qualify as an eligible assignee of this Conservation Restriction under the provisions of paragraph 10.1 or to an adjacent property owner with property subject to conservation restrictions substantively similar to this grant. Any conveyance of any portion of the Protected Property under the provisions of this paragraph 6 shall be subject to this Conservation Restriction in all respects.

7.0 **Access.** No right of public access to any portion of the Protected Property is conveyed or created by this Conservation Restriction.

8.0 **Costs, Liabilities, Permits and Taxes.** Grantor 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 general liability insurance coverage and the timely payment of any taxes, assessments, fees, and charges (hereinafter collectively referred to as "taxes") assessed on Grantor's interest in the Protected Property and the acquisition of permits required, if any, for the activities permitted hereunder. Nothing contained herein shall require payment of such taxes when payment is contested by Grantor in good faith in accordance with law. In the event Grantor fails to pay taxes assessed on the Protected Property, which failure results in municipal action that threatens or jeopardizes Grantor's or Grantee's title to the Protected Property, Grantee may, but shall have no affirmative duty to, pay back taxes. In such event, all amounts so expended shall be a debt of Grantor to Grantee, together with interest at the legal rate, and Grantor hereby authorizes Grantee to file a notice of such obligation on the Old Lyme Land Records.

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8.1 **Hazardous Material.** Grantor shall hold harmless, indemnify, and defend Grantee and Grantee's members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with the presence or release of any hazardous material or substance of any kind on the Protected Property. This paragraph 8.1 shall not apply in the case of any hazardous material or substance in any manner placed on the Protected Property by Grantee or Grantee's representatives or agents or in connection with unauthorized acts of third parties.

8.2 **Indemnification.** Grantor shall hold harmless, indemnify, and defend Grantee from any and all liabilities, injuries, losses, damages, judgments, costs, expenses of every kind, including reasonable attorney's fees, Grantee may suffer or incur as a result of or arising out of the negligent act or omission of Grantor, Grantor's employees, agents, guests, and invitees on the Protected Property. Grantee agrees to hold harmless, indemnify, and defend Grantor from any and all liabilities, injuries, losses, damages, judgments, costs, expenses of every kind, including reasonable attorney's fees, Grantor may suffer or incur as a result of or arising out of the willful or grossly negligent acts or omissions of Grantee, Grantee's employees, agents, guests, and invitees on the Protected Property.

**NOTICE AND APPROVAL**

9.0 **Breach; Approval by Grantee; Notice to Grantee.**

9.1 **Breach.** Notwithstanding any other provision of this Conservation Restriction, failure to secure such approval or give such notice as may be required by this paragraph 9 shall be a material breach of this Conservation Restriction and shall entitle Grantee to such rights or remedies as may be available under paragraph 2.

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**9.2 Notice and Approval.**

(a) When notice to Grantee pursuant to **paragraph 9.2(a)** is required pursuant to the terms of this Conservation Restriction, Grantor shall provide Grantee with at least **thirty (30)** days written notice of the scope and timing of the proposed activity, and the method and manner with which such activity will be accomplished, including a written description of any action planned to protect the purpose of this Conservation Restriction. Within such period, Grantee may comment on the proposed activities, suggest changes or actions in the timing, method, and manner of the proposed activities, and request any actions reasonably necessary to prevent a result that is inconsistent with the purpose of this Conservation Restriction or an adverse impact on any important environmental elements on the Protected Property, such as threatened or endangered species and critical, rare, or unusual habitat. Notwithstanding the foregoing sentence, Grantor may, in Grantor's sole discretion, proceed with such activity after the notice period has expired if such activity conforms with the Purpose of this Conservation Restriction.

(b) When notice to and the approval of Grantee is required pursuant to the provisions of this **paragraph 9.2(b)** by the terms of this Conservation Restriction, Grantor shall provide Grantee with at least **forty-five (45)** days written notice of the scope and timing of the proposed activity and the method and manner with which such activity will be accomplished sufficient for Grantee to determine its impact on the Purpose of this Conservation Restriction. Within such period, Grantee may comment upon the proposed activities, require amendments or other actions reasonably necessary to protect the ecological value of the Protected Property or the Purpose of this Conservation Restriction and shall provide its written approval or disapproval of such activity. Such approval shall be granted or denied at the sole discretion of Grantee, but may not be unreasonably withheld. In the event that Grantor desires to relocate the boundaries of the Reserved Residential Area, it shall request such approval in writing and shall include therewith such information identifying the proposed site and any and all limitations placed on the site in order to ensure that the location of the Dwelling Unit and Accessory

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Structures will not have an adverse affect upon wetlands, water courses or the Purpose of this Conservation Restriction. Grantee's approval of the alternative siting for a Reserved Residential Area shall not be unreasonably withheld and shall take into account the extent to which the location and activity associated herewith would destroy or have an adverse impact on wetlands, threatened or endangered species, or significant and otherwise unfragmented forest areas located on the Protected Property. Grantee agrees not to oppose, or support opposition, to any site location for a future Reserved Residential Area approved by it pursuant to this **paragraph 9.2**.

9.3 **Approval by Grantee.** When Grantee receives a request for its approval pursuant to **paragraphs 9.2(b)**, Grantee shall respond, in writing, within the applicable time period of such paragraph beginning on the date of receipt of Grantor's written request therefor; provided, however, in the event Grantee notifies Grantor in writing that additional relevant information is required in order for it to make an informed decision about the impact of the proposed activity, the time period for Grantee's response shall be extended by an additional **fifteen business (15) days**. Grantee shall evaluate Grantor's notice and requests in accordance with good faith exercise of professional judgment. In the event Grantee withholds approval, it shall notify Grantor in writing with reasonable specificity of its reasons for withholding approval and the conditions, if any are known to Grantee, on which approval might otherwise be given. Failure of Grantee to respond in writing within such time period shall be deemed to constitute written approval by Grantee of any request submitted for approval that is not inconsistent with the Purpose of this Conservation Restriction. Grantee shall not approve any proposed change or activity that would be inconsistent with the Purpose of this Conservation Restriction.

9.4 **Discretionary Consent.** Grantee's consent for activities otherwise restricted or prohibited or for which no provision is made in **paragraph's 4 and 6** hereof may be given if Grantee determines, in Grantee's sole discretion, that due to changes in scientific knowledge, technology, or good land management practices, such activities are beneficial to or consistent with the Purpose of this Conservation Restriction. Grantee shall not

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approve any proposed activity that would be inconsistent with the Purpose of this Conservation Restriction or allow additional development rights to accrue to the benefit of the Protected Property.

9.5 **Compliance.** Within thirty (30) days of the written request of Grantor, Grantee shall execute and deliver to Grantor a written document, in the form of an estoppel or compliance certificate, certifying, to the best of Grantee's knowledge, Grantor's compliance with its obligations of Grantor contained in this Conservation Restriction.

**ASSIGNMENT BY GRANTEE; TRANSFERS BY GRANTOR**

10.0 **Limitations on Assignment by Grantee.**

10.1 **In General.** The benefits of this Conservation Restriction shall be in gross and shall not be assigned by Grantee, except (i) if as a condition of any assignment, Grantee requires that the Purpose of this Conservation Restriction continues to be carried out in perpetuity, and (ii) if the assignee, at the time of assignment, qualifies as a publicly supported, qualified conservation organization under Section 170(h) of the Code and the laws of the State of Connecticut as an eligible donee to receive this Conservation Restriction directly. In furtherance thereof, Grantor consents to the assignment of this Conservation Restriction to the Old Lyme Conservation Trust or any qualified successor thereof in the event such assignment is deemed appropriate. Any attempted assignment by Grantee of the benefits of this Conservation Restriction contrary to the terms hereof shall be invalid, void, and of no effect.

10.2 **No Extinguishment Through Merger.** Grantor and Grantee herein agree that should Grantee come to own all or a portion of the fee interest in the Protected Property, (i) Grantee, as successor in title to Grantor, shall observe and be bound by the charitable conservation purpose imposed upon the Protected Property by this Conservation Restriction, and (ii) this Conservation Restriction shall not be extinguished through the doctrine of merger, in whole or in part. Any instrument of assignment of this



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Conservation Restriction or the rights conveyed herein shall refer to the provisions of this paragraph 10.2, and shall contain language suitable to confirm and re-impose this Conservation Restriction to the extent, if any, necessary to continue it in full force and effect.

11.0 Transfers by Grantor. Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which Grantor transfers any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the proposed transfer of any such interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.

AMENDMENT; EXTINGUISHMENT

12.0 Limitations on Amendment. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Conservation Restriction; provided that no amendment shall be made that will adversely affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and Title 47 Sections 42a - 42c of the Connecticut General Statutes. Any such amendment shall be consistent with the Purpose of this Conservation Restriction and shall not affect its perpetual duration as a charitable use. Any such amendment shall be executed by Grantee or by Grantee's successor in title to the benefits of this Conservation Restriction and by the record owner or owners of the portion or portions of the Protected Property to which the amendment applies and shall be filed on the appropriate public land records. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

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13.0 **Limitations on Extinguishment.** If circumstances arise in the future that render the Purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction may only be terminated or extinguished, whether with respect to all or part of the Protected Property, by judicial proceedings in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and after the satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of this Conservation Restriction, which amount is reserved to Grantor) in accordance with their respective percentage interests in the fair market value of the Protected Property, as such percentage interests are determined under the provisions of paragraph 13.1, adjusted, if necessary, to reflect a partial termination or extinguishment of this Conservation Restriction. All such proceeds received by Grantee shall be used by Grantee to preserve and manage natural habitat for the benefit of fish, wildlife, or plants, or similar natural communities or ecological systems in the Town of Old Lyme.

13.1 **Percentage Interests.** For purposes of this paragraph, the parties hereto stipulate that as of the effective date of this grant the Conservation Restriction and the restricted fee interest in the Protected Property each represent a percentage interest in the fair market value of the Protected Property. Said percentage interests shall be determined by the ratio of the value of the Conservation Restriction on the effective date of this grant to the value of the Protected Property, without deduction for the value of the Conservation Restriction, on the effective date of this grant. The values on the effective date 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 Code. The parties shall amend such values, if necessary, to reflect any final determination

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thereof by the Internal Revenue Service or court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of the Conservation Restriction to the value of the Protected Property unencumbered by the Conservation Restriction shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Protected Property thereby determinable, subject only to any adjustment in such ratio attributable to the value of permitted improvements made by Grantor after the effective date of this Conservation Restriction, shall remain constant.

13.2 **Condemnation.** If all or any part of the Protected Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Protected Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Conservation Restriction in connection with such taking shall be paid out of the recovered proceeds. Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs 13 and 13.1 (with respect to the allocation of proceeds). The respective rights of Grantor and Grantee set forth in this paragraph 13.2 shall be in addition to, and not in limitation of, any rights they may have at common law with respect to a modification or termination of this Conservation Restriction by reason of changed conditions or the exercise of powers of eminent domain as aforesaid.

**GENERAL PROVISIONS**

14.1 **Reasonableness Standard.** Grantor and Grantee shall follow a reasonableness standard and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Conservation Restriction in a timely manner and shall cooperate with one another and shall take all other reasonable action suitable to that end.

14.2 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the charitable, conservation Purpose of this Conservation Restriction. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Restriction that would render the provision valid and perpetually enforceable shall be favored over any interpretation that would render it invalid.

14.3 **Charitable Purpose.** Grantor and Grantee acknowledge that this contribution and grant of a Conservation Restriction is intended to and does result in a public benefit and a public charitable use enforceable in accordance with the laws of the State of Connecticut.

14.4 **Controlling Law.** The interpretation and performance of this Conservation Restriction shall be governed by the laws of the State of Connecticut.

14.5 **Title.** Grantor represents that the Protected Property is free and clear of all encumbrances, including, without limitation, liens or mortgages, and represents that, as the sole owner of the Protected Property in fee simple, Grantor have access to the Protected Property and has good right to convey to Grantee this Conservation Restriction, and that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Restriction.

14.6 **Severance.** If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction and their application to other persons and circumstances shall not be affected thereby.

14.7 **Entire Agreement.** This instrument and the Exhibits attached hereto set forth the entire agreement of the parties with respect to the Conservation Restriction and supersede all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 12.

14.8 **Successors.** The covenants, terms, conditions, and restrictions of this Conservation Restriction shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property, provided that a person is not responsible for violations that occur on such person's land after that person ceases to be an owner or have any interest therein.

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14.9 **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, or receipted delivery service or acknowledged facsimile transmission, addressed as follows:

To Grantor: David Sears McCulloch  
18 Rowland Road  
Old Lyme, CT 06371

with a copy to: Frederick B. Gahagan, Esq.  
Waller, Smith & Palmer, P.C.  
103 Halls Road P. O. Box 506  
Old Lyme, CT 06371

To Grantee: The Nature Conservancy of Connecticut, Inc.  
55 High Street,  
Middletown, CT 06457

with a copy to: The Nature Conservancy  
Attn: Legal Counsel  
201 Devonshire Street, 5<sup>th</sup> Floor  
Boston, MA 02110-1402

or to such other address as any of the above parties from time to time shall designate by written notice to the others.



14.10 **Effective Date.** Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this **DEED OF CONSERVATION RESTRICTION** is recorded in the Land Records of the Town of Old Lyme, Connecticut, after all required signatures have been affixed hereto. Grantee may re-record this instrument at any time as may be required to preserve its rights in this Conservation Restriction.

14.11 **Counterparts.** This **DEED OF CONSERVATION RESTRICTION** may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

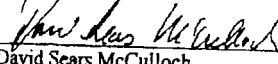
**TO HAVE AND TO HOLD**, the said Conservation Restriction, unto the said Grantee and its successors and assigns forever.

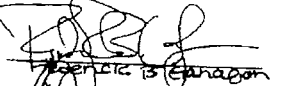
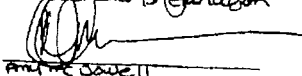
BOOK 260 PAGE 1039

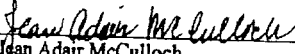
IN WITNESS WHEREOF, the parties hereunto have set their hands under seal  
on the dates set forth below.

  
David Sears McCulloch  
  
Andrew McDowell

GRANTOR:

  
David Sears McCulloch  
December 29, 1999

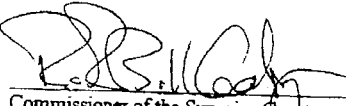
  
Jean Adair McCulloch  
  
Andrew McDowell

  
Jean Adair McCulloch  
December 29, 1999


STATE OF CONNECTICUT )  
                                  ) ss: *Olden*  
COUNTY OF NEW LONDON)


December 29, 1999

Personally appeared David Sears McCulloch and Jean Adair McCulloch,  
signer and sealer of the foregoing instrument and duly acknowledged the same to be  
their free act and deed before me.

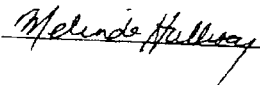
  
Commissioner of the Superior Court  
Notary Public  
My commission Expires:

ACCEPTED: THE NATURE  
CONSERVANCY OF  
CONNECTICUT, INC.



  
By: Hans P. Birle  
Its: Assistant Secretary  
December 29<sup>th</sup>, 1999

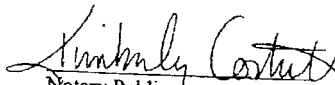




COMMONWEALTH OF MASSACHUSETTS)  
COUNTY OF SUFFOLK) SS.

December 29, 1999

Before me personally appeared Hans P. Birle, the Assistant Secretary of The  
Nature Conservancy of Connecticut, Inc., a Connecticut non-profit corporation,  
incorporated in and doing business in the State of Connecticut and Hans P. Birle as  
signer and sealer of the foregoing instrument duly acknowledged the same to be his  
free act and deed as such Assistant Secretary before me.

  
Notary Public  
My Commission Expires:

KIMBERLY CORBETT, NOTARY PUBLIC  
MY COMMISSION EXPIRES SEPT. 1, 2008

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EXHIBIT 1

Those four pieces or parcels of land shown on Sheet 1, Sheet 2, Sheet 3, Sheet 4, Sheet 5, Sheet 6, and Sheet 8 of a Plan entitled: "McCULLOCH FARM WHIPPOORWILL ROAD OLD LYME, CT SCALE 1"=100' DATE AUGUST 1, 1997 REVISIONS: DATE 12/9/99 CONSERVATION RESTRICTION AREA ADDED" RICHARD W. GATES LAND SURVEYOR 81 MAIN STREET, CENTERBROOK, CT (hereinafter referred to as the "Plan") and being more particularly shown as follows:

**Parcel 1** being that parcel of land identified as "LAND OF DAVID SEARS McCULLOCH & JEAN ADAIR McCULLOCH 21 AC.±" on Sheet 1 of the Plan.

**Parcel 2** being that parcel of land identified as "LAND OF DAVID SEARS McCULLOCH & JEAN ADAIR McCULLOCH 63 AC.±" on Sheet 1 of the Plan.

**Parcel 3** being that Parcel of land identified as "LAND OF DAVID S. & JEAN McCULLOCH 183.9 AC.±" shown on Sheets 2, 3, and 6 of the Plan and, in addition, .50 AC. ± shown as a portion of that piece or parcel identified as "CONSERVATION RESTRICTION AREA" within the "STONE BARN LOT" on Sheet 8 of the Plan.

**Parcel 4** being that piece or Parcel identified as "LAND OF DAVID S. & JEAN McCULLOCH 43.6 AC.±" on Sheet 5 of the Plan, specifically excluding therefrom that area identified as "AREA EXCLUDED FROM CONSERVATION RESTRICTION" running easterly from Whippoorwill Road along the northerly boundary thereof, which excluded area is 2.0 AC.±.

Subject to:

A Right of Way, Maintenance Agreement, and Restriction found in Volume 223, at Page 692 of the Old Lyme Land Records;

An Easement in favor of Connecticut Light & Power Company found in Volume 227, at Page 389 of the Old Lyme Land Records;

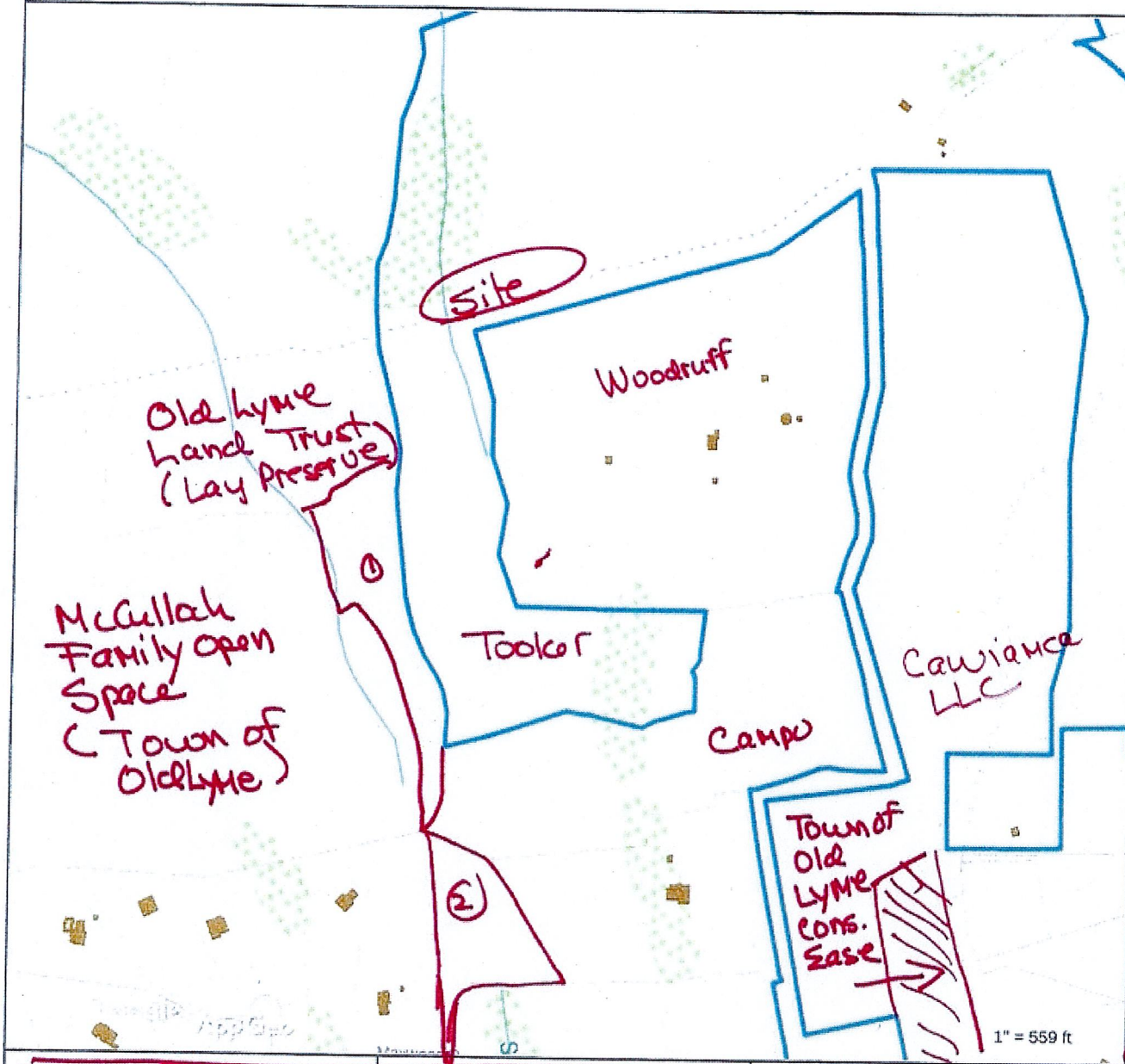
An Easement in favor of Andrew Pfeiffer and Marianne G. Pfeiffer found in Volume 227, at Page 389 of the Old Lyme Land Records;

An Easement to the Eastern Connecticut Power Company recorded in Volume 98, at Page 18 of the Old Lyme Land Records;

Subject to Easement reserved to other members of the McCulloch family over the common drive and woods roads on the Protected Property.

FBG/McCulloch/dsm-Desc/12-28-99

Tooker Property



Old Lyme Land Trust, Town of Old Lyme, & Private Owners / Upper Three Mile River Preserve + Open Space

off 4 Mile River Road

Property Information

Property ID 24-13  
 Location 20-1 SHORT HILLS RD  
 Owner TOOKER HOWARD S

Flat Rock Hill Road  
 Short Hill Road



MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT

Town of Old Lyme, CT makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 05/01/2018  
 Data updated 11/19/2018

① Cawianca LLC } potential acquisition / Town of Old Lyme  
 ② May