STATE OF CONNECTICUT

SUPREME COURT

S.C. 19797

LYME LAND CONSERVATION TRUST, INC.

vs.

BEVERLY PLATNER

APPENDIX PART 2 TO THE BRIEF OF THE
DEFENDANT-APPELLANT, BEVERLY PLATNER
pp. A202 to A493

DEFENDANT-APPELLANT,
BEVERLY PLATNER

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FILED: OCTOBER 20, 2016

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DOCKET NO. CV-09-6001607-S	SUPERIOR COURT
LYME LAND CONSERVATION	JUDICIAL DISTRICT
TRUST, INC. ET AL	OF NEW LONDON
VS.	
BEVERLY PLATNER	MARCH 23, 2015

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S CLAIMS FOR ATTORNEY'S FEES

The Defendant, Beverly Platner, hereby raises the following objections to the Plaintiff's claims for attorney's fees (NOTE: As of the date and time of the filing of this Objection, the only Affidavit of Attorney's Fees filed in this matter was that of the firm of Waller, Smith & Palmer. The Defendant reserves the right to object to any additional claims that may be filed in any later filed affidavits):

1. The claims for reimbursement for Waller, Smith & Palmer fees contain expenditures for time spent, not on the enforcement of the Declaration of Restrictive Covenants, but on the Plaintiff's litigation against the Town of Lyme Inland Wetlands Commission, and the

Plaintiff's defense of a defamation claim. It is unreasonable for the Plaintiff to charge the Defendant in this matter for this other completely separate litigation. **Exhibit A** attached hereto itemizes the expenses unreasonably charged to the Defendant.

2. The claims for reimbursement for Waller, Smith & Palmer fees contain expenditures for time spent from November 2009 until October 13, 2010 on the prosecution of a **withdrawn** claim for declaratory judgement, not an enforcement action. By its own evidentiary **admission** in that complaint for declaratory judgment, the Plaintiff urged the court that there was "substantial uncertainty of legal relations requiring judicial determination" before the Plaintiff could enforce its rights under the Declaration.(The Plaintiff also **admitted** in its operative December 26, 2013 answer to the Defendant's counterclaim for Declaratory Judgment that there exists " a substantial uncertainty of legal relations requiring judicial determination," which admission, as part of the operative answer, is considered a judicial admission. Answer to Second Count of Counterclaim, Paragraph 4a and 4b) It is unreasonable to charge the Defendant with expenses to

prosecute a claim that was not enforcement action. **Exhibit B** attached hereto itemizes the expenses that are unreasonably charged to the Defendant.

3. Attorney John Pritchard appeared pro hac vice in this matter on October 30, 2012. The firm Winthrop, Shaw has no appearance in this matter. It is unreasonable to charge the Defendant with paralegal and other expenses incurred by the non-appearing firm of Winthrop, Shaw. **Exhibit C** attached hereto itemizes expenses unreasonably charged by Winthrop Shaw to the Defendant.

4. Attorney Timothy Russo appeared pro hac vice in this matter on March 3, 2015. It is unreasonable to charge the Defendant with fees associated with this attorney for services performed for Winthrop Shaw before Attorney Russo's admittance to practice in Connecticut. Specifically, the Defendant is being charged for Attorney Russo's fees incurred in familiarizing himself with the facts and law in this matter and also for attending a Florida deposition where it was not agreed that he would attend and before the Defendant was made aware of Winthrop Shaw's unauthorized participation in this matter. It is also

unreasonable to charge the Defendant with fees associated with this attorney's travel to New London and from New York and for this attorney's time spent familiarizing himself and Attorney Pritchard with Connecticut law. **Exhibit D** attached hereto itemizes expenses unreasonably charged by Winthrop Shaw to the Defendant.

5. Hours and fees spent supporting Attorneys Pritchard and Russo's pro hac vice motions and simply acting as local counsel when Attorney Pritchard was lead counsel should not reasonably be charged to the Defendant. These expenses would not have been necessary had Plaintiff simply retained local counsel with experience in land use and Connecticut contract law. New York counsel did not represent at any time that they had specialized skill or knowledge that was not available from Waller Smith & Palmer. **Exhibit E** attached hereto itemizes expenses unreasonably charged to the Defendant.
6. It is unreasonable to charge the Defendant with attorney's fees that have obviously been increased after the close of trial. The invoices of Waller Smith & Palmer from October 2009 until December 2012 were produced monthly and contemporaneously with the services rendered.

The hourly rate shown on those invoices ranged from $185.00 to $225.00 per hour. The final invoice of Waller Smith & Palmer was dated March 17, 2015, after the close of the trial and after the decision rendered by the court, and this invoice purports to cover the period from December 2012 until March 12, 2015 totalling $149,093.75. The hourly rate charged on that invoice was changed to $350.00 per hour. The Rules of Professional Conduct at Section 1.5(b) provides that the scope of representation, the basis, or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing before or within a reasonable time after commencing the representation, except when the lawyer will be charging a regularly represented client on the same basis or rate. **Exhibit F** attached hereto itemizes expenses unreasonably charged to the Defendant.

7. Plaintiff's decision on October 30, 2012, to engage as its lead counsel, its own Board President, Attorney John Pritchard, was made based on the representation that Attorney Pritchard would provide pro bono services, with Waller, Smith & Palmer as his sponsoring firm. At

some undetermined later date, Attorney Pritchard, who was not admitted to practice in Connecticut, decided he needed the assistance of more New York resources. Sometime even later undetermined date, he decided that he would indeed charge the Defendant for his services, together with the charges for services of local counsel who was required to supervise him. This series of decisions, influenced by lead counsel, as the President of the Board of Directors of the Plaintiff has now resulted in the Plaintiff's claim of a combined rate of $975.00 per hour for the services of all three counsel.

LAW AND ARGUMENT

The "American rule" provides that each party to litigation bears its attorney's fees and expenses and those fees are not shifted to the losing party absent contractual or statutory authority. Section 3.6 of the Declaration of Restrictive Covenants provides that the obligation to reimburse reasonable attorney's fees is limited to an action enforcing the covenants. Thus it is unreasonable for the Plaintiff to include fees associated with the non-

enforcement claims in its claims for reimbursement. These claims include fees associated with the declaratory judgment that was filed and later withdrawn by the Plaintiff, the defamation action between the parties and other individuals not parties hereto, and administrative proceedings before the inland wetlands agency and appeals thereto, also withdrawn. The requirements of Connecticut General Statutes Section 52-560a(c) provide the same basis for finding reasonable attorney's fees. Aggregating and accumulating fees which were not part of the court enforcement action is authorized by neither the Declaration or the relevant statute.

The amount of attorney's fees to be awarded lies within the discretion of the trial court. When exercising this discretion, the court makes its determination while considering the eight factors set forth under Rule 1.5(a) of the Rules of Professional Conduct. Schoonmaker vs. Lawrence, 265 Conn. 210, 259 (2003). Two of these listed factors are a) whether the fee is fixed or whether counsel shared in the risk inherent in litigation by entering into a contingent fee agreement; and b) the fee customarily charged in the locality for similar legal services. It is the party that is claiming attorney's fees that has the burden of proving reasonableness and applicability of the requested

fees by appropriate evidentiary showing. Smith vs Snyder, 267 Conn. 456, 471-72 (2004)

Attorney John Pritchard appeared in this matter pro hac vice on October 30, 2012. In both of the statements in his motion, twice, it was represented to the court and to opposing counsel that Attorney Pritchard was to "efficiently and effectively represent" the Plaintiff on a pro bono basis. However, Mr. Pritchard's period of pro bono did not last even one month after his admittance, since his billing on this matter began at December 6, 2012. Over Defendant's objection, Attorney Pritchard later supported another New York attorney's pro hac vice motion at the start of trial claiming that he needed assistance from the New York law firm from which he had "retired", assistance that apparently no one from his local sponsoring firm could provide. Attorney Pritchard and his sponsoring firm now present the Defendant with claims of necessary attorney's fees equal to **$975.00** per hour for hours spent before and at trial supporting Attorney Pritchard ($350 each for Attorneys Pritchard and Collins, and $275 for Attorney Russo). In addition, on the first day of trial, Attorney Pritchard represented to the court that his engagement was changed and now was a "contingent" fee

arrangement, meaning that the Plaintiff would have no responsibility for paying Attorney Pritchard's attorney's fees, and that only "Mrs. Platner" would be made responsible for his fees. **Trial Transcript Page 53, March 3, 2015. Exhibit G.**

One of the material facts omitted from the October 30, 2012 pro hac vice motion filed on behalf of Attorney Pritchard was that Attorney Pritchard was in 2012, and is currently the President of the Board of Directors, and was therefore influential in his own "hiring" as counsel in this matter, and the decision to change from pro bono to contingent fee representation.

The Defendant objects to the charging of **$975.00** per hour as a reasonable and necessary attorney's fee in the prosecution of this matter. This rate is not the rate customarily charged in New London County for similar civil litigation. In support of this objection, the Defendant attaches as **Exhibit H** the affidavit of Attorney Ralph Monaco, Partner of the firm of Conway & Londregan of New London.

For the foregoing reasons, the Defendant objects to the claims of attorney's fees submitted by the Plaintiff.

THE DEFENDANT, BEVERLY PLATNER

BY:s/s Santa Mendoza

Santa Mendoza Attorney at Law
111 Huntington Street
New London, CT 06320
(860) 447-3994

CERTIFICATION

I hereby certify that a copy of the foregoing, together with all exhibits and attachments thereto, was served by U.S. mail on March 23, 2015 to the following counsel of record:

Waller Smith Palmer
52 Eugene ONeill Drive
New London, CT 06320

Pro Hac Vice: John Pritchard
1540 Broadway
New York, New York 100345

George C. Jepsen
Attorney General
55 Elm Street

P.O. Box 120
Hartford, CT 06141

Gary William Hawes AAG
AG Special Litigation 2nd Floor
55 Elm Street
P.O. Box 120
Hartford, CT 06141

John R. Lambert
25 Trumbull Place
North Haven, CT 06473

Janet P. Brooks
1224 Mill Street
Building B Suite 212
East Berlin, CT 06023

S/S Santa Mendoza

ORDER

The foregoing objection having been presented to the Court is hereby ordered

SUSTAINED/ OVERRULED

_____
JUDGE

ORDER 419136

DOCKET NO: KNLCV096001607S

SUPERIOR COURT

LYME LAND CONSERVATI
V.
PLATNER, BEVERLY ET AL

JUDICIAL DISTRICT OF NORWICH/NEW LONDON
AT NEW LONDON

6/9/2011

ORDER

ORDER REGARDING:
10/13/10 111.00 REQUEST TO AMEND COMPLAINT/AMENDMENT

Judicial Notice (JDNO) was sent regarding this order.

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

Per P.B. 1-8, although the plaintiff has failed to comply strictly with the requirments of the Practice Book, nonetheless the court finds the granting of this motion will advance justice and will not cause substantial prejudice or injustice to the defendant. The granting of the motion will allow the parties to move forward toward a resolution of their disputes on the merits.

419136

Judge: EMMET COSGROVE
Processed by: Gail Friswell

EXHIBIT A

Invoice Date	AMOUNT CHARGED		REASON
2/9/2010	12.5 hrs	$2,327.00	Platner Inland Wetlands Application
3/30/2010	14.2 hrs	$3,138.00	Platner Inland Wetlands Application
		700.00	Platner Inland Wetlands Application Engineer Fee
5/17/2010	10.25 hrs	$1,896.00	Inland Wetlands Appeal filed (appeal subsequently withdrawn)
6/10/2010	5.70 hrs	$1,128.00	Inland Wetlands Appeal filed (appeal subsequently withdrawn)
		$551.00	Costs of Inland Wetlands Appeal (appeal subsequently withdrawn)
10/14/2010	3.10 hrs	$ 698.00	Inland Wetlands Appeal – Motion To Stay (appeal subsequently withdrawn)
	3.90 hrs	$ 877.50	Defamation case
11/17/2010		$ 1,530.00	Defamation case
12/15/2010		$ 720.00	Withdrawal of Inland Wetlands Appeal
1/20/2011	2.20 hrs	$ 495.00	Defamation

2/14/2011		$ 887.50	Withdrawal IWC
3/14/2011	.80hrs	$ 225.00	Defamation
2/16/2012	2 hrs	$ 400.00	Defamation
7/16/2012	9.40 hrs	$1,786.00	Defamation
8/7/2012		$ 1,156.25	Defamation
12/10/2012		487.00	Defamation
12/17/2012		$1,155.00	Defamation Consolidation
5/31/2013		$1,750.00	Defamation settle
6/28/2013		$1,505 .00	Defamation settle
7/10/2013		$1,120.00	Defamation settle

SEPARATE LITIGATION CLAIMS: $24,532.25

EXHIBIT B

DATE OF INVOICE		AMOUNT
9/22/2009		$4,777.23
10/8/2009		$4,391.25
11/5/2009		$4,435.61
12/8/2009		$ 962.00
1/21/2010		$ 545.75
2/9/2010	10.25 hrs	$ 1,906.50
3/30/2010	4.20 hrs	$ 928.20

TOTAL RE: WITHDRAWN DECLARATORY JUDGEMENT: $17,946.54

EXHIBIT C

Winthrop Shaw claim for services of "D. Babbott-Klein" 41.10 hours: **$6,165.00**

EXHIBIT D

RUSSO TIME ENTRIES	REASON	AMOUNT
7/14/2014	REVIEW FILE	$1053.50
7/15/2014	REVIEW FILE	$ 710.50
10/6/2014	RESEARCH CT LAW	$ 931.00
10/7/2014	RESEARCH CT LAW	$ 931.00
10/13/2014	RESEARCH CT LAW	$ 637.00
10/14/2014	RESEARCH US LAW	$ 784.00
10/15/2014	RESEARCH DISCUSS	$ 465.50
10/16/2014	RESEARCH CT STATUTE	$ 612.50
10/22/2014	CALL EXPERT W/JP	$ 196.00
10/24/2014	REVIEW BRANSE	$ 122.50
11/10/2014	RESEARCH CT LAW	$ 686.00
11/13/2014	TALK TO JP	$ 122.50
11/26/2014	RESEARCH CT LAW	$ 588.00
12/3/2014	MOTION FOR SJ	$ 882.00
01/5/2015	TALK TO JP	$ 98.00
01/6/2015	CORRESPONDENCE	$ 367.50

01/8/2015	RESEARCH DEFENSES	$1078.00
01/12/2015	TALK TO JP	$ 98.00
01/14/2015	LOGISTICS	$ 98.00
01/24/2015	REVIEW DEPOSITION	$ 637.00
01/25/2015	TALK TO KLEIN	$ 73.50
01/26/2015	RESEARCH CT LAW DECEPTIVE TRADE	$ 294.00
01/29/2015	REVIEW DEPOSITION	$833.00
01/30/2015	RESEARCH CT LAW	$637.00
01/31/2015	RESEARCH CT LAW MOTION IN LIMINE	$759.50
2/01/2015	RESEARCH CT LAW	$ 98.00
2/04/2015	RESEARCH CT LAW	$514.50
2/5/2015	MOTION IN LIMINE	$637.00
2/10/2015	BRIEF WRITING	$1,494.50
2/112015	RESEARCH IWC LAW	$ 612.50
2/12/2015	BRIEF WRITING REVIEW DEPOSITIONS	$1,323.00
2/14/2015	REVISE BRIEF	$ 318.50
2/18/2015	ATTEND DEPOSITION	$2,082.50
2/20/2015	REVISE BRIEF MOTION IN LIMINE	$1,543.50
2/21/2015	MOTION IN LIMINE	$ 931.00
2/25/2015	CORRESPONDENCE	$ 1,617.00
2/27/2015	REVISE BRIEF REVIEW DEPOSITION	$2,254.00
2/28/2015	REVISE MOTIONS	$1,421.00
3/01/2015	REVIEW STANDART TRAVEL	$ 833.00
3/01/2015	REVIEW DEF. BRIEF OUTLINES	$1,176.00
3/02/2015	OUTLINES AND LOGISTICES	$1.151.50
3/6/2015	TRAVEL	$ 931.00

TOTAL WINTHROP SHAW/ PRE ADMITTANCE CHARGES: $32,634.00

EXHIBIT E

CHARGES IN SUPPORT OF THE PRO HAC VICE MOTION:

10/17/2012	$885.00	

SPONSORING ATTENDANCE WITH ATTORNEY PRITCHARD

11/22/2013	$2,800.00	NOVAK DEPOSITION
2/20/2014	$2,800.00	BEVERLY PLATNER DEPOSITION
10/18/2014	$2,450.00	THROCKMORTON DEPOSITION
12/09/2014	$ 700.00	TERWILLIGER DEPOSITION
2/20/2015	$ 910.00	MOTION TO ADMIT RUSSO PRO HAC VICE

TOTAL SUPPORT OF PRO HAC VICE: $10,545.00

EXHIBIT F

ATTORNEY COLLINS HOURS PER WSP INVOICE DATED MARCH 17, 2015

388.50 HOURS @ 350.00 = $135,975.00

388.50 HOURS @ 250.00 = 97,125.00

DIFFERENTIAL NOW CHARGED TO THE DEFENDANT: $38,850.00

VOL. 71 PAGE 223

DECLARATION OF RESTRICTIVE COVENANTS

THIS IS A DECLARATION of restrictive covenants made by PAUL B. SELDEN, of New York, New York (hereinafter referred to as the "Grantor"), in favor of, and enforceable by, the LYME CONSERVATION TRUST, of Lyme, Connecticut (hereinafter referred to as the "Grantee"), in which the Grantor stipulates as follows:

A. The Grantor is the owner of a certain tract of real estate more particularly described in Exhibit "A" appended hereto;

B. The Grantor desires to impose certain conservation restrictions upon certain portions of said land, which portions are delineated and designated as "Area 'B' Restricted Area" upon a certain map entitled "Land of Paul Selden Lyme, Ct." dated May 22, 1981 and prepared by Richard W. Gates, Land Surveyor (which portions are hereinafter referred to as the "Protected Areas"), for the benefit of the Grantee and its successors and assigns; and

C. The Grantor further desires to grant to and confer upon the Grantee the power and right to enforce said restrictions.

NOW, THEREFORE, the Grantor, for himself and his heirs and assigns, hereby declares that the Protected Areas are, and shall be, held and conveyed by him upon and subject to the restrictions hereinafter set forth.

I.
RESTRICTIONS

1.1. No building, sign, outdoor advertising display, mobile home, utility pole or other temporary or permanent structure will be constructed, placed or permitted to remain upon the Protected Areas.

1.2. No soil, loam, peat, sand, gravel, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, or other waste material will be placed, stored or permitted to remain thereon.

1.3. No soil, loam, peat, sand, gravel, rock, mineral substance or other earth product or material shall be excavated or removed therefrom.

1.4. No trees, grasses or other vegetation thereon shall be cleared or otherwise destroyed.

TIGHE AND SENNING
71 MAIN STREET
COBEN, CONNECTICUT
(203) 767-2150

6 pages
CERTIFIED TO BE A TRUE COPY
DATE 5/12/08 TIME 11:00 A.
ATTEST [signature]
TOWN CLERK, LYME, CONN.

PLAINTIFF'S EXHIBIT
NO. 8

1.5. No activities or uses shall be conducted thereon which are detrimental to drainage, flood control, water conservation, erosion control, soil conservation, fish and wildlife or habitat preservation.

1.6. No snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other vehicles of any kind shall be operated thereon.

1.7. Except as may otherwise be necessary or appropriate, as determined by the Grantee, to carry out beneficial and selective non-commercial forestry practices, all woodland thereon shall be kept in a state of natural wilderness.

1.8. No hunting (as distinguished, in the opinion of the Grantee, from ecologically necessary or appropriate practices of animal population control) shall be carried on thereon.

1.9. No boat centers, docks or other such landings shall be located or used thereon.

II.
RESERVATIONS

Anything in ARTICLE I above to the contrary notwithstanding, the Grantor reserves to himself and his heirs and assigns the following rights in and upon the Protected Areas:

2.1. To create and maintain views and sight lines from residential property of the Grantor by the selective cutting, pruning or trimming of vegetation, provided that such action shall not have a significant adverse impact upon the Protected Areas.

2.2. To conduct and engage in the cultivation and harvesting of crops, flowers and hay; the planting of trees and shrubs and the mowing of grass; the grazing of livestock; and the construction and maintenance of fences necessary in connection therewith.

2.3. The cultivation and harvesting of forest products in accordance with sound non-commercial forestry practices.

2.4. To maintain, repair, reconstruct and replace any utility poles and associated appurtenances thereto located upon the Protected Areas at the effective date hereof.

2.5. To continue the use of the Protected Areas for all purposes not inconsistent with the restrictions set forth in ARTICLE I above.

III.
MISCELLANEOUS

3.1. The Grantee shall have, and is hereby granted, a right of access to the Protected Areas, upon reasonable notice to the Grantor, his heirs and assigns, for the purpose of inspecting the Protected Areas and determining compliance with the restrictions hereinbefore set forth.

3.2. The covenants herein set forth shall be real covenants which shall run with and shall burden the Protected Areas and all parts thereof in perpetuity.

TICHE AND SENNING
[illegible] MAIN STREET
[illegible], CONNECTICUT
[illegible]

3.3. The purpose of these restrictive covenants is to assure retention of the premises predominantly in their natural, scenic or open condition and in agricultural, farming, forest and open space use and to assure competent, conscientious and effective preservation and management in such condition and use. Said restrictions are intended as "conservation restrictions" as that term is defined in Section 47-42a of the Connecticut General Statutes.

3.4. The Grantee is an exempt organization referred to in Section 501(c)(3) of the Internal Revenue Code and the restrictions herein imposed are intended to implement the public policy expressed in Section 22a-1 of the Connecticut General Statutes, and are for "public" and "charitable" purposes as those terms are used in Section 45-97 of the Connecticut General Statutes. The rights of the Grantee hereunder shall not be assignable by the Grantee except to an organization exempt from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code having substantially the same purposes to be promoted or carried out as the Grantee.

3.5. It is expressly agreed that a breach of this covenant in respect of any restriction herein set forth may be enforced by the Grantee by injunctive relief and that no action at law for damages or otherwise shall be considered an adequate remedy for any such breach. The failure of the Grantee, its successors and assigns, to exercise any remedial right shall not constitute a waiver of any default in the observance or performance thereof and shall not relieve or excuse any person from the obligation to observe and perform such covenant.

3.6. If any action, whether at law or in equity, shall be brought to enforce the covenant arising pursuant to this declaration or to prevent an anticipatory breach thereof, and if any relief is granted in favor of the plaintiff in said action, the defendant, or all defendants jointly and severally, shall be obliged to pay all court costs and the reasonable attorneys' fees of the plaintiff therein and judgment therefor may be entered in the same proceeding.

3.7. Each of the restrictions hereinbefore set forth shall be considered severable and, if any one or more of them shall be held unenforceable in whole or in part, the effect of such decision shall be limited to the particular restriction or restrictions held to be unenforceable and all other restrictions shall continue to be separately and fully binding and effective.

IV.
AMENDMENT

4.1. This declaration may be amended by the addition, deletion or modification of any of the restrictions or other provisions herein contained or otherwise by the Grantor and the Grantee, provided that any such amendment shall be embodied in a writing executed by both the Grantor and the Grantee and recorded in the Lyme Land Records.

NE AND SEIDING
MAIN STREET
CONNECTICUT

V.
EFFECTIVE DATE

5.1. The effective date of this declaration of restrictive covenants shall be the date upon which this writing is recorded in the Lyme Land Records.

IN WITNESS WHEREOF, PAUL B. SELDEN has hereunto set his hand and seal this 25 day of November, 1981.

Witnessed by:

[signature]

[signature] PAUL B. SELDEN (L.S.)

STATE OF New York }
COUNTY OF New York } ss. , 1981

The foregoing instrument was acknowledged before me this 25th day of November, 1981, by PAUL B. SELDEN.

[signature]
Notary Public

NOTARY [illegible] of New York
No. 31-[illegible]
Qual. [illegible] New York County
Commission Expires March 30, 1982

EXHIBIT "A"

A certain piece or parcel of land located on the southerly side of Selden Road in Lyme, Connecticut, and more particularly bounded and described as follows:

Beginning at a point in the northerly boundary of the premises herein described at a point marked by a merestone, and thence run the following courses and distances: (1) South 50° 39' 50" West, 410.33 feet to a point marked by an iron pipe; (2) South 50° 39' 50" West, 80 feet, more or less, to the waters of the Connecticut River; (3) southerly along the waters of the Connecticut River, 860 feet, more or less, to a point; (4) southeasterly, easterly and northeasterly along the waters of the Connecticut River and Selden Creek, 950 feet, more or less, to a point; (5) northerly and northwesterly along the waters of Selden Cove, 210 feet, more or less, to a bulkhead; (6) northeasterly along the waters of Selden Cove and said bulkhead, 154 feet, more or less, to a point; (7) northerly, northwesterly, northeasterly, southeasterly and easterly along the waters of Selden Cove, 886 feet, more or less, to a point; (8) North 12° 44' 46" West, along land now or formerly of Louise W. Russell, 46.44 feet to a point; (9) North 15° 23' 15" West, along said Russell land, 148.64 feet to a point; (10) North 11° 48' 22" West, along said Russell land, 30.39 feet to a point; (11) North 15° 34' 34" West, along said Russell land, 130.82 feet to a point; (12) South 58° 20' 20" West, 13.88 feet to a point; (13) South 49° 53' 45" West, 45.12 feet to a point; (14) South 52° 05' 01" West, 62.46 feet to a point; (15) South 53° 27' 11" West, 70.03 feet to a point marked by a merestone; (16) southwesterly in the arc of a curve to the left, having a radius of 25 feet, an arc distance of 26.20 feet to a point marked by a merestone; (17) westerly in the arc of a curve to the right, having a radius of 80 feet, an arc distance of 69.00 feet to a point marked by a merestone; (18) South 43° 04' 09" West, 44.91 feet to a point marked by a merestone; (19) westerly in the arc of a curve to the right, having a radius of 430 feet, an arc distance of 147.31 feet to a point marked by a merestone; (20) South 62° 41' 50" West, 201.24 feet to a point marked by a merestone; (21) westerly in the arc of a curve to the right, having a radius of 477.20 feet, an arc distance of 112.88 feet to a point marked by a merestone; (22) northwesterly in the arc of a curve to the right, having a radius of 190 feet, an arc distance of 82 feet to a point marked by a merestone; (23) South 69° 42' 50" West, 22.43 feet to the point and place of beginning.

Said premises are the same and all the same premises described in a certain Quit-Claim Deed from Richard L. Selden to Paul D. Selden dated July 24, 1981 and recorded in Volume 70 at Page 1083 of the Lyme Land Records.

IGHE AND DENNING
71 MAIN STREET
[illegible], CONNECTICUT
[illegible]

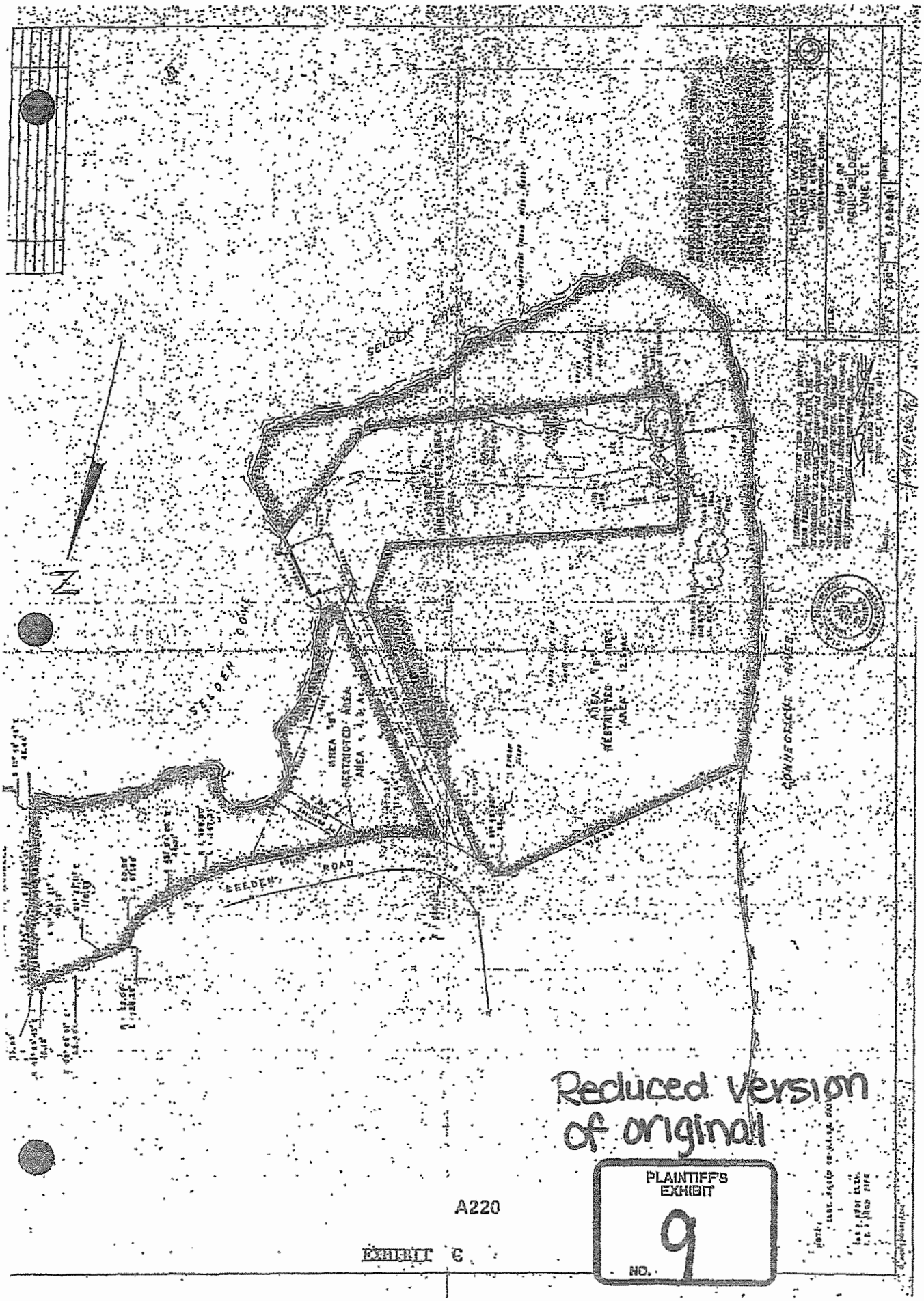
Said premises are shown on a certain map entitled "Land of Paul Selden Lyme, Ct." dated May 22, 1981 and prepared by Richard W. Gates, Land Surveyor, which map is filed or to be filed in the office of the Lyme Town Clerk.

RECEIVED 12-21-81 AT 9:55 A.M.

AND RECORDED BY ME Joan K. Mayers

ATTEST: TOWN CLERK.

TIGHE AND SENNING



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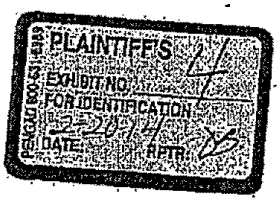
PLAINTIFF'S EXHIBIT NO. 9

EXHIBIT C



Print - Close Window

Subject: RE: 66 Selden Rd

Date: Sun, 16 Sep 2007 10:19:42 -0400

From: "Beverly Platner" <beverly@sensorswitch.com>

To: "GEORGE MOORE" <geosails@sbcglobal.net>

CC: "Attorney Frederick B. Gahagan" <fbgahagan@wallersmithpalmer.com>, "Emily Fisher" <cspreys@sbcglobal.net>, Santamendoza@comcast.net

George,
We have simply been attempting to have a dialogue with you. If you look at the amendment to the agreement (I don't have it in front of me and am traveling), I believe it would allow for just about anything to happen to this agreement if both parties agreed.

Either way, it appears at this juncture that it would be best if you and your attorney sat down with us and ours so we can attempt to resolve this matter. We are traveling pretty heavy right now and not available for a meeting like this until the week of October 22nd.

Let me know. Thanks.

Beverly
Sensor Switch, Inc.
900 Northrop Road
Wallingford, CT 06492
203 265-2842 phone
203 269-9621 fax

From: GEORGE MOORE [mailto:geosails@sbcglobal.net]
Sent: Saturday, September 15, 2007 3:08 PM
To: Beverly Platner
Cc: Attorney Frederick B. Gahagan; Emily Fisher
Subject: RE: 66 Selden Rd

Hi Beverly

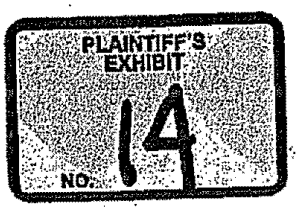
The conservation easement on your property was created by Paul Selden's attorneys and not by the Land Trust. Whatever his motivation might have been, a strict conservation easement was signed by Mr. Selden, recorded with the Town of Lyme and placed with the Lyme Land Trust to protect and defend in perpetuity.

I am virtually certain the Lyme Land Trust does not have the ability to extinguish the easement or trade it for something else. We are obliged to protect and defend it and could find ourselves in trouble if we did not.

The Chair of the Stewardship Committee, Emily Fisher and I will speak with Attorney Gahagan immediately upon his return about the memo he is preparing. In the meantime, we urge you not to undertake any activity in the restricted area.

Best regards

George



Beverly Platner <beverly@sensorswitch.com> wrote:

Dear George,

Obviously our read on things is different from yours.

Putting this all aside for a moment, we wonder if there is some way we could provide something of more value to the LLCT in exchange for removing the easement on our property, which would of course eliminate any future discussions or conflicts on this or any other matter. Please let me know if this is a possibility to explore.

Thank you for your attention to this matter.

Beverly Platner
66 Selden Road
Lyme , CT 06371
Fx: 860-526-9680
Ph: 860-526-2400
Cell: 203-980-0024

From: GEORGE MOORE [mailto:geosails@sbcglobal.net]
Sent: Friday, September 14, 2007 8:53 AM
To: Beverly Platner
Cc: Emily Fisher
Subject: 66 Selden Rd

PDF

Dear Beverly and Brian

I reviewed the Lyme Land Trust files regarding the conservation easement on your property at 66 Selden Rd in Lyme and forwarded them to our attorney Fritz Gahagan of Waller, Smith & Palmer in New London . Fritz is a native of Lyme who specializes in conservation law and does a lot work for the Trust.

Attorney Gahagan was familiar with the easement since he represented Richard Whitehead, a prior owner. In 1995 the predecessor to the current Inland Wetlands Commission wanted to see the fields revert to a forested state. Fritz argued on behalf of Mr. Whitehead that there had been fields there as long as anyone could recall and that the easement did permit mowing. The critical question was when. Mr. Whitehead agreed to early Spring and then not until the end of October. In the Land Trust's Property Management Plan for the easement, we advocated mowing before the second week in April and then not before the first week of September, and further, the area east of the paved drive preferably should not be mowed at all.

The document that is recorded in Town records Vol 71, p223 is a true conservation easement. There appear to be some contradictory statements regarding mowing as you pointed out under RESERVATIONS: paragraphs 2.2 and 2.3 . Fritz advises that when ambiguities arise, one must look to the purpose of the easement. That is laid out in paragraph 3.3 which clearly states the restrictive covenants are "conservation restrictions" and refers to the Connecticut General Statutes Section 47-42a.

The Land Trust agrees that the fields can be mowed and defers to the judgment of conservation experts who would limit it to as early in the Spring as possible and then not until after August

1st. This is to protect nesting and fledgling bird life. To get some current and expert insight, I contacted an expert with the Nature Conservancy and below is part of his reply:

"....., going on the assumption that there may be some breeding birds (even if not the so-called grassland birds, e.g. Bobolink, Meadowlark, Savannah Sparrow - the three most likely to occur), then mowing should be delayed annually until August 1st. July 15 is an old stand-by date, whereby most breeding grassland birds are done with their nesting season, but the August 1st date allows for the potential of a second brood. Really, the best place to go for complete grassland bird management recommendations is the Massachusetts Audubon web site (http://www.massaudubon.org), and once there, you can link to MAS' grassland bird pages, including this one, specifically designed to address small grasslands: http://www.massaudubon.org/Birds_&_Beyond/grassland/small.php. This outlines habitat needs for a variety of species, and how to best manage for those species, depending on the management technique being used."

I would suggest you visit the referred to web site, particularly the second link.

Fritz is away for a few days, but when he returns he is going to write something up I can pass along to you. In summary, previous owners have agreed to this mowing schedule. I hope you will agree that it is the right thing to do and will do the same.

On the subject of the stone walls. Again, I consulted Fritz. If either wall is within Restricted Area "B" as defined in the Richard Gates survey of May 22, 1981, then, because of the conservation easement, the Land Trust does not have the right to give permission. The easement would prohibit the walls. Outside area "B" does not concern us.

However, in the case of a wall along the road to replace the guard rail, the opinion is that it may well be on the town right of way for Selden Road and thus might be approved by the Town.

Please call if you have any questions. I would be happy to visit if you feel it would help.

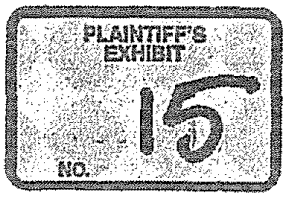
Best regards

George

George Moore
President, Lyme Land Conservation Trust

——— Original message ———
From: GEORGE MOORE <geosails@sbcglobal.net>
Hi Beverly

I was waiting on a memo from Attorney Gahagan. I posed your questions to him regarding



mowing, stone walls and the possibility of amending the easement. I attach it to this email.

To better understand the overall situation, it is important you appreciate your property is located in an area of great conservation interest to several parties, not just the Land Trust.

Selden Creek and Selden Cove are high priority Special Focus Areas of the **Silvio O. Conte National Fish & Wildlife Refuge** having these identified special values: 1. Federally listed species; 2). Rare species; 3). Fisheries, 4) Wetlands 5). Waterfowl and 7) Unusual habitat type.

The Nature Conservancy regards the tidal areas of Selden Cove as an important component in its Tidelands of the Connecticut River program, identified as one of the remaining "Last Great Places" on earth.

Selden Creek and Cove are part of the Connecticut River Estuary and Tidal Wetlands Complex designated as a wetlands of international importance on October 14,1994 under the **RAMSAR Wetlands Convention.**

The Connecticut River Estuary Regional Planning Agency in March of this year prepared maps of Lyme showing all of the land, both easement and fee properties, under conservation by the Lyme Land Trust, the Town of Lyme, the State of Connecticut, and the Nature Conservancy. It graphically shows the huge conservation commitment made by these entities in the Selden and Whalebone Creek areas. (There is much much more all around Town, but this is the area with which we are concerned right now). Many landowners, recognizing the importance of the area have generously helped bring this about; Coudert, Feldman, Johnstone, to name a few.

I won't repeat what is in Fritz' memo, but after reading it, I hope you will understand why I have not offered you any encouragement that this easement could be changed.

I am sure you and Brian realize your property is in a truly special area and I hope you will join with us in being good stewards of the easement.

George

From: GEORGE MOORE <geosalls@sbcglobal.net>
To: beverly@sensorswitch.com
CC: santamendoza@comcast.net
Subject: 66 Selden Rd
Date: Tue, 25 Sep 2007 18:26:17 +0000

MEMORANDUM

FROM: FBG
TO: George Moore, President, Lyme Land Conservation Trust
DATE: 9/24/07
RE: Guidance on Interpretation of the Conservation Restriction over the Selden Meadow

This Memorandum constitutes preliminary advice on the interpretation of the Declaration of Restrictive Covenants Granted by Paul Selden. The advice is subject to change or further clarification because I have not yet had the opportunity to review the Planning & Zoning and Conservation Commissions files. These files may shed further light on the basis for the grant of the Declaration and the grantor's intent for making the gift.

The Conservation Restriction. The conservation restriction is in the form of a "Declaration of Restrictive Covenants" over an area described as "Area 'B' Restricted Area" 12.6 Ac. Plan prepared by Dick Gates said area being hereinafter referred to as the "Protected Property". The Declaration was granted by Paul B. Selden on November 25, 1981 and was recorded on December 21, 1981 in Volume 71, at Page 223 of the Lyme Land Records (herein referred to as the "Declaration").

Although titled "Declaration of Restrictive Covenants" the language of the Declaration specifically states that the restrictions are intended to be a "conservation restriction" as defined in the Connecticut General Statutes and reference is made to the statutory section which authorizes and empowers conservation restrictions. By that reference, the Declaration is given an expanded legal meaning that normally runs with conservation restrictions.

Maybe not

Interpretation. A question has arisen with regard to what rights to mow the Protected Property have been retained in favor of his landowner. There is no question that the language in the Declaration is ambiguous on this issue as there are provisions that appear to both prohibit and allow mowing, without clear delineation about the limits of that activity.[1] Given this ambiguity, one must look to the structure stated purpose of the Declaration to see if it provides clear guidance on its interpretation. I believe reasonable guidance is provided by viewing the language of the Declaration as a whole.

[1] Section 1.6 and 2.2

The Declaration sets forth a number of provisions that directly pertain to this issue. These are:

> 1.4. "No trees, grasses or other vegetation thereon shall be cleared or otherwise destroyed."

> 1.5. "No activities or uses shall be conducted thereon which are detrimental to drainage, flood control, water conservation, erosion control, soil conservation, *fish and wildlife or habitat preservation*." (emphasis added)

The extent of this restriction is not without limit as the Grantor retained certain rights which exist "notwithstanding" the "Restrictions". The pertinent reserved rights are set forth in Article 2 "Reservations", particularly:

> 2.2 "To conduct and engage in the cultivation and harvesting of crops, flowers and hay; the planting of trees and shrubs and the *mowing of grass*, the grazing of livestock and the construction and maintenance of fences necessary in connection therewith." (emphasis added)

This provision makes it clear that there is an exception to Restrictions on the clearing of grass. However, it is important to note a number of points here:

First, given the interrelationship between Section 1 and Section 2 and the language of each provision, mowing is prohibited, except as specifically provided in Section 2.

NO

Second, the reserved right to mow grass is set forth within a paragraph that pertains to agricultural rights. I do not believe a court would interpret this to permit the mowing of grass as part of landscape activities as distinguished from bona-fide agricultural activities; and

Third, this interpretation is also consistent with the stated purpose of the Declaration set forth in Section 3.3 which states:

> 3.3 "The purpose of these restrictive covenants is to assure retention of the premises predominately in their natural, scenic or open condition and in agricultural, farming, forest and open space use and to assure competent, conscientious and effective preservation and management in such condition and use"; and

Fourth, this reading is consistent with the restriction set forth of Section 1.5 prohibiting activities inconsistent with "wildlife or habitat preservation."

This interpretation is reinforced by the language in Attorney Charles M. Tighe's cover letter to the Land Trust that accompanied the draft of the Declaration in which he stated:

"Because of the ecologically sensitive nature of this area, the Conservation Commission has indicated that it would like some assurance that *the intensity of uses be kept to the barest minimum.*" (emphasis added) and

"It is felt that this achieves the purpose of assuring . . . retaining the restricted area in its *natural state* . . .." (emphasis added)

This interpretation is also consistent with Section 3.3, which states that the restrictions are intended to be a "conservation restriction" as that term is defined in Section 47-42a ..... of the Connecticut General Statutes, which read at that time:

(a) "Conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf or behalf of the owner of the land described therein or in any order of taking such land *whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.* (emphasis added)

While the language in the Declaration pertaining to the "Restrictions" and "Reservations" is ambiguous, the intent and purpose of the Declaration is clear. When the ambiguities are read and construed in this light, I advise that the areas of Area B described as "Open Field and Small Brush" north of the house site and between the house site and the Connecticut River must be maintained in an agricultural or natural state and, if the latter, consistent with sound wildlife habitat management principals. This would preclude mowing of the field during important periods of the nesting session.

The landowner could convert the area to an agricultural use, in which case, it could mow inside the bird nesting season, but that would have to be part of a bonafide agricultural use.

<u>Other</u>. I would also like to comment on some other issues that may arise.

<u>Forestry</u>. Section 1.7 states:

"Except as may otherwise be necessary or appropriate, *as determined by the Grantee [the Lyme Land Conservation Trust]* to carry out beneficial and selective non-commercial forestry practices, all woodland thereon shall be kept in a state of natural wilderness." (emphasis added)

I believe this provision should be interpreted to apply to the area of Area B described as "Large Hardwood and Shrubs" between the building area and Selden Creek that was forested state at the time the Declaration was created. I advise that the forestry activity allowed under Section 2.3 does not apply to this area, and it is to be left in a state of

natural evolution unless otherwise approved by the Land Trust. The cultivation and harvesting of forest products with sound non-commercial forest practices and the right to plant trees and shrubs for that purpose should be construed as limited to the area north of the building envelope that was a field at the time the Declaration was created.

I advise this because there is already a prohibition of clearing trees in Section 1.4 and to construe the broad and specific restriction contained in Section 1.7 otherwise would give its language no meaning. A court will not construe the terms of an agreement to give the plain language of a provision no meaning.

Enforcement. The Land Trust is given broad rights to enforce this Declaration under its language and under the statute governing conservation restrictions. In essence, this allows the Land Trust to bring an action either at law for monetary damages or equity to seek a court order prohibiting certain activities or to require restoration of an area on which un-permitted activities have occurred. This is found in Section 3.5 of the Declaration and in Section 47–42c of the Connecticut General Statutes which provide for injunctive relief and participation by the Attorney General in any enforcement action.[2]

In addition, should the Land Trust be successful in an action it would be able to obtain reimbursement of its legal fees from the land owner.

Modification or Amendment. The land owners have raised the question of amending or modifying the Declaration. While I know that the Land Trust has never considered this in the past, I do want to review some of the issues involved in case you feel the need to discuss the issue with them.

It would be extremely difficult to modify or amend the Declaration for a number of reasons.

First and foremost is the importance of the habitat protected by the Declaration and its interrelationship with numerous other protection activities of the State and The Nature Conservancy in the immediate area of Selden Island, Selden Creek and Whalebone Cove. The perception created by the Land Trust's agreeing to amend or modify substantive terms of the Declaration that protect important habitat would be problematic to say the least.

Second, it appears that the Declaration was given as part of obtaining a permit for regulated activities. In that case it should only be amended by including the regulatory agencies involved. I reviewed the minutes of the Planning & Zoning and Conservation

[2] Sec.47-42c. Acquisition of Restrictions. Enforcement by Attorney General.

Such conservation and preservation restrictions are interests in land and may be acquired by any governmental body or any charitable corporation or trust which has the power to acquire interests in land in the same manner as it may acquire other interests in land. Such restrictions may be enforced by injunction or proceedings in equity. *The Attorney General may bring an action in the Superior court to enforce the public interest in such restrictions.* (emphasis added)

Commissions at the time of the re-subdivision that created Lot 2 in its current configuration and around the time of the creation of the Declaration. The only reference to the Declaration is in the minutes of the September 16, 1981 meeting of the Conservation Commission where it reviewed the Declaration as part of granting a permit to construct a home and access road within the regulated area. A copy of the minutes accompanies this Memorandum. While it is unclear whether the grant of the Declaration was a condition of the approval of the permit from the language of the minutes, the correspondence in the Land Trust's file indicates that this was the case..

Alternatively, if the Declaration was granted to the Land Trust as a gift, its substantive provisions cannot be modified in a way that changes the intent of the donor, unless that purpose is no longer feasible to carry out. In this case, the best evidence we have for the donor's intent is the purpose of the Declaration. Our law, as expressed in case law and statute, requires that a donor's intent be honored. Section 47-2 governs interests in real property given for charitable purposes.

> 47-2 Charitable uses. *All estates granted* for the maintenance of the ministry of the gospel, or of schools of learning, or for the relief of the poor, or for the preservation, care and maintenance of any cemetery, cemetery lot or monuments thereon, or *for any other public and charitable use, shall forever remain to the uses to which they were granted, according to the true intent and meaning of the grantor, and to no other use whatever.*

The only way to change the purpose of a gift of an interest in real estate is to bring an action before the Superior Court seeking its approval of the change. Under our law, in order to approve a change in purpose, the court must first find that the original purpose is not longer feasible, in this case an impossible hurdle to overcome. In addition, please note that the Attorney General is a necessary party to any such action as the representative of the public interest.

ROBERT P. ANDERSON, JR.
HUGHES GRIFFIS
EDWARD B. O'CONNELL
FREDERICK B. GAHAGAN
TRACY M. COLLINS*
PHILIP M. JOHNSTONE+*
DAVID P. CONDON
CHARLES C. ANDERSON
KERIN M. WOODS+
ANDREW R. CELLEMME+
ELISA VALENTIN HOBBS
JOSHUA H. FOLEY**

OF COUNSEL:
WILLIAM W. MINER
ROBERT W. MARRION

WALLER, SMITH & PALMER, P.C.
COUNSELORS AT LAW

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EMAIL: fbgahagan@wallersmithpalmer.com

FOUNDED IN 1885 AS
WALLER & WALLER

TRACY WALLER (1862-1947)
J. RODNEY SMITH (1906-1979)
BIRDSEY G. PALMER (1915-2000)

*ALSO ADMITTED IN MASS.
+ALSO ADMITTED IN R.I.
**ALSO ADMITTED IN N.Y.

October 3, 2007

VIA E-MAIL ORIGINAL TO FOLLOW

Attorney Santa Mendoza
The Liberty Law Firm
111 Huntington Street
New London, CT 06320-2196

Re: 66 Selden Road

Dear Santa:

It was good to meet you last week and thank you for your cooperation in arranging for a mutually agreeable time for the Land Trust's site inspection.

As I indicated at the time of our meeting, I am writing to provide you with the Lyme Land Conservation Trust's (the "**Land Trust**") initial response to the site visit. I will try to address specific areas of the property as they are treated under the 1981 Declaration of Restricted Covenants (the "**Declaration**").

The Land Trust recognizes that the Platners may not have been aware of the extent of the restrictions contained in the Declaration when they undertook many of the activities that violates its terms. As a result, the Land Trust is not looking to bring an enforcement action at this time and hopes that future discussions can lead to an amicable resolution of this matter, particularly once the Land Trust has obtained professional advice on the restoration of the highly disturbed areas.

<u>Mowing of the Field to the North of the Residence and on Both Sides of the Driveway.</u> The Land Trust recognizes that mowing is permitted as part of bona-fide agricultural activity and, otherwise, on a more limited basis that preserves the natural resource and wildlife habitat benefits of the meadow. The Land Trust requests that the mowing return to the practices established with prior owners, which is mowing no more than twice a year and not between April 1st and July 31st. The Land Trust understands that spring mowing may be delayed a little in some years due to high ground water. The basis for

PLAINTIFF'S EXHIBIT
NO. 17

this request is set out in the Memorandum I prepared for the Land Trust, which I believe has been forwarded to your clients and then to you.

As I informed you in my e-mail of October 2nd the Land Trust will be having the restricted area surveyed and located in the field. We believe the survey may show that a portion of the area that has been converted from native warm season grasses to lawn lies within the Restricted Area. Once we know whether or not that is the case, the Land Trust will be in a position to discuss what it believes should happen in that area.

We noted that the bank below Selden Road and to the east of the driveway has been totally cleared. The Land Trust believes that this should be restored to a natural ground cover and, until we have a better understanding of what shrubs were removed and whether the Platners would prefer this area to be grass or native shrubs, we regard this as an open matter for further discussion.

Structures-Stone Wall. The Land Trust does not believe the construction of a stone wall is permitted under the Declaration or that re-grading or depositing of fill to change grade in conjunction with construction of a stone wall is permitted. (See Sections 1.2, 1.3 and 1.4).

Beach and Grass Area to the West of the Residence. I believe the violations of the Declaration in this area need to be treated separately. First is the beach area, which appears to have been made by removal of the native grasses and improved with sand brought in from off the property. This violates Sections 1.2 and 1.4 of the Declaration. The Land Trust does not know what the best method is to restore the area to its natural condition and it will seek advice before discussing it further.

Second, the original lawn has been extended to the bank of the river and beach created by the Platners and this area is no longer in a natural state. The Land Trust will be seeking professional advice on that matter as well. While the restoration of this area is of high importance to the Land Trust, that does not mean that there cannot be a path to the river so long as the path consists of native grasses.

Third, we also noted that all of the small shrubs along the river have been removed from this area and it appears that at least one tree has been removed. Please be advised that the Land Trust believes that the clearing of the river bank may have had a significant adverse impact and that any further disturbance or removal of shrubs and trees from this area will have a significant adverse impact. (See Sections 1.4 and 2.1) The Land Trust will seek advice on this issue and whether restoration of shrubs or trees along the river bank is appropriate. (See Sections 1.4 and 2.1.).

Wooded Area to the South of the Residence and the Unrestricted Area. We note that there has been disturbance in this area and, as I set out in my Memorandum, the Land Trust believes that Section 1.7 applies to this area. The Land Trust requests that, if the Platners have a desire to undertake any further activity in this area, they have a certified forester or a wildlife or forest ecologist prepare a management plan for its review. The Land Trust would support removal of invasive specifies, the restoration of the disturbed areas with native shrubs and, if appropriate, grasses, and other activity resulting in a healthy flood plain forest and forest under story. A list of invasive specifies can be found at the website of the Connecticut Invasive Plants Council. The Connecticut College Arboretum publishes a pamphlet on planting with native species. I believe a copy of this may be available at the Lyme Library.

Northeast Corner of the Restricted Area. The clearing of the bank of Selden Cove and Selden Creek and the wooded area to the southeast of the dock is a violation of the Declaration. As I requested during our site visit, please have the Platners cease all activity in this area. The Land Trust will obtain advice on the best method of restoring the natural state of a wooded flood plain and we can discuss this further at that time.

Future Site Inspections and Survey. Given the numerous and significant violations of the Declaration and the apparent extent of ongoing landscape activity, the Land Trust will be undertaking more frequent site visits in order to determine compliance with the Declaration. In addition, given the location of a number of the activities that resulted in the destruction of natural areas, the Land Trust has engaged Richard Gates, the surveyor who prepared the original plan depicting the Restricted Area, to survey the boundary between the Unrestricted Area and the Restricted Area. I previously provided you with notice of this activity per my e-mail of October 2nd. Finally, the Land Trust will need to visit the property with one or more professionals who can advise it on future treatment of the disturbed areas. Notice is hereby given that the Land Trust will be conducting periodic visits for the foregoing purposes until an agreement on future activity is reached.

Other. During our site visit we also noted that a rather extensive irrigation system has been put in place, portions of which of which may intrude into the Restricted Area both to the north and south of the Unrestricted Area. The survey will allow us to determine the extent of any encroachment and intelligently discuss how this can be resolved, with minimal expense and disturbance in light of the location of these improved areas.

I think that covers most of the issues we have identified; however, additional issues may arise once the Land Trust has a chance to inspect the property with various photographs taken of the property over the past 36 months.

I would appreciate it if you would contact me to discuss this once you have reviewed it with your clients and I look forward to working with you to try and bring this to an amicable resolution.

Very truly yours,

Frederick B. Gahagan, for
Waller, Smith & Palmer, P.C.

FBG/dmh
cc: George Moore, President
Lyme Land Conservation Trust

PLAINTIFF'S
EXHIBIT NO. 26
FOR IDENTIFICATION
DATE 12-20-14 RPTR

SANTA MENDOZA
ATTORNEY AT LAW

111 Huntington Street
New London, Connecticut
06320
Telephone: (860) 447-3994
Facsimile: (860) 447-3102

October 15, 2007

Frederick B. Gallagan
Waller Smith & Palmer, P.C.
52 Eugene O'Neill Drive
New London, CT 06320

RE: 66 Selden Road, Lyme

Dear Fritz:

I have received your e-mails dated October 2 and 3, and have forwarded them to my clients, who, as you know, have been out of state. The Platners' surveyor, J.P. Garcia, has just concluded his survey work, and the Platners would like him to meet with Mr. Gates to share his results, and hopefully review your photographs and "GPS coordinates." Hopefully, the shared data from this discussion will be enough for the Trust to issue its conclusions and findings and obviate the need for another survey on the Platner's land.

Since the Platners will not be back in town until the 18th, it has been impossible for me to meet with them and review your other extensive comments. This notwithstanding, I would like to make some preliminary comments of my own.

1. The restricted area at issue is not a large, undeveloped wildlife preserve or woodland. The parts of the area most at issue consist of relatively small open acreage sections of less than 4 or 5 acres, part of same abutting the Connecticut River, and whose other boundaries very closely abut driveways, buildings, Selden Road, and a personal residence. Clearly, the drafters of the Declaration intended that no further building or development activity occur near the River, and that the area remain open and not further subdivided. Those objectives have been clearly and successfully met. There is no language in the Declaration which prescribes the species of grasses, the schedule of mowing, and the character of the shrubs. You are therefore correct that the Platners and their professional arborist, soil engineers and other consultants have

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been completely unaware of your client's highly detailed, hyper-inclusive interpretations of Section I of the Declaration. Your memoranda and correspondence have been revelations of a completely different point of view from theirs. Please be hereby advised that the Platners intend no destruction or detriment to the scenic beauty and natural openness of the site, or to fish, wildlife or habitat preservation. The Platners are aware of the importance of the River's ecology and do note with interest your client's observations about the best native species to cultivate, etc. However, it would be their contention that no "destruction" or unnatural habitat disturbances which could be described as "violations," have occurred in the restricted area.

2. Keeping in mind the above perspective, and in furtherance of amicable resolution, I would simply request that Section II of the Declaration be read and interpreted at least as broadly by your professionals and experts as they are interpreting Section I. The Platners have certain enumerated legal rights and it would be helpful if your client and their experts leave enough room for the exercise of these rights. Since your letter reserves many of the issues to later discussion, hopefully your conclusory comments such as "numerous and significant violations," and "highly disturbed" will be tabled to a later date.

3. You have indicated that more frequent visits and surveying is required. You have also indicated that the Trust has not inspected since 2004, and that "normally" a once a year inspection would be reasonable. The fact that the Trust has renewed and heightened its interest in the area should not unfairly burden the Platners. Please try to keep in mind that this entire site is a private residence subject only to a negative easement. Your client does not have the rights inherent in a positive easement, such as the rights of enjoyment, the right to pass and repass, and/or to hold conferences there. I am not convinced that the group has the right to survey. Six people have already spent almost two hours there to inspect essentially a four or five acre area. Notwithstanding the above, the Platners' surveyor is standing ready to meet with Mr. Gates to share his findings.

4. I understand from your letter that your client is not looking to bring an enforcement action. It is my conclusion, therefore, that the cost all of the professionals and the experts and the surveyors that your client feels it needs to process the data from its site visit, will be borne by your client. Also the cost for your participation in this site visit and your memoranda

and advice, and personal photography services, will also be borne by your client. My interpretation of Section 3.6 of the Declaration is that, since this amicable preliminary correspondence is not in the nature of enforcement, then your expert costs are not chargeable to my client.

Once I have more client input, I will call you to arrange a meeting, where much of this will hopefully be resolved.

Sincerely,

Santa Mendoza

cc: Brian and Beverly Platner

ROBERT P. ANDERSON, JR.
HUGHES GRIFFIS
EDWARD B. O'CONNELL
FREDERICK B. GAHAGAN
TRACY M. COLLINS*
PHILIP M. JOHNSTONE+*
DAVID P. CONDON
CHARLES C. ANDERSON
KERIN M. WOODS+
ANDREW R. CELLEMME+
ELISA VALENTIN HOBBS
JOSHUA H. FOLEY**

OF COUNSEL:
WILLIAM W. MINER
ROBERT W. MARRION

WALLER, SMITH & PALMER, P.C.
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FOUNDED IN 1885 AS
WALLER & WALLER

TRACY WALLER (1862-1947)
J. RODNEY SMITH (1906-1979)
BIRDSEY G. PALMER (1915-2000)

*ALSO ADMITTED IN MASS.
+ALSO ADMITTED IN R.I.
**ALSO ADMITTED IN N.Y.

October 17, 2007

VIA E-MAIL ORIGINAL TO FOLLOW

Attorney Santa Mendoza
The Liberty Law Firm
111 Huntington Street
New London, CT 06320-2196

Re: 66 Selden Road, Lyme, CT

Dear Santa:

I am writing in response to your letter of October 15th, and I will respond to your points in the order in which you have addressed the various issues pertaining to the application of the 1981 Declaration of Restrictive Covenants (the "Declaration") in your letter.

1. The comments in the first point convey a perception that the acreage protected by the Declaration does not have significant ecological importance. This repeats of a number of comments you made during our site visit and in our subsequent phone calls. As a result, I would like to address that issue specifically.

   The areas protected by the Conservation Restriction are deemed to have great ecological importance by the Lyme Land Conservation Trust (the "Lyme Land Trust"). The small size of the property is not a significant factor as, in a fragmented landscape, land conservation is undertaken on a step by step basis involving a number of smaller properties. This is the case in this situation. As a result, each parcel is viewed as an important component of a larger mosaic of protected properties.

   This property's ecological importance is clearly demonstrated: It is within a mile of numerous other protected properties that have been acquired over the years. This started, naturally, with Selden Island but has been

PLAINTIFF'S EXHIBIT
NO. 19

expanded in recent times by the joint efforts of the Town of Lyme, the Lyme Land Trust, The Nature Conservancy and the State of Connecticut to protect sensitive habitat in the watershed of the Selden Creek and Cove and Whalebone Cove area of the Connecticut River. To that end, in recent years the foregoing parties have spent several million dollars acquiring a number of properties within a mile, more or less, of your clients' property. In addition, there have been several gifts of Conservation Restrictions or land in the area for this same purpose. These protection efforts share the same purpose and environmental goals as the restrictions over your clients' property.

Selden Creek (which includes Selden Cove) is a "high" priority "Special Focus Area" of the Silvio O. Conte National Fish & Wildlife Refuge having the following specifically identified "Special Values":

1. Federally listed species,[1]
2. Rare species,
3. Fisheries,
4. Wetlands,
5. Water birds and
6. Unusual habitat type.

The activity on your clients' property has a direct impact on these important conservation values.

The tidal areas of Selden Cove are also a tidal wetland within an identified program area of The Nature Conservancy and an important component of its Tidelands of the Connecticut River Program, identified as a "Last Great Place" remaining on earth. The Nature Conservancy has spent several million dollars over the years protecting properties that abut or impact the ecological health of Selden Creek and Cove.

Finally, Selden Creek and Cove is part of the Connecticut River Estuary and Tidal Wetlands Complex designated as a "wetlands of international importance" on October 14, 1994 under the United Nations Ramsar Wetlands Convention.

[1] These are legally protected, i.e., threatened and endangered, species

While none of these factors give any of these parties, except the Town and State, enforcement rights against your client, they clearly indicate that Selden Cove is not just a beautiful area, but a portion of the Connecticut River and its associated tidal wetlands of primary ecological importance. I do want you and the Platners to be aware that the Lyme Land Trust has a great responsibility and obligation to treat it accordingly.

The second comment I want to make about your first point is that your interpretation of the Declaration, essentially limiting it to a prescription against further building or development, flies in the face of its terms and would render Sections 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, and 3.3 meaningless. I do not believe that a court would adopt an interpretation of the Declaration that renders these significant and substantive provisions meaningless. The Lyme Land Trust believes that the Platners have violated the substance and intent of the Declaration as cited in my October 3rd letter and does not accept the claim that there has been no violation.

2. Section of the Declaration is not intended to be read as broadly as Section 1. Section 1 set out broad prohibitions of all activities that would interfere with the purpose of the Declaration, which is:

   "The purpose of these restrictive covenants is to assure retention of the premises predominately in their natural, scenic or open condition and in agricultural, farming, forest and open space use and to assure competent, conscientious and effective preservation and management in such condition and use."

   Section 2 provides identified, narrowly crafted, exceptions that were deemed to be consistent with that purpose. This intent is summarized in Section 2.5, which states: "To continue the use of the Protected Areas for all purposes *not inconsistent with the restrictions set forth in ARTICLE I above.*" (emphasis added"

   If your clients hold to the interpretation of the Declaration set forth in the first and second points of your letter, amicable resolution of this matter will not be possible and the Lyme Land Trust will not allow tabling of the violations and disturbance that has occurred on the property.

3. The Lyme Land Trust normally undertakes formal monitoring inspections of properties subject to Conservation Restrictions on an annual basis. It

monitors properties more frequently in the event there is a potential or actual violation of a restriction. The Lyme Land Trust believes that it has the legal right to come on the property to inspect it more frequently in times of violation in order to ensure that additional violations are not occurring and to have its surveyors enter upon the property in order to ascertain the extent of the violations. Given your clients' past actions and the statements contained in your letter, the Lyme Land Trust will continue to exercise those rights as reasonably required to protect its interest in the property.

Due to the Declaration's reference in Section 3.3, where it states: "[s]aid restrictions are intended as "conservation restrictions" as that term is defined in Section 47-42a of the Connecticut General Statutes", the restrictions contained in the Declaration carry a much greater weight then a negative easement. For example, they do not need to be appurtenant to another parcel of property and privity of contract is not required.[2] In addition, the holder of a Conservation Restriction is required to receive notice of the filing of a permit application with any state or municipal any land use agency or local building official or director of health, other than for interior work or exterior work that does not expand or alter the footprint of an existing building, prior to the filing of the application.[3] Finally, in recognition of the public benefit provided by conservation restrictions that protect important conservation values, our statutes give the Attorney General specific authority to bring an enforcement action to protect the public's interest in the protected property.[4]

The Lyme Land Trust is happy to have Mr. Gates meet with the Platners' surveyor and receive any information delivered to him. Thank you for the offer. However, the Lyme Land Trust reserves the right to have Mr. Gates enter onto the property protected by the Declaration in order to ascertain or confirm the location of the boundary line of the restricted area in the field. I would appreciate it if you would forward me Mr. Garcia's contact information so that I can pass it on to Mr. Gates.

4. With regard to your fourth point, I believe you misread my letter. I apologize if it was ambiguous. The Lyme Land Trust's statement that it was not looking to bring an enforcement action at this time was

[2] See C.G.S. §47-42b
[3] See C.G.S. §47-42d
[4] See C.G.S. §47-42c

conditioned upon being able to reach an amicable resolution of this matter. If your clients continue to take the position outlined in your letter, such a resolution is not possible and the Lyme Land Trust will undertake all actions necessary to enforce the restrictions contained in the Declaration, including seeking an injunction against further violation, orders seeking restoration of the areas of the property damaged by your clients' activities, as well as seeking reimbursement of the costs allowed pursuant to Section 3.6 of the Declaration.

While you are correct that certain preliminary costs may not be recovered under Section 3.6, please be advised that the Lyme Land Trust will seek recovery for any costs incurred by it as part of an action to enforce the Declaration, including all professional fees and expenses.

I am sorry to have to reply to your letter in such direct terms; however, I do not want you or the Platners to have a false impression about the importance the Lyme Land Trust places on this property, the existence of violations, or the Lyme Land Trusts' willingness to act to enforce the Declaration.

I look forward to hearing from you when you have had a chance to review this with your client so that all parties will be able gain an understanding of how they need to proceed to resolve this matter.

Very truly yours,

Frederick B. Gahagan, for
Waller, Smith & Palmer, P.C.

FBG/dmh
cc: George Moore, President
Lyme Land Conservation Trust

EOI Em GMtg LLCT Bd 2007 Oct 19.pdf

Linda E. Bireley

From: GEORGE MOORE [geosails@sbcglobal.net]
Sent: Friday, October 19, 2007 11:18 AM
To: Susan Ballek; Andy Baxter; Rod Duxbury; Matt Elgart; Jeb Embree; Emily Fisher; Ben Gahagan; Mary Guitar; George Moore; Mike Richardson; Tom Shoemaker; Penny Smyth; Anthony Sullivan
Cc: Linda Bireley
Subject: Easement Violation Report E-1

Memo to LLCT Directors:

I want to inform you of a major violation on Easement E-1 at 66 Selden Rd. We are in the midst of confronting the owners. Our attorney, Fritz Gahagan, became actively involved once we realized their attitude was less than co-operative.

A small group became involved once the infraction was reported by me (I was the newly assigned Steward as of last year) to Emily Fisher, Stewardship Chair. That group consists of Emily Fisher, Linda Bireley, and myself. We asked Mike Richardson to join us given his legal background and brought in Parker Lord as a surveyor's assistant and our attorney Fritz Gahagan.

Some background details:

The easement which we refer to as E1 was recorded with the Town on December 21, 1981 as Vol 71, page 223 and was written by an Attorney Tighe for Paul Selden. It is not the comprehensive type Easement document we see today. In fact it is ambiguous as it pertains to mowing the field area. That is part of the problem.

Based on the records a mowing schedule of early Spring and late Summer in order to protect nesting and fledgling birds was adhered to for many years.

The second owners were involved in a mowing issue in 1995. Fritz was their attorney. An over zealous Conservation Commission wanted the fields to be allowed to return to a treed state. Fritz argued they had been fields as long as anyone could remember and owners had the right to keep them that way as long as they mowed responsibly. The owners at the time wrote a letter agreeing to a mowing schedule agreeable to the LLCT.

Because of their compliance, stewardship moved more towards an inspection from the road without on-site easement inspection to monitor the mowing issue.

Unfortunately, the last documented stewardship report was Nov 2004. The stewardship duty changed hands. The assigned steward failed to do inspections.

It was re-assigned to me as steward for 2006-7 and I did not do it in the fall of 2006 as should have been done.

The property changed hands in May 2007. I did an inspection from the road on July 18th and noted unauthorized mowing had occurred, and notified the Stewardship Chair.

After several contacts with the new owners, I sent them a memo Fritz prepared. Based on the response from their attorney an on- site visit by a LLCT committee in September noted extensive easement violations not visible from the road. This went well beyond mowing. Heavy equipment was used in the protected area to strip plants and shrubs from an embankment, a beach had been created on the river, other clearing had taken place and there was possible infringement with an irrigation system. Unfortunately the lack of an accurate survey of our easement area prevents our claiming that with certainty. We have elected to have it surveyed.

There were no earlier photographs in the Stewardship file. Luckily we were able to retrieve aerial images from real estate listing records. Emily and Mike also took some waterfront shots from the river to give us some before and

PLAINTIFF'S EXHIBIT 20

after. Rather than send out huge files, I'll leave it up to you to request copies. We will have them at the next Board Meeting.

I attach the letter that Fritz sent their attorney. There has been a response which for the first time suggest they are taking the matter seriously. In fact, I learned today they have hired a soil scientist, Richard Snarski, who specializes in restoring wetlands.

I believe, and I am sure my colleagues share my belief, that defending our easement is NOT an option. We must defend them or people will be reluctant to entrust us with easements in future. Defending is not synonymous with a lawsuit. It does mean going to the appropriate bodies and asking their intervention which we have done.

You have to take a tough stance and be prepared to go the mile (i.e.legal action if it comes to that) otherwise the other party will try and roll over you. Some of these people have deeper pockets than the LLCT.

There are legitimate concerns as to what a lawsuit could cost, and the Board would have to vote before such a commitment was undertaken. It is not the best use of our funds.

For more detailed information, contact Emily or myself

Again, it now appears to be heading to a resolution. It is not in our best interests to talk about this outside the Board or to malign the owners in any way.

George

PS

Read Fritz' memo before his letter for the best understanding of the situation

Also, the yellow highlights on his draft were to highlight phrases I foungd awkward. An ammended version went out.

Note to file: the two attached documents are in the electronic file as:

E01MemFBGtoMoore2007Sep24.pdf

E01LtrFBGtoMendoza2007Oct17.pdf

Beverly & Brian Platner
66 Selden Road
Lyme, CT 06371

Lyme Land Conservation Trust
PO Box 1002
Lyme, CT 06371

December 30, 2007

Dear Board Member;

I am writing to you as a precursor to meeting you at your January 8th meeting. Recently we had requested the blessing of the Land Trust for "soil samplings" on our property, and George Moore subsequently invited me and my consultant Richard Snarski to attend your upcoming meeting, which we accepted.

My husband and I moved into our new home May 2nd of this year. Since that time there have been a number of activities at the house and the property. Most recently we applied for, and received a permit from the Lyme Inland Wetlands and Conservation Commission for many of these activities. We have received approval for some of the things that are completed, as well as guidelines for the balance of the property. I mention this because there have been numerous rumors concerning ecological violations on our property, and to the best of my knowledge at this point, any temporary disturbances have been remediated appropriately, and all other activities have been identified and guidelines set forth to the satisfaction of all conservation commissions.

The purpose of our visit to your upcoming meeting is to discuss our desire to develop a marsh/pond system on the property, and the relocation of our driveway. Both of these activities have positive ecological value, however involve part of the property which has an LLCT easement restriction. Mr. Snarski will give you an outline of our conceptual thoughts at this time, and we are looking for your blessings to proceed with our evaluation of this marsh/pond system by beginning soil testing on the property. The second phase of our project is to prepare a more formal Master Plan to present to both the LLCT and the appropriate town officials and commissions.

Of additional interest is the marsh/pond system would include a fire hydrant, and the source for a Geo Thermal Heat Pump (a major energy conservation and environmental measure). The driveway relocation will allow safer passage to our house (higher ground) as well as move it significantly farther from the edge of Selden Cove.

I look forward to meeting you all on January 8th, and a positive response to our ecological plans for our property.

Sincerely

Beverly Platner

Beverly Platner

PLAINTIFF'S EXHIBIT NO. 23

(3)

fax

Subject: Lyme Land Trust
Pages 5
Date: January 21, 2008

To: Brian & Beverly Platner
Phone Number: 526-2400
Fax Number: 526-9680

From: George Moore
Phone Number: 434-3051
Fax Number: 434-3054

After considerable debate by the Board of Directors and further review by our Executive Committee, we have come up with a response to your presentation to the Land Trust at the last Board Meeting.

We look forward to working this out.

George

This is our position

SKIT Operations Center
508-230-8080

PLAINTIFF'S EXHIBIT
NO. 25

3

LYME LAND CONSERVATION TRUST, INC.

P.O. Box 1002, Lyme, Connecticut 06371

January 21, 2008

Brian & Beverly Platner
66 Selden Road
Lyme, CT 06371

Dear Beverly:

On behalf of the Lyme Land Trust, I wish to respond to your request for approval to dig test holes to monitor hydrological conditions on the site in order to aid you in the design of an extensive pond and marsh wetland system proposed to be constructed on a limited portion of the Protected Property at 66 Selden Road.

As you know, any excavation or removal of earth material is not permitted by the existing Conservation Restriction. Never-the-less, the Land Trust is willing to permit testing under the following conditions:

1. you obtain the approval of the Inland Wetlands & Conservation Commission,
2. the existing Conservation Restriction is amended to allow the test holes,
3. the testing is no more invasive than necessary, as determined by the Land Trust,
4. the Land Trust has an opportunity to review and approve the test protocol, and
5. you share with the Land Trust, all testing results and copies of all engineering reports based on the testing results.

In fairness, moving beyond the test holes, you should know that the Land Trust will only be willing to discuss amending the Conservation Restriction to allow the proposed pond and marsh wetland system if this results in a better ecological outcome and we can reach an agreement on all issues concerning your compliance with the Conservation Restriction.

I believe you have already received the Land Trust's interpretation of the Conservation Restriction and I will not repeat that here. Nor, do I believe that it serves any purpose reviewing past actions and so I will try and focus on what the Land Trust believes should occur from this point on. I want to clearly set out what actions the Land Trust requires for compliance with the Conservation Restriction.

I. Eliminate any Doubts about the Location of the Protected Property

With regard to the delineation of the boundaries of the Protected Property, the Land Trust believes that it is in our common interest to clearly mark the boundaries of the Protected Property in the field and to record them so that there is no uncertainty in the future. We thank you for forwarding the "Progress" plan provided by your surveyor, but let me note that it fails to consider four iron pipes previously placed to delineate the boundaries of the Protected Property in or about 1988. We request that:

- our surveyors meet to reconcile these differences;
- the boundaries of the Protected Property be surveyed so that they can be recovered in the future; and
- the boundaries of the Protected Property be marked in the field to prevent inadvertent violation of the Conservation Restriction. This can be accomplished in a way that will not be an eyesore to you.

II. Conservation Restrictions for the Protected Property

1. *With regard to the wooded areas to the south of the area excluded from the Conservation Restriction:*

   The Land Trust concurs with the opinion of the Lyme Conservation Commission that the area that was disturbed must be left to naturally regenerate to a wooded state. Except for the removal of invasive vegetation, there must be no cutting or removal of vegetation, no application of fertilizer or herbicides, and no weeding or mulching. We are not sure if we have agreement on the extent of the area that was disturbed and should be allowed to regenerate to a wooded state.

   This same limitation applies to the entire wooded area south of the area excluded from the Conservation Restriction. In order to be sure that there is no future inadvertent violation of the Conservation Restriction, I would remind you that the Land Trust's permission is required to cut trees, shrubs and other vegetation in this area. This does not mean that you must come to us every time you wish to work in the area. As a practical matter, if you submit a management plan prepared by a licensed forester or a forest ecologist, the Land Trust will review and approve or request modification of the activities set out in the plan. As long as those activities are carried out under the supervision of a licensed forester or forest ecologist, the Land Trust would not need to monitor the site other than through its ordinary inspections.

Finally, in order to ensure that there is no misunderstanding of our position, I need to say that regulatory approval of the Lyme Conservation Commission does not supersede the need to obtain the Land Trust's approval of these activities.

2. *With regard to the area between your residence and the Connecticut River:*

Given the disturbance created last summer, this area must not be used for access by construction equipment.

To the extent that the irrigation system intrudes into the Protected Property, it must be removed. In order to encourage the restoration of more natural vegetation, the area within the Protected Property to the west of your residence must not be watered.

The height and frequency of mowing in this area should be limited in order to encourage the restoration of natural vegetation.

3. *With regard to the grassed area along the Connecticut River to the north of the cedar grove[1], which includes the best examples of native warm season grass habitat on the Protected Property:*

In accordance with the recommendations of Anthony Irving, we request that this area not be mowed between April 1st and August 1st and that any mowing not be less than 6 inches in height in order to encourage the restoration of natural vegetation.

4. *With regard to the grassed area, north of the area excluded from the Protected Property and cedar grove, where the natural vegetation was destroyed and replaced with lawn grasses:*

To the extent that the irrigation system intrudes into the Protected Property, it must be removed. In order to encourage the restoration of natural vegetation, this area must not be watered.

In accordance with the recommendations of Anthony Irving, we request that this area not be mowed between April 1st and August 1st and that any mowing not be less than 6 inches in height in order to encourage the restoration of natural vegetation.

[1] The cedar grove is situated both in the excluded area and within the Protected Property.

5. *With regard to the remainder of the Protected Property that is maintained as open field:*

   In accordance with the recommendations of Anthony Irving, we request that this area not be mowed between April 1st and August 1st and that any mowing not be less than 6 inches in height in order to encourage the restoration of natural vegetation.

Finally, there is another point which we should clarify; that concerns our right to inspect the Protected Property. Lest there be future uncertainty, we are obliged to give you reasonable notice of an inspection of the Protected Property, and we assure you that you are very welcome to be present on such inspections. However, we cannot be denied access to a Protected Area and there is no requirement that you be present.

The Land Trust is obligated to the residents of Lyme to assure full compliance with all of its easements and is prepared to take whatever steps are necessary to accomplish that, including legal action if necessary.

We have no wish to disturb your enjoyment of your property, but we must fulfill our stewardship obligations. We hold about sixty Conservation Restrictions in Lyme and we fulfill our obligations, invariably with the willing co-operation of landowners.

Clearly this response has been reviewed by Attorney Gahagan as will any suggested amendments to the Conservation Restriction itself; however, if you would prefer to address these requests directly with the Land Trust without lawyers, we are prepared to do so.

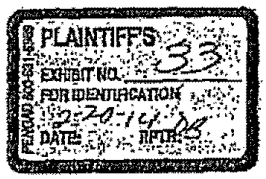
We sincerely hope that you will meet with us to develop a plan for executing the compliance requirements outlined above.

Sincerely

George Moore
President

(3)

PLAINTIFF'S EXHIBIT NO. 33 FOR IDENTIFICATION 2-20-14 DATE: RPTR:



Beverly & Brian Platner
66 Selden Road
Lyme, CT 06371
(860) 526-2400

January 24, 2008

George Moore
Lyme Land Conservation Trust
PO Box 1002
Lyme, Ct 06371

Dear George,

We are receipt of your letter dated January 20, and while we are encouraged that the Land Trust appears to recognize the significant ecological value of our marsh/pond plans, and the master plan in general, we are disappointed to again be part of a continuing colloquy about the terms of the Conservation Easement.

At this juncture, we need to understand the basis for your interpretations of the document and your "directives." Please do not inform us of your "desires or opinions" for the use of the property, rather please cite the document section. We are very confused by statements that begin with "We request that...." This clearly indicates your desires for us to perform a specific task not supported by the legal documents. We state this request because for going on 7 months we have received too many documents that begin with these types of preferences and they are over burdening us with rhetoric and require us to waste time and resources reviewing and responding. As you know, we have made this request before.

Please be very specific about your interpretations and the support of those interpretations in the easement document. Based on your formal address of the issues, we will hopefully be able to bring these extraneous matters to rest, properly assess this negotiation, and begin to assess the most appropriate amendments to the document which will benefit conservation and ecology.

We assume you can provide this document in a timely matter, hopefully within a week. If you have a problem with this time frame, please let us know.

Sincerely,

Brian & Beverly Platner

PLAINTIFF'S EXHIBIT NO. 26

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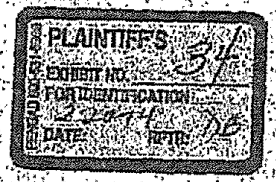
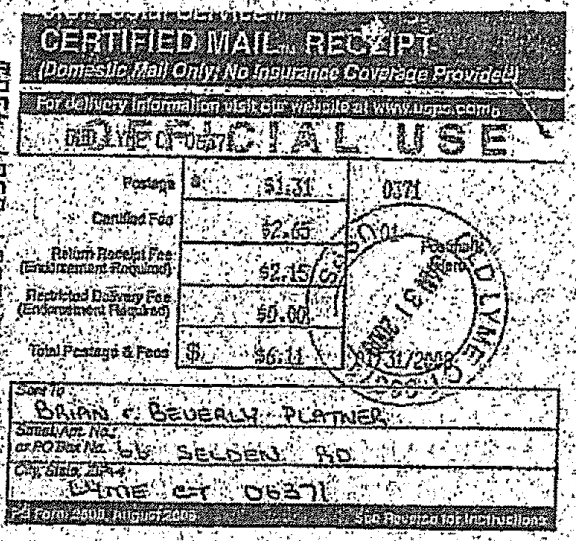




January 29, 2008

SENT BY CERTIFIED MAIL & EM

Brian & Beverly Platner

66 Selden Rd

Lyme, CT 06371

Dear Brian & Beverly,

Thank you for your January 24th response to my January 21st letter.

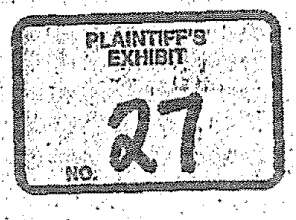
The Land Trust, when communicating through our attorney Fritz Gahagan, or directly through me or the handful of people working on this issue, has been very consistent with our message.

Attached are a memo Fritz Gahagan prepared for me in September 2007 which I sent to you at the time, and a copy of Atty. Gahagan's October 3, 2007 letter to your attorney, Santa Mendoza. In answer to your request in paragraph 3, I respectfully ask you to please re-read this memo and the October 3rd letter, especially as they relate to the mowing issue. A formal legal analysis on a point by point basis would seem premature at this time unless you are indicating that you do not intend to change your practices, in which case written communications should be between our attorneys and not between us.

After our on-site inspection of the disturbances that had occurred, we had our expert Anthony Irving of EECOS visit and write a report on remedial steps to be taken. We sent this to your attorney. I assume she shared it with you. Attached is a copy. It is the basis for our requested remedial actions.

My January 21st letter was carefully worded to once again state our position in the most direct yet respectful, way possible. We tried to discuss this subject with you on December 26th at a meeting at your house, but we were unsuccessful in having a meaningful discussion.

I have reread my January 21st letter. The only places I used language that conveyed "should" and "we request" is when we address mowing. We acknowledge the Conservation Restriction's wording regarding the extent of permitted mowing can be seen as ambiguous. However, we do not believe the Conservation Restriction permits mowing for cosmetic reasons; rather it allows mowing for agricultural purposes and mowing that provides for a continuance of the meadow in a natural condition. I used "should" and "request" to acknowledge that:



- there are different ways to accomplish this; and
- there are desired ecological outcomes that are not required under the Conservation Restriction;
- we would like to establish an open dialogue on the mowing issue and your desires for use of the meadow.

So, in response to your request let me be more specific: if you are going to mow the meadow within the restricted area, the timing and height of your mowing should be restricted to provide for the continuance of a natural condition. This requires limitation of the number of times the meadow is mowed and the height at which it is mowed (minimum of 6 inches in height). We would prefer that mowing be limited to early spring and late autumn. We acknowledge a bona fide agricultural use is permissible as is allowing the area to revert to another natural condition such as woodland or an early succession state, but mowing as you appear to have done is not.

The majority of the Board would prefer the "protected Areas" north of your residence continue as an open meadow. We are still prepared to consider the conversion to a pond and marsh wetland system as long as that results in a better ecological outcome and we resolve outstanding issues as outlined in my letter of January 21st.

In summary: our interpretation of the Conservation Restriction is reviewed in the attached memorandum and letter. The ecological basis for our requests for remedial actions is explained in the EECOS report. The process to be followed to get the approval of the Land Trust to dig test holes and to seek approval for the pond and marsh wetland system is outlined in my January 21st letter.

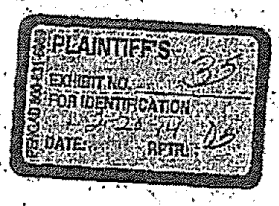
Sincerely

George Moore, President

Lyme Land Conservation Trust

PDF

BEVERLY & BRIAN PLATNER
66 SELDEN ROAD
LYME, CT 06371



January 31, 2008

George Moore
Lyme Land Conservation Trust, Inc.
P. O. Box 1002
Lyme, CT 06371

Dear George:

We are in receipt of your e-mail dated January 29, 2008 and that correspondence has been somewhat if not entirely helpful. We are helped by your clarification that there are desired ecological outcomes that are not required under the Declaration. As you know it has always been our intention to clarify and simplify the Land Trust's communications, including and especially the communications that have been directed to and from Attorney Gahagan and indirectly to us. In simple terms: we are owners of private property and are simply trying to understand the Land Trust's enforcement directives to us, as holders of certain restrictions under the Declaration. These directives need to be separated from discussions of "desired ecological outcomes" and other enhancements the Land Trust may be seeking. Otherwise, we can become very frustrated, confused and over-burdened.

At your suggestion we have yet again reviewed all of these many correspondences and, pending any further clarifications from the Land Trust, we understand the following, and please correct us if we are reading something in error:

1. Mowing grasses is not destroying grasses and is therefore not restricted under Section 1.4.
2. Watering grasses is not destroying grasses and is therefore not restricted under Section 1.4.
3. Creating and maintaining views and sight lines from the residence by selective cutting, pruning and trimming of vegetation is generally permitted pursuant to Section 2.1 notwithstanding any restrictions set out in Section 1, specifically any detriment to habitat preservation mentioned at Section 1.5.
4. Planting trees, shrubs and mowing grasses are generally permitted pursuant to Section 2.2 notwithstanding any restrictions set out in Section 1, specifically any detriment to habitat preservation mentioned at Section 1.5.
5. Setting out a timetable for mowing of grasses or setting the height of the grasses, or choosing the species of grasses is a desired ecological outcome not a directive.

LLCT 2-1-08

6. Notwithstanding Attorney Gahagan's comments in the 9/24/ 07 memo, the Land Trust is willing to consider modification and/or amendment pursuant to Section 4.1 to the Declaration, in order to achieve various desired ecological outcomes to which both parties may, at some point in the future, agree.

7. The Selden Cove bank below Selden Road and to the east of the driveway was cleared in inadvertent violation of Section 1.4, but has been restored to a natural ground cover with native shrubs under the direction of an arborist and with the approval of the Inland Wetlands Commission.

We understand from our attorney that Connecticut statute 47-42a and similar laws in other states were enacted to help charitable groups like the Land Trust enforce conservation easements, where esoteric common law in the past may have required such groups to own land benefited by an easement before the group could legally enforce it. While the statute helps the group retain its status as enforcers, also adds the Attorney General as a possible enforcer, the law does not expand the legal meaning of the terms of documents. Attorney Gahagan, in his 9/24/ 07 memo refers to correspondence "in the Land Trust files" which inform him as to interpretation. We are not, nor was any potential purchaser of the property, privy to that correspondence, since it is not part of the public record.

However, we do have public correspondence dated July 31, 1995 from Attorney Gahagan to the Lyme Conservation Commission which unambiguously states that the owners of 66 Selden Road may " continue to exercise their lawful right to decide whether the meadow should be allowed to return to a wild state, or remain integrated into their residential site. Mowing the meadow periodically merely maintains it in the open state that it has remained for living memory." We therefore feel that our property is in compliance with Section 3.3 of the document.

In conclusion, we are in full agreement with your statement that there are many ways to achieve desired ecological outcomes, and our paid experts stand ready to address and improve the ecology of the property, hopefully with the Land Trust's advice and cooperation. The property will soon be subject to the spring floods and pollution that is wrought in the coming season. We would like to concentrate our energies to protecting our residence and protecting and improving the habitat for indigenous plants and wildlife, vegetation that will buffer and mitigate flood damage and pollution, and protect natural organisms.

Thank you for your consideration of these matters.

Sincerely,

Beverly Platner

Beverly and Brian Platner

LLCT 2-1-08

LYME LAND CONSERVATION TRUST, INC.

P.O. Box 1002, Lyme, Connecticut 06371

February 18, 2008

Sent Via Email and Certified Mail

Beverly & Brian Platner

66 Selden Road

Lyme, CT 06371

Dear Beverly and Brian

With regard to your letter of January 31st, let me comment on a few of your points.

1. Mowing as part of an agricultural use is permitted. Other mowing is not prohibited per se; however, when mowing causes a change in the natural condition it is destroying grasses. Frequent and close mowing will result in the destruction of the natural grasses and replacement by another type. Therefore, our position is certain frequencies and heights of mowing are restricted within the restricted area. Mowing of a frequency or height that causes a change in the natural condition is a violation.
2. Similarly, watering grasses destroys grasses that exist without watering; i.e. the natural condition and is a restricted activity. Continuing to do within the restricted area is a violation.
3. With regard to creating and maintaining sight lines from the residence, we believe that this activity has already occurred and additional clearing of the area to the west of your residence would be a violation. Any cutting of trees in areas that were wooded at the time the Conservation Restriction was created without the Land Trust's consent as provided in §1.7 would be a violation.
4. I have commented on mowing grasses in point 1 above. As long as your plantings are agricultural in nature and or create or maintain a natural condition, that is acceptable. An example of what is not acceptable is where you destroyed the existing grasses and seeded lawn grasses. Please note that §2.2 does not include a right to plant grass. If you are not going to limit your mowing to allow a natural restoration of those areas, we will require restoration by replanting those areas with naturally occurring species of grasses. If you are not planning on limiting mowing on the remainder of the meadow and along the River, we will have to wait and see whether your activity destroys, as we believe it will, the naturally existing grasses that occur in those areas.

PLAINTIFF'S EXHIBIT NO. 29

5. I believe you are missing the point entirely. While creating a bird nesting habitat is desirable, destroying natural grasses through over cutting and irrigation is a violation.
6. I believe the best way to respond to this is to quote from my January 21, 2008 letter:

"As you know, any excavation or removal of earth material is not permitted by the existing Conservation Restriction. Never-the-less, the Land Trust is willing to permit testing under the following conditions:

1. *you obtain the approval of the Inland Wetlands & Conservation Commission,*
2. *the existing Conservation Restriction is amended to allow the test holes,*
3. *the testing is no more invasive than necessary, as determined by the Land Trust,*
4. *the Land Trust has an opportunity to review and approve the test protocol, and*
5. *you share with the Land Trust, all testing results and copies of all engineering reports based on the testing results.*

In fairness, moving beyond the test holes, you should know that the Land Trust will only be willing to discuss amending the Conservation Restriction to allow the proposed pond and marsh wetland system if this results in a better ecological outcome and we can reach an agreement on all issues concerning your compliance with the Conservation Restriction.

7. Your comments are noted. We have not determined the extent of the clearing that took place nor confirmed if the restoration was sufficient. We need to look at that during our spring inspection.

The Land Trust was generally satisfied with the ecological status of the meadow under the prior owners. We are not advocating the pond and marsh wetland system concept you presented to the Board last month to gain a different condition. It is something you want on your property and, since we hold a Conservation Restriction, we will consider it if and only if it results in an improved ecological outcome.

Before giving approval for any changes to the Conservation Restriction we require that we resolve our differences on all outstanding issues, including those referenced in my January 21st letter that you did not comment on in your letter of the 31st. One of those is surveying the restricted area and permanently marking it. You do not refer to that in your letter. Can we start there?

In closing, let me say going back and forth on these issues is not proving to be productive. What is needed is for us to sit down and discuss all the issues within the context of resolving our problems. We need to find solutions rather than engage in a never ending debate.

I suggest we organize a meeting one morning at Town Hall with our attorneys present.

Sincerely

George Moore, President

Lyme Land Conservation Trust

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature X [illegible] ☐ Agent ☐ Addressee B. Received by (Printed Name) [illegible] C. Date of Delivery 2-29-08 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No
1. Article Addressed to: Brian Beverly Plaintiff 66 Seldon Rd Lyme CT 06371	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes
2. Article Number (Transfer from service label) 7007 1490 0004 0367 4318	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	

7007 1490 0004 0367 4318

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	$ [illegible]	0071
Certified Fee	$2.65	04 Postmark Here
Return Receipt Fee (Endorsement Required)	$3.15	
Restricted Delivery Fee (Endorsement Required)	$0.00	
Total Postage & Fees	$ 35.21	02/10/2003

Sent To: BEVERLY X BRIAN PLATNER

Street, Apt. No.; or PO Box No.: 66 SELDEN RD

City, State, ZIP+4: LYME CT 06371

PS Form 3800, August 2006 See Reverse for Instructions

ROBERT P. ANDERSON, JR.
HUGHES GRIFFIS
EDWARD B. O'CONNELL
FREDERICK B. GAHAGAN
TRACY M. COLLINS*
PHILIP M. JOHNSTONE+*
DAVID P. CONDON
CHARLES C. ANDERSON
KERIN M. WOODS+
ANDREW R. CELLEMME+
ELISA V. HOBBS

*ALSO ADMITTED IN MASS.
+ALSO ADMITTED IN R.I.
**ALSO ADMITTED IN N.Y.

WALLER, SMITH & PALMER, P.C.
COUNSELORS AT LAW

52 EUGENE O'NEILL DRIVE
P.O. BOX 88
NEW LONDON, CT 06320
(860) 442-0367
FAX (860) 447-9915

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EMAIL: fbgahagan@wallersmithpalmer.com

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TRACY WALLER (1862-1947)
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BIRDSEY G. PALMER (1915-2000)

OF COUNSEL:
WILLIAM W. MINER
ROBERT W. MARRION

May 20, 2008

Via Certified Mail
Return Receipt Requested

Mr. Brian Platner
Mrs. Beverly Platner
c/o Attorney Santa Mendoza
The Liberty Law Firm
111 Huntington Street
New London, CT 06320-2196

RE: 66 Selden Road, Property of Beverly Platner

Dear Mr. and Mrs. Platner:

The Lyme Land Conservation Trust, Inc. (the "Land Trust") received and reviewed your correspondence of May 7, 2008. Unfortunately it makes it clear that there remain a number of misunderstandings about the Land Trust's position on last year's activities within the "Protected Area" created by the November 1981 Conservation Restriction granted to the Land Trust by Paul B. Selden (The "Conservation Restriction").

The Officers of the Land Trust have attempted, on a number of occasions, to discuss these matter with you and have been rebuffed in each instance. The Land Trust has also sent you several communications, most recently on January 21st and February 18th 2008 with its view of potential and existing violations of the Conservation Restriction over portions of your property. This letter provides you with written notice of the clearest violations and attempts to ensure that you clearly understand what must be done in order to maintain compliance with the Conservation Restriction.

PLAINTIFF'S EXHIBIT
NO. 31

This letter does not address the several points in the Land Trust's February 18th letter that set out the Land Trust's belief that identified ongoing conduct will result in the destruction of natural features over time in violation of the Conservation Restriction.

There are several immediate violations that must be dealt with at this time.

1. The portions of the "Protected Areas" (as meant by the Conservation Restriction) north and west of your residence where natural grasses were destroyed and replaced with lawn grasses must be restored to a natural condition. The same is true for the "beach" you created to the west of your residence. Your actions violated Section 1.4 of the Conservation Restriction. Please provide us with your proposed plan to remediate this violation within 30 days of your receipt of this letter. By remediation, we mean actions which will restore the areas to the condition that existed prior to the violations.

2. There are a number of areas where underground irrigation systems have been placed in violation of Sections 1.1 and 1.3 of the Conservation Restriction. These irrigation systems must be removed. Since most of the irrigation systems are located in areas where the naturally existing grasses were replaced with lawn, please include your plan for removing the irrigation systems from the protected area in your remediation plan for item 1 above.

3. The destruction and clearing of the wooded area and natural understory at the southeast corner of the Protected Areas was a violation of Sections 1.4 and 1.7 of the Conservation Restriction. While the Land Trust concurs with the Conservation Commission that the area you replanted will, *if left undisturbed to naturally regenerate (including over time the regeneration of a wooded state)*, restore that specific area, we have not been able to determine whether the area that was disturbed is larger than the area you restored. If this proves to be the case, additional remediation will be required in this area.

In addition, the Land Trust is not certain about the exact limits of the areas destroyed when you expanded your lawn. As a result we have engaged Richard Gates to work with your surveyor to prepare a survey to locate the exact boundaries of the Protected Areas and this correspondence serves as notice that he will be coming on

the property for that purpose within 30 days.[1] He has been asked to give you reasonable notice of starting his work. At the same time the Land Trust will ask him to make a determination of the size of the area disturbed at the southeast corner of the Protected Area.

The Land Trust believes that this right of access is provided to it and allowed under Section 3.1 of the Conservation Restriction, as the Land Trust cannot properly inspect the area protected by the Conservation Restriction and determine compliance with its terms if the Land Trust is not certain of the location of the boundaries of the Protected Area.

In addition, Michael Richardson, the new property steward, will be contacting you shortly to give notice of an inspection of the Protected Area in order to determine compliance with the Conservation Restriction.

Please be advised that if you are unwilling to cure the violations of the Conservation Restriction, the Land Trust will have no choice but to exercise its legal responsibility to defend the rights and public benefit created by it.

Very truly yours,

Frederick B. Gahagan, of
Waller, Smith & Palmer, P.C.

FBG/dmh

cc: Mr. Templeton Brown, Vice President
Mr. Michael Richardson, Steward

[1] As noted in the Land Trust's earlier correspondence in response to your recent notices of applications to construct improvements near the boundary of the Protected Areas and as discussed at the Public Hearing before the Planning & Zoning Commission, the Land Trust also needs a more specific determination of the boundary in order to provide a formal response pursuant to Section 47-42d of the Connecticut General Statutes.

PLAINTIFF'S EXHIBIT NO. 38 FOR IDENTIFICATION 2-20-14 DATE: RPTR: DB

Beverly & Brian Platner
66 Selden Road
Lyme, CT 06371
(860) 526-2400 Cell: (203)980-0024

Paul Armond
Chairmen, Lyme Conservation Commission
480 Hamburg Road
Lyme, CT 06371

May 10, 2008

Ref: Restoration within a Regulated Area: Tax Map 7, Lot 16

Dear Mr. Armond,

Under the oversight of the enforcement officer and the guidance of Richard Snarski, we have been removing exotic invasive species in our approximately 5.5 acre wooded area. Please see the attached progress report dated May 9, 2008 from Mr. Snarski written to Bernie Gigliotti, ZEO.

I would like to add the following comments. This area has had little to no attention from previous owners, and in fact was used as a "dump" site. We removed 32 car tires that were apparently dumped into this area, along with a lot of other "trash". Some of these tires actually had inflatable inners and thus are over 20 years old. The location of these tires was beyond any high water mark that this property has experienced since 1984. We also collected years of fallen dead branches and arranged them into many wood piles throughout the area. As we speak the underbrush is currently flourishing and coming in fast. Following Mr. Snarki's instructions, we are continuing the "battle". The vines that have been rampant throughout the trees is maybe the most challenging. Many have been removed, but many have been cut and need to die and be removed later.

It is apparent to us that we will be somewhat successful this year, however a long term effort will be needed to maintain the forested area. I look to your guidance on how we proceed annually without causing any violations with the IWC. Is it a simple matter of repeating what we did this year? Of course our efforts will be a much smaller scale since we have made much progress this year.

On a second matter, we have filed an application to perform work at our bulkhead. Unfortunately, we will be out of town during the May 21st meeting. We discussed this with Mr. Gigliotti and provided a letter to him (attached) asking that Gary Terwilliger represent us. Gary is our full time property Care Taker and will be overseeing this project. I trust this will not be an issue for the IWC. If it is, please let me know.

If you need to contact us please call our cell number above, or email Beverly@sensorswitch.com. Thank you.

Sincerely,

Beverly and Brian Platner

Beverly and Brian Platner

P:\IWCUpdateMay08.doc

PLAINTIFF'S EXHIBIT NO. 33

NEW ENGLAND ENVIRONMENTAL SERVICES

BLACKLEDGE RIVER NURSERY

May 9, 2008

Mr. Bernie Gigliotti
Zoning Enforcement Officer
Town of Lyme
480 Hamburg Road
Lyme, CT 06371

RE: Platners Land
Seldon Cove Road
Lyme, Connecticut

Dear Mr. Gigliotti:

This letter is to serve as a status report concerning the removal of exotic invasive plants at the Platners Land. The exotic invasive plant eradication is being conducted on the forested area south of the house. I inspected the progress of the exotic plant eradiation several times during the winter and spring. On May 7, 2008 I inventoried the plant species in the forested area and the following is a list of the plant species present. This is not a complete list of all the plant species present, because some of the herbaceous plants could not be identified this time of year.

Trees
Silver Maple
Sycamore
Eastern Red Cedar
Red Maple
Black Cherry
Flowering Dogwood
Eastern White Pine
Gray Birch
Black Birch
White Birch
Black Willow
Red Oak

Shrubs
Spicebush
Elderberry
False Indigo
Smooth Sumac
Speckled Alder
Highland Blueberry
* Multiflora Rose
* Japanese Barberry
* Morrowii Honeysuckle

Vines
* Asiatic Bittersweet

PLAINTIFF'S EXHIBIT NO. 34

155 JERRY DANIELS ROAD, MARLBOROUGH, CT 06447 (860)295-1022

EXHIBIT 35

Herbaceous Plant Species

Cinnamon Fern	Golden Rod
New York Fern	Jewelweed
Sensitive Fern	Tussock Sedge
Christmas Fern	Bottle Sedge
Jack-in-the-Pulpit	Lakebank Sedge
Skunk Cabbage	Blackberry
Violet	Yellow Iris
Bed Straw	Blue Flag Iris
* Phragmites	Wood Reed Grass
Geum	Broad-leaved Cattail
Field Horsetail	River Bulrush
Wild Rice	Whitewood Aster
May Flower	Blackberry
Poison Ivy	

* denotes exotic invasive plant specie

The forested area encompasses both moderately well-drained floodplain and fresh water tidal wetland. The plant specie diversity is high. The replanted wetland area which was cleared was inspected. The Arrowwood, Red-Osier Dogwood and Winterberry shrubs which were planted survived. Sensitive Fern, Goldenrod, Cinnamon Fern and Yellow Iris are growing in the restored wetland. In approximately two months, the restored wetland should be revegetated. No remedial measures are needed.

The eradiation of exotic invasive plant removal has primarily been focused on the cutting of the large stands of Japanese Barberry and Multiflora Rose. The large plants have been cut and placed in brush piles around the forested area. Dead branches and logs have also been placed in the brush piles. The majority of the Asiatic Bittersweet vines which were growing high into the trees have been cut. Many of the cut vines were pulled out of the trees. No trees or saplings were cut during the plant eradication. Small Japanese Barberry and Multiflora Rose plants are presently being sprayed with an herbicide. The majority of the plants are less than 12 inches in height thus the potential of the herbicide killing the native plant is minimal.

The following eradication measures need to be continued over the next two months:

1. Pull the Asiatic Bittersweet vines which are growing on the ground.

2. Spray the small Multiflora Rose, Morrowii Honeysuckle and Japanese Barberry plants when they resprout.

3. Spray the small patch of Phragmites in the tidal wetland in June when the plants mature.

Please do not hesitate to contact me if you have any questions.

Sincerely yours,

R. Richard Snarski (SRH)

R. Richard Snarski
Certified Professional Soil Scientist #1975
Professional Wetlands Scientist
Certified Sediment & Erosion Control Specialist #200

RRS:srh

Beverly & Brian Platner
66 Selden Road
Lyme, CT 06371

Lyme Land Conservation Trust
P.O. Box 1002
Lyme, CT 06371

March 2, 2010

Dear Board Member,

In January of 2008, we along with our consultants made a presentation to the board concerning the Master Plan for our property at 66 Selden Road. As part of that plan, we showed the relocation of our primary driveway. Since that time, we have not received a formal response from the LLCT concerning it's opinion or support of this project.

Our driveway has numerous problems, the most important of which is proper ingress and egress from our primary residence. The entrance is not properly designed for large vehicles to enter including Fire Trucks or Ambulances; the slope from Selden Road is too steep and is a hazard in icy conditions; and most importantly, a portion of the drive near Selden Cove floods preventing passage. We have filed a detailed plan to resolve all of these problems with the Lyme Inland Wetlands commission and are seeking a permit to resolve these problems. Notice of this action was provided to your organization some time back, and we understand that your leadership currently has all the details of this plan.

At the last IWC meeting, Attorney Gahagan, representing the LLCT, appeared to oppose our plan. It is for this reason we are reaching out to you so you can understand what and why we are making this application.

In review of the topology of our property, and keeping in mind the existence of several mature trees, we desire to relocate part of our driveway westerly away from Selden Cove, and cross the property at an elevation 2 feet higher than its existing elevation. To accomplish this, our driveway would cross into the Restricted Area 20-30 feet for approximately 100 feet across a section that is currently grass. To avoid the Restricted Area completely, we would have to remove 3 mature, and beautiful Cedar Trees. Of special note, our current driveway is asphalt, and we propose to install a pervious driveway for most of it, specifically the stretch across the Restricted Area.

We acknowledge the fact that we have disagreements on activities on our property. We sincerely hope those disagreements can be resolved soon. However, we have an immediate safety issue with the ingress and egress to our home that cannot wait any longer. God forbid if something happened and an emergency vehicle was unable to reach our house!

We appeal to your sense of Ecology and ask that you support our application Wednesday evening March 10th, and do not force us to unnecessarily remove several trees that have existed long before anyone inhabited the property!

Sincerely,

Beverly & Brian Platner

PLAINTIFF'S EXHIBIT
35
NO.

PLAINTIFF'S EXHIBIT NO. 55

April 1, 1992

Mr. Rufus Barringer
LYME LAND CONSERVATION TRUST
11 Oakland Avenue
Lyme, CT 06371

Dear Rufus:

We think it is reasonable to limit the cutting of our field to twice a year; once as early in the Spring that soft ground allows, and just before the cold weather towards the end of October. If the Trust has other concerns at 66 Selden Road, let me know.

Sincerely,

Richard H. Whitehead III

12

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 3, 2015

TRIAL

BEFORE THE HONORABLE JOSEPH Q. KOLETSKY, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff:

ATTORNEY TRACY M. COLLINS
Waller, Smith & Palmer, P.C.
52 Eugene O'Neill Drive
New London, Connecticut 06320

ATTORNEY JOHN F. PRITCHARD
Pillsbury, Winthrop et al
1540 Broadway
New York, New York 10036

ATTORNEY TIMOTHY RUSSO
Pillsbury, Winthrop et al
1540 Broadway
New York, New York 10036

Representing the State of Connecticut:

ATTORNEY GARY HAWES
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, Connecticut 06141

Representing the Defendant:

ATTORNEY SANTA MENDOZA
Attorney at Law
111 Huntington Street
New London, Connecticut 06320

ATTORNEY JOHN LAMBERT
25 Trumbull Place
North Haven, Connecticut 06473

ATTORNEY JANET BROOKS
1224 Mill Street
Building B, Suite 212
East Berlin, Connecticut 06023

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1 F L E U R H A H N E L A W R E N C E ,
2 of 1 Mill Pond Lane, Old Lyme, Connecticut, called as a
3 witness by the Plaintiff, being first duly sworn, was
4 examined and testified under oath as follows:
5 DIRECT EXAMINATION BY ATTORNEY PRITCHARD:
6 Q Mrs. Lawrence, did you ever own 66 Selden Road in
7 Lyme, Connecticut, the property that is the subject matter
8 of this case?
9 A Yes, I did.
10 Q And when did you purchase the property?
11 A In March of 1997.
12 Q Did you purchase the property in your own name?
13 A Yes, I believe so.
14 Q And are you married to Jerry Lawrence?
15 A I am.
16 Q Did you understand that large portions of the
17 property were subject to a declaration of restrictive
18 covenants in favor of the Lyme Land Conservation Trust?
19 A I did.
20 Q And was 66 Selden Lane [sic] you and your husband's
21 primary residence?
22 A Yes, it was.
23 Q Did you live there fulltime?
24 A Yes, we did.
25 Q Did there come a time when you sold the property?
26 A Yes, we sold it in May of 2007.
27 Q And at the time you sold the property, was the

1 property owned by you alone, or by you and Mr. Lawrence?
2 A Both of us; by both of us, yes.
3 Q And to whom did you sell the property?
4 A We sold it to the Platners.
5 Q Okay.
6 ATTY. PRITCHARD: Your Honor, may I approach the
7 witness with an exhibit?
8 THE COURT: You may.
9 BY ATTORNEY PRITCHARD:
10 Q Mrs. Lawrence, I've handed you four photographs, but
11 I just want to direct your attention to the top photograph.
12 A Okay.
13 ATTY. PRITCHARD: That exhibit, Your Honor, is
14 Exhibit 55.
15 THE COURT: It's a full exhibit?
16 ATTY. PRITCHARD: No.
17 THE COURT: Okay, then I won't look at it yet.
18 BY ATTORNEY PRITCHARD:
19 Q Mrs. Lawrence, had you ever seen this photograph
20 before I put it in front of you just now?
21 A No, I've not.
22 Q Okay. And what does this photograph depict?
23 A It depicts the entire property and the adjacent
24 property and the field -- the meadow, with the -- and the
25 house, and the immediate lawn around the property.
26 Q Okay. And when you say it depicts the property, is
27 it your testimony that it depicts the property at 66 Selden

1 ATTY. PRITCHARD: I'm sorry.
2 THE WITNESS: Which side do you mean? You said
3 the left of the --
4 THE COURT: You may approach.
5 BY ATTORNEY PRITCHARD:
6 Q Let me point it out to you.
7 A Okay. Sorry.
8 Q I was referring to this whole area here.
9 A Oh, the whole area.
10 ATTY. BROOKS: May I approach?
11 THE COURT: In fairness not just to other
12 counsel, but the Court couldn't see what you were
13 pointing at.
14 ATTY. PRITCHARD: Yes.
15 THE COURT: Take the exhibit and hold it so --
16 not just me, so that everybody can see it. You know,
17 back up a little so the witness can see it. Okay.
18 ATTY. PRITCHARD: Thank you, Your Honor. I
19 could use all the coaching I can get.
20 THE COURT: Well, you may come to regret that
21 remark.
22 BY ATTORNEY PRITCHARD:
23 Q Mrs. Lawrence, I'm referring to this large, I call
24 it a tan, area to the left of the house.
25 A Yes.
26 Q And my question to you is, can you identify that
27 area in the photo?

1 A Yes.
2 Q What is that area?
3 A That area is a meadow.
4 Q Okay. And at the time you owned the property, was
5 that meadow mowed?
6 A Yes, it was mowed twice a year at the end of July,
7 when all of the birds who were nesting there, the baby
8 birds, had left their nests, and then again around
9 Thanksgiving before the snow falls.
10 Q Okay. And can you tell whether the last time this
11 field was mowed was in that Thanksgiving timeframe?
12 A Yes.
13 Q Who performed the mowing for you?
14 A A man called Ernest Thody.
15 Q Can you spell that for the reporter?
16 A T-H-O-D-Y.
17 Q And do you know what equipment he used to mow this
18 field?
19 A He used a large, sort of a large tractor, and --
20 Q Okay. Does he --
21 A In the very end, the last year, I think it was John
22 Wagner, because Mr. Thody had died.
23 Q Okay. And did Mr. Thody also mow the lawn in front
24 of your house that you've pointed out to us in the
25 photograph?
26 A He did. He did, but that was also done by John
27 Wagner in the last year.

1 Q Let me draw your attention to the woodland area to
2 the right of the house. First of all, can you identify the
3 area to the right of the house?
4 A I can.
5 Q The house is a woodland.
6 A Yes.
7 THE COURT: And for the sake of the record, when
8 you're talking right of the photo --
9 ATTY. PRITCHARD: Right of the photo.
10 THE COURT: In the photo.
11 ATTY. PRITCHARD: Yes. Thank you, Your Honor.
12 BY ATTORNEY PRITCHARD:
13 A Well, that's sort of mixed trees and bushes.
14 Q Okay. And when you and Mr. Lawrence lived on the
15 property, did you cut down any trees that were in this
16 wooded area?
17 A The only ones we cut down were on the river, because
18 we had beavers there and they chewed up about four or five
19 trees to the point that we were afraid that they were going
20 to fall into the creek. So we had trappers come and get
21 some of the beavers, and we took down those trees.
22 Q Did you do any other cutting or mowing inside the
23 wooded area on your property?
24 A No. The only thing we did is, when there were dead
25 branches on some of the cedars and when there were parasites
26 growing on them, we took those down. And then on the --
27 what is here on the left of the house, there were some dead

1 bushes that we took down.
2 Q Okay. Now, did you ever retain the landscaping
3 services of the Novak Brothers Landscaping?
4 A We did, and I think they worked on that area where
5 we had the dead bushes.
6 Q Do you recall any other landscaping services that
7 they performed for you?
8 A You know, I don't -- I was trying to recall. I
9 don't believe they did very much.
10 Q Okay. Did they do any work, so far as you know,
11 outside of the restricted area around the house?
12 A No.
13 Q Now, did you and your husband install an irrigation
14 system at 66 Selden Road?
15 A No, we did not.
16 Q Was there an irrigation system at 66 Selden Road
17 when you purchased the property?
18 A Yes.
19 Q And where was the irrigation system located?
20 A If you look at this photograph, the green areas that
21 you see around the house is where it was.
22 Q Did you -- were there any irrigation systems, so far
23 as you know, in the field to the left of the house in this
24 picture?
25 A No.
26 Q Were there problems with the irrigation system
27 around the house?

1 THE COURT: No.
2 BY ATTORNEY PRITCHARD:
3 Q Mrs. Lawrence.
4 A Yes.
5 Q You mentioned that the tide appears to be high in
6 this photograph.
7 A Yes.
8 Q Did you not?
9 A Yes.
10 Q And how could you tell that the tide is high here?
11 A I can tell because the beach is not visible, because
12 there is a sandy beach below, normally.
13 Q Okay. And would you refer back to Plaintiff's
14 Exhibit 55, please?
15 A Uh-huh.
16 Q Do you see that there is any difference in the tide
17 in Exhibit 55 than the photograph that we're discussing,
18 Exhibit 57?
19 THE COURT: In the what of 55?
20 ATTY. PRITCHARD: 55.
21 THE COURT: In the blank of Exhibit 55. I'll
22 hear it back, please, or you can remember. In the
23 tide.
24 ATTY. PRITCHARD: In the tide.
25 THE COURT: Thank you. I heard size, and it
26 didn't make a lot of sense, so I asked.
27 BY ATTORNEY PRITCHARD:

1 A Yes, the tide has gone out in Exhibit 55.
2 Q And the tide is in in Exhibit 57, correct?
3 A Yes.
4 Q Did you ever, while you owned the property, install
5 a beach inland from the high tide mark of the river?
6 A No.
7 ATTY. PRITCHARD: I have no further questions
8 for Mrs. Lawrence.
9 THE COURT: Cross-exam. I assume it'll be you,
10 Attorney Brooks, because you were objecting.
11 ATTY. BROOKS: Yes.
12 CROSS-EXAMINATION BY ATTORNEY BROOKS:
13 Q You refer to a beach that was not visible in one of
14 the photos. How would you describe the beach that you --
15 not on the photo, but how would you describe that you know
16 existed there?
17 A Well, it's actually visible in Exhibit 55. You can
18 see --
19 Q Well, I'm asking -- I'm actually not asking you from
20 the photo. My thing is, from your knowledge of the site,
21 would you describe what the beach was or looked like?
22 A It was a lovely, sandy beach, and there were dunes.
23 And the dunes, the sand extended into the property for
24 about -- maybe ten, 15 meters, and then came the lawn.
25 Q And the length of this beach; either can you
26 estimate how many feet, or would you like to compare it to
27 the size --

1 THE COURT: She did. She gave you an estimate
2 in meters.
3 ATTY. BROOKS: I'm sorry. I didn't hear that.
4 THE COURT: That's okay. This room swallows
5 up sound.
6 ATTY. BROOKS: I didn't hear it. I heard the
7 depth, but I'm sorry, I missed the length.
8 THE COURT: I would say width. You mean in --
9 but --
10 BY ATTORNEY BROOKS:
11 Q So, along the - you'll stop me if this has been
12 asked and answered - but along the Connecticut River, how
13 long did the beach stretch?
14 A Well, the beach stretched all along the front of the
15 property and around into the creek for maybe ten meters or
16 so.
17 Q Did you ever have occasion to remove unwanted plants
18 at the property, other than -- you referred to some dead or
19 dying, diseased plants. Did you remove any exotic invasive
20 plants?
21 A Not that I know.
22 Q Did you ever experience in the flood waters the
23 depositing of debris or trash on the property ever?
24 A Well, we once or twice had the beach cleaned up
25 because we got driftwood and debris on the beach.
26 Q Did you ever go into the wooded area - the wooded
27 area that faced Selden Island - and remove any trash or

1 debris?

2 A We removed -- we actually were asked by the Platners

3 to remove a whole pile of old tires that were left there by

4 the former owners. We didn't even know they were there

5 because they were in an area that was not visible.

6 Q Were you aware of any flooding on the driveway at

7 the property?

8 A We had, in the ten years we lived in this house -- I

9 think probably around the 20th of April in 2007, there was a

10 major flood, and water came not from the river but from the

11 cove, over the dock, and into the road, our private road, so

12 that we could not drive on it. We parked up on Selden Road.

13 That was the one time there was water.

14 THE COURT: And how long did you say you'd owned

15 the property?

16 THE WITNESS: Ten years.

17 THE COURT: When did you buy it?

18 THE WITNESS: 1997.

19 THE COURT: Okay. I misheard that date. Thank

20 you.

21 ATTY. BROOKS: May I approach the witness to

22 show exhibits that are marked as full exhibits?

23 THE COURT: You certainly may.

24 ATTY. BROOKS: I'm going to be showing S1

25 through S7.

26 THE COURT: Are there bench copies? It's not

27 required.

1 front of the house so he understands what your testimony
2 was?
3 A Okay. Well, I refer to the front of the house as
4 the part facing the river.
5 Q And when you said that you mowed, you mowed lawn in
6 front of the house; is that accurate?
7 A Yes.
8 Q And that was mowed weekly.
9 A Well, maybe every ten days or so.
10 Q And how close to the dunes did you mow?
11 A Probably about ten meters away from the dunes, but
12 we mowed maybe two thirds of that piece of property that
13 comes between the house and the river.
14 Q You mowed two thirds of the property along what
15 length? I understand that between the house and the
16 river -- the entire length from the woods up to the next
17 neighbor's property?
18 A No, no. From -- the length of the house,
19 approximately, I think. I would say the length of the
20 house, because if you look at the restricted area, you can
21 see that there is no way that you could mow up to the next
22 property, because it's unrestricted -- I mean it's
23 restricted. I think I used the wrong term. I mean, we
24 certainly didn't mow up to the next property. That was your
25 question, wasn't it?
26 Q I was -- yes. I was asking what length along the
27 river did you mow. I believe you answered it.

1 B R A N D O N N O V A K ,
2 of 123 Norwich Salem Road, Lyme, Connecticut, called as
3 a witness by the Plaintiff, being first duly sworn, was
4 examined and testified under oath as follows:
5 DIRECT EXAMINATION BY ATTORNEY PRITCHARD:
6 Q Good morning, Mr. Novak. What is your present
7 employment position?
8 A Novak Brothers Landscaping.
9 Q And what is the business of Novak Brothers
10 Landscaping?
11 A It's landscape maintenance, property maintenance,
12 property management, and installations.
13 Q And who formed the company Novak Landscaping
14 Brother [sic]?
15 A My brother and I.
16 Q And approximately how many employees does Novak
17 Brothers Landscaping have these days?
18 A Twenty.
19 Q And looking back to the period of 2007 to 2009 when
20 the events at the heart of this trial took place,
21 approximately how many employees did you have?
22 A Approximately 12 to 15.
23 Q Okay. Did there come a time when you began to work
24 at 66 Selden Road?
25 A Yes.
26 Q Did you perform work for the prior owner, Mrs.
27 Lawrence?

1 A Yes.
2 Q And did you do any work outside of the restricted
3 area on her property?
4 THE COURT: Outside?
5 ATTY. PRITCHARD: Outside of the restricted
6 area. In other words, in the protected areas.
7 THE COURT: Outside of the restricted area
8 would --
9 ATTY. PRITCHARD: Yes, Your Honor. What I'm
10 wondering is whether Mr. Novak performed any services
11 that extended into the -- I should have said the
12 [indiscernible].
13 THE COURT: That's why I interrupted you,
14 because even if Mr. Novak understands the question,
15 I'm not going to understand the answer.
16 BY ATTORNEY PRITCHARD:
17 Q Did you perform any services outside of the
18 restricted area?
19 A No.
20 Q Did there come a time when you and Novak Brothers
21 Landscaping were retained by the Platners?
22 A Yes.
23 Q When did that occur?
24 A I believe the spring of 2007, May of 2007.
25 Q Do you know whether it was shortly after Mrs.
26 Platner acquired the property?
27 A I believe so.

1 you mowing for that charge -- on May 15, 2007 for a charge
2 of $150?
3 A I believe around the house.
4 Q Around the house. Okay. Do you recall how often
5 you were mowing the lawn around the house?
6 A No.
7 THE COURT: Well, would it be fair to look at
8 the bill --
9 THE WITNESS: Yes, if you ask me to look at the
10 bill, I can. Once a week; it looks like once a week.
11 BY ATTORNEY PRITCHARD:
12 Q Now, I'm going to be asking you a little bit later
13 about some landscaping activities that took place in the
14 vicinity of the house during 2007 and 2008, but I would like
15 to go to the period 2009, and let me ask you whether you
16 recall doing major landscaping in the field portion of the
17 protected areas during 2009.
18 A I don't remember the years. I don't -- I mean --
19 Q You don't remember the dates.
20 A Yes, the dates, the years. I mean --
21 Q Did there come a time when you did very substantial
22 landscaping in the field portion of the protected areas?
23 A We've planted flowers and shrubs in the fields, if
24 that's what -- that's what we did.
25 Q And did you plant lawn-type grasses throughout the
26 field?
27 A We planted grass throughout the field.

1 THE COURT: I don't know what lawn-type -- what
2 is a non-lawn-type grass?
3 THE WITNESS: That's a good question.
4 ATTY. PRITCHARD: Field grasses, Your Honor. If
5 I may, we will come to the testimony about what the
6 lawn-type grasses are, because they're reflected on
7 the invoices as we go forward.
8 THE COURT: I want to see his bill for non-lawn-
9 type grasses.
10 BY ATTORNEY PRITCHARD:
11 Q Now, Mr. Novak, would you turn to Exhibit 59 in the
12 other book? Do you have that photograph in front of you?
13 A Yes.
14 Q You testified that you had planted shrubs and
15 flowers in the protected areas and that you had planted
16 grass. Can you recognize the subject matter of this
17 photograph?
18 A Yes.
19 Q What is it?
20 A There's grass, there's flowers --
21 THE COURT: Do you recognize where the picture
22 is? I think that's what he meant by the subject
23 matter.
24 THE WITNESS: Yes.
25 BY ATTORNEY PRITCHARD:
26 Q Where is the -- what is this a picture of, Mr.
27 Novak?

1 Q So as you look at the plants that are planted on the
2 hill, are the lion's share of those plants planted on the
3 Platners' property?
4 ATTY. MENDOZA: Your Honor, objection to the use
5 of lion's share. I don't --
6 THE COURT: Yes. If the witness doesn't
7 understand it - you don't have to understand it - if
8 the witness doesn't understand it, he'll tell us.
9 BY ATTORNEY PRITCHARD:
10 Q Are most of these plants planted on the Platners'
11 property?
12 A I would say about 60% on the restricted area. I'd
13 say about 60% are planted on the restricted area.
14 Q Okay. And what about the grass; is 100% of that on
15 the restricted area?
16 A Maybe not 100, but really close.
17 Q Okay. Could you turn to Exhibit 60A, the next
18 exhibit in the photographic book? Same one.
19 ATTY. MENDOZA: Your Honor?
20 THE COURT: Yes.
21 ATTY. MENDOZA: There's been testimony that is
22 being elicited from documents and photographs that
23 are not in evidence.
24 THE COURT: Which one is that?
25 ATTY. MENDOZA: All of them.
26 THE COURT: You're telling me 59 is not a full
27 exhibit?

1 ATTY. MENDOZA: Objection, Your Honor.
2 THE COURT: Ground?
3 ATTY. MENDOZA: Confusing. We don't know what
4 he means by these plants.
5 THE COURT: I think you're probably right. I
6 mean, I don't know what a selection of these plants
7 are. But if the witness --
8 Do you understand the question? Yes or no.
9 THE WITNESS: These particular ones? I can't --
10 THE COURT: Do you understand the question?
11 THE WITNESS: Say the question again.
12 THE COURT: Can you testify that a selection of
13 these plants were planted in the restricted areas?
14 Do you understand the question?
15 THE WITNESS: Yes. No, I can't. I mean, I'm
16 not saying I didn't plant in the restricted area, but
17 these particular ones, I cannot.
18 THE COURT: Put a question.
19 THE WITNESS: Is that a good answer? Does that
20 make sense?
21 THE COURT: We'll find out at the end of the
22 trial.
23 BY ATTORNEY PRITCHARD:
24 Q Mr. Novak, can we cut through this? Did you not
25 plant -- did you plant a very substantial number of plants
26 on the hillside in the protected area as reflected in the
27 photograph that you identified at tab 59?

1 A Yes.
2 Q Thank you. Did there come a time, Mr. Novak, when
3 you planted plants under the cedar trees in the protected
4 areas?
5 A Which cedar trees?
6 Q Do you understand that there are a number of cedar
7 trees throughout this field area in the protected area?
8 A Yes.
9 THE COURT: Aren't there also cedar trees to the
10 south of the property?
11 THE WITNESS: There are cedar trees all over.
12 ATTY. PRITCHARD: Yes, Your Honor, but the ones
13 that I'm asking about are these in --
14 THE COURT: Okay, well, you asked about cedar
15 trees. The witness said, what cedar trees? You
16 proceeded to use your laser pointer to point out a
17 particular area. The record can't see that. So in
18 the interest of making some sort of record of these
19 proceedings, I intervened to say that pointing a
20 laser pointer where you think there are cedar trees
21 when I've heard testimony that there are also cedar
22 trees somewhere else is not fair to the record or to
23 the witness, may I say.
24 ATTY. PRITCHARD: Okay. Well, thank you again,
25 Your Honor.
26 THE COURT: Oh, you're welcome.
27 ATTY. PRITCHARD: I really am thankful.

1 BY ATTORNEY PRITCHARD:
2 Q So Mr. Novak, I am referring to the field north of
3 the house; are there a number of cedar trees in that field?
4 A Yes.
5 Q And did Novak Brothers Landscaping under-plant a
6 number of those cedar trees with plants?
7 A Yes.
8 Q Before I go further with this line of questioning,
9 let me ask you to turn to the photograph at 63.
10 THE COURT: 63 is not a full exhibit.
11 ATTY. PRITCHARD: Not a full exhibit.
12 BY ATTORNEY PRITCHARD:
13 Q And so my first question to you, Mr. Novak, is, do
14 you recognize this exhibit as a fair and accurate depiction
15 of the Novak Brothers planting activities on the hillside in
16 the northern part of the protected areas?
17 A Which photograph? This is 63.
18 THE COURT: I'm sorry. You've got probably --
19 THE WITNESS: This one?
20 ATTY. PRITCHARD: Yes.
21 THE COURT: -- number 62. I don't know what
22 book it's in.
23 THE WITNESS: Oh, it goes up to 54.
24 THE COURT: I'm guessing the other book.
25 THE WITNESS: You said only 36 --
26 THE COURT: No, we've gone off of 36 and onto
27 62.

1 THE COURT: Now we're going back to Exhibit 36.
2 And the Bates stamp number is what?
3 THE WITNESS: 25.
4 BY ATTORNEY PRITCHARD:
5 Q Let me direct your attention to the first item there
6 that says tree rings and general garden maintenance, 20
7 hours. Does this reflect the beginning of the work planting
8 under the tree rings?
9 A I don't know if it was the beginning. I don't know.
10 Q Well, does it reflect work planting under the tree
11 rings?
12 A Yes.
13 THE COURT: Planting what?
14 ATTY. PRITCHARD: Planting under the tree rings.
15 BY ATTORNEY PRITCHARD:
16 A Are you referring to the field tree rings?
17 Q I'm referring to the field in the protected areas.
18 A I don't know. There's -- half the amount of tree
19 rings I believe are in the field, and about half are in the
20 non-restricted area.
21 THE COURT: Excuse me. What's a tree ring?
22 THE WITNESS: Planted flowers under a tree.
23 THE COURT: Ah, okay. Thank you.
24 THE WITNESS: That's what a tree ring is, and
25 half of them are in the restricted, and half of them
26 are not.
27 ATTY. PRITCHARD: Maybe this will help Your

1 Honor.
2 BY ATTORNEY PRITCHARD:
3 Q Mr. Novak, will you turn to the photograph at
4 Plaintiff's Exhibit 64?
5 THE COURT: I understand what a tree ring is
6 now.
7 ATTY. PRITCHARD: Okay.
8 THE COURT: I don't need to see a picture of
9 flowers around a tree trunk. I've just never heard
10 it called a tree ring.
11 ATTY. PRITCHARD: Oh, okay. I understand. We
12 do want to get some of these photographs into
13 evidence.
14 THE COURT: Well, that would be grand, but you
15 don't have to do it on my account.
16 ATTY. PRITCHARD: Thank you.
17 BY ATTORNEY PRITCHARD:
18 Q So if I understand your testimony - and correct me
19 if I'm wrong - there were tree rings throughout the
20 property. Some of the tree rings were within the protected
21 areas, and some of the tree rings were in the unrestricted
22 area; is that correct?
23 A Yes.
24 THE COURT: About half.
25 ATTY. PRITCHARD: About half.
26 BY ATTORNEY PRITCHARD:
27 Q And did you plant all the tree rings in the

1 ring. What's a conduit?
2 THE WITNESS: A conduit is electrical, a pipe.
3 THE COURT: For the purpose of carrying --
4 THE WITNESS: Electricity.
5 THE COURT: An electrical wire.
6 THE WITNESS: Yes.
7 THE COURT: Okay. And you don't know where that
8 was installed.
9 THE WITNESS: No.
10 THE COURT: Okay.
11 BY ATTORNEY PRITCHARD:
12 Q While we're on that item, though, Mr. Novak, did
13 Novak Brothers remove sod from under the cedar trees prior
14 to planting?
15 A What we did was - around the tree rings - is we cut
16 the grass around the tree rings to plant flowers. That's
17 what we did.
18 Q Am I understanding, did you take out the existing
19 grass that was there in order to create flower beds?
20 A Yes.
21 Q Okay. Now, on September 15, we have 39 hours,
22 general garden work and planted tree rings; do you see that?
23 A Yes.
24 Q And are we planting tree rings here throughout the
25 property, including the protected areas?
26 A Yes. I don't know about that date, but I planted
27 tree rings in the non-protected and the protected. You're

1 planted tree rings for 27 hours?
2 A Yes.
3 Q The next day, the 17th, planted tree rings for 47
4 hours.
5 A Yes.
6 Q On the 18th, planted tree rings.
7 A Yes.
8 Q 21st, planted tree rings and hillside planting.
9 A Yes.
10 Q Now, can you refer to Page 29 of Exhibit 36?
11 A Yes.
12 Q Do you see an item there, topsoil, premium topsoil,
13 per yard, 21?
14 A Yes.
15 Q Is that topsoil that you sold to Mr. and Mrs.
16 Platner?
17 A Yes.
18 Q And the labor item for 24 hours is spread topsoil in
19 field; do you see that?
20 A Yes.
21 Q Is -- do you know whether that is the topsoil that
22 we saw reflected in Plaintiff's Exhibit 36?
23 THE COURT: I'm sorry. I'm sure you don't mean
24 36.
25 ATTY. PRITCHARD: 63; dyslexic.
26 BY ATTORNEY PRITCHARD:
27 A You're asking me what 63 -- the picture --

1 THE COURT: You're not going to remember what 63
2 is.
3 THE WITNESS: No, I don't know.
4 THE COURT: Do you know what field got the
5 topsoil? Was it the picture where the brown was on
6 the left of the driveway and the green was on the
7 right of the driveway? Remember that picture?
8 THE WITNESS: Yes. The 20 -- I do remember
9 that. Twenty-one is -- you're asking if the 21 yards
10 of topsoil -- is that what you're asking?
11 ATTY. PRITCHARD: Right.
12 THE WITNESS: Where did that go? I don't
13 believe that was the hillside. I don't --
14 THE COURT: I think he also asked you to look at
15 the picture in the book called 63, being careful not
16 to bump the microphone, and he's asking you if the
17 topsoil in the invoice that's Bates-stamped 029 is
18 the topsoil that went on the left-hand side of that
19 picture, if you know.
20 THE WITNESS: I don't think it is.
21 BY ATTORNEY PRITCHARD:
22 Q The item directly beneath the topsoil reads spread
23 topsoil in field, doesn't it?
24 A Mm-hmm.
25 Q What -- is that the field portion of the protected
26 areas?
27 A I can't remember.

1 plantings.
2 Q Who chose the plants?
3 A Mainly one of my guys, Dan.
4 Q Okay. Now, Mr. Novak, I'd like you to turn to Page
5 31 of Exhibit 36.
6 A Yes.
7 Q Before I ask you about this, we saw at Exhibit 63,
8 if you'll turn to it, please, the photograph of the topsoil
9 on the field. Was that topsoil spread in preparation for
10 planting grass seed?
11 A Didn't you ask me this question already? Didn't we
12 go over this?
13 Q 63, yes, but I have another question to ask you.
14 A I just don't want to get confused.
15 THE COURT: You're looking at 63, and you have
16 been asked questions about that very picture before.
17 THE WITNESS: Yes.
18 THE COURT: Now he's asking you -- I won't
19 repeat it. You ask him, please.
20 BY ATTORNEY PRITCHARD:
21 Q Yes, was that soil spread in preparation for hydro-
22 seeding?
23 A Yes.
24 Q Okay. And what is the process of hydro-seeding?
25 A You spray it on. What is the process of hydro-
26 seeding? You spread out topsoil and then you spray hydro-
27 seed on the ground.

1 Q Okay. And what is hydro-seed?
2 THE COURT: Seed and water.
3 THE WITNESS: Yes.
4 ATTY. PRITCHARD: Thank you. I see the Court is
5 on top of this.
6 BY ATTORNEY PRITCHARD:
7 Q And when you hydro-seed, do you use grass seed as
8 well, strewn grass seed?
9 A I use -- I put --
10 THE COURT: I think -- from the gesture that was
11 made with the question, I think you're being asked,
12 in addition to the spraying on of the hydro-seed mix,
13 do you also throw grass seed onto the soil?
14 THE WITNESS: Sometimes I broadcast it first
15 and then hydro-seed it. Like sometimes -- yes. Not
16 all the time, but sometimes I do.
17 BY ATTORNEY PRITCHARD:
18 Q Okay. And is the objective to grow the type of seed
19 that you hydro-seed and that you broadcast on top of the
20 soil?
21 A To grow the type of seed that I seed with?
22 Q Yes.
23 A Yes.
24 Q Okay. And is it true that, when you hydro-seed an
25 area by spreading topsoil on top of it and broadcasting and
26 hydro-seeding, that it effectively kills the grass that's
27 under the hydro-seed -- under the topsoil?

1 to a photograph.
2 THE COURT: Yes, I understand, but the witness
3 was looking like he could use a little direction.
4 ATTY. PRITCHARD: Oh, okay. Thank you.
5 THE WITNESS: Thank you.
6 ATTY. PRITCHARD: Evidently, we all can.
7 BY ATTORNEY PRITCHARD:
8 Q So, Mr. Novak, would you turn -- would you look at
9 the second item there? It says slice-seeded field.
10 A Yes.
11 Q 7.5 hours. And did there come a time that Novak
12 Brothers slice-seeded the entire field north of the house,
13 or virtually the entire field north of the house in the
14 protected areas?
15 A Yes.
16 Q Okay. And what is slice-seeding?
17 A Slice-seeding is -- you would take a slice-seeder
18 and you go over the ground with it, and it slices like a
19 quarter of an inch, and it drops the seed into the areas
20 where it was sliced or turned over or cultivated, whatever,
21 and -- so that the grass could grow.
22 Q And is the objective of slice-seeding to replace the
23 existing grasses in the field with the types of seed that
24 you are planting?
25 A In slice-seeding, you add grasses; it doesn't
26 replace. If you want -- yes. It doesn't replace, no.
27 Q Let's look at this, the second item, again. You

1 The whole purpose of pre-marking and Court orders is
2 that they be done in good faith.
3 ATTY. MENDOZA: Thank you.
4 THE COURT: So hopefully, at ten o'clock
5 tomorrow morning, I'll be pleasantly surprised to see
6 more full exhibits.
7 Put a question, please, Mr. Pritchard.
8 BY ATTORNEY PRITCHARD:
9 Q Okay, Mr. Novak, would you look at Page 40, please?
10 THE COURT: Of --
11 ATTY. PRITCHARD: Of Exhibit 36.
12 THE COURT: Thank you.
13 BY ATTORNEY PRITCHARD:
14 Q This invoice is dated April 30, 2010, is it not?
15 A Yes.
16 Q Do you see the items there that say mowing, lawn
17 mowing -- April 20, lawn mowing; April 24, lawn mowing;
18 April 27, lawn mowing; and April 30?
19 A Yes.
20 Q You are no longer brush-hogging the field for Mr.
21 and Mrs. Platner, are you?
22 A We are not using the brush hog in 2010. I think
23 we're using Scag mowers.
24 Q Are you using the same machinery that you used to
25 mow the original lawn around the Platner residence for $150
26 a mow?
27 A Yes.

1 Q Now you've identified the lawn mowing as something
2 that is done for $1,050 a mow throughout the whole property,
3 correct?
4 A Yes.
5 THE COURT: Well, that can't be right. I
6 mean, -- well, look at the bill. Excuse the
7 interruption. Have you got the bill in front of you?
8 THE WITNESS: Yes.
9 THE COURT: You're not telling me that in April,
10 you're mowing the entire property on the 20th, and
11 four days later, you're mowing the entire property
12 again, four days later. I'm thinking that what this
13 means is that it took you four days to mow the entire
14 property, but you take a look and see what you think.
15 THE WITNESS: I don't know what year, but there
16 was -- we don't do it now, but we have mowed the
17 property twice a week.
18 THE COURT: Really?
19 THE WITNESS: Yes.
20 THE COURT: In April?
21 THE WITNESS: Not in April, because in April,
22 you don't mow lawns.
23 THE COURT: Well, I --
24 THE WITNESS: In April, there's no grass
25 growing, so --
26 THE COURT: I'm not -- I don't live in Lyme, but
27 I don't live very far.

1 of the house and in front of the house?
2 A The north of the house, the front of the house, yes.
3 That also includes not just straight mowing. It includes,
4 you know, blowing off all the walkways, the driveway; it
5 includes weed-whacking. It's not strictly mowing, and that
6 price I think included -- yes, included everything else that
7 goes along with that, not just --
8 Q What does it mean to aerate a lawn?
9 A Aerate is to add oxygen to the soil, also known as
10 core cultivation. It pulls plugs out of the ground.
11 Q And how often -- did you aerate the entire north of
12 the house on a regular basis?
13 A Once a year.
14 Q I refer you to Page 45 of Exhibit 36; the item reads
15 aerated lawn on September 9, 2010 for $3,800. Do you see
16 that?
17 A Yes.
18 Q Is that the aeration you're talking about?
19 A That's for the restricted and non-restricted fields.
20 Whatever -- yes, that's for everything.
21 Q Do you remember irrigation being installed in the
22 protected areas in the field north of the house?
23 A Yes.
24 Q Do you remember when the irrigation system was
25 installed in that area?
26 A The date, no; the year, no.
27 Q Do you recall whether it was before you slice-seeded

1 the field?
2 A No.
3 Q Did you see the irrigation system actually being
4 constructed?
5 A From time to -- yes, from time to time.
6 Q Okay. Would you turn to paragraph -- photograph 66,
7 please?
8 THE COURT: Do you know who -- excuse me. Do
9 you know who installed the --
10 THE WITNESS: Yes.
11 THE COURT: Who?
12 THE WITNESS: The company is Golf Irrigation.
13 THE COURT: Gulf.
14 THE WITNESS: Golf.
15 THE COURT: Gulf. G-U-L-F.
16 THE WITNESS: I think it's G-O-L-F.
17 THE COURT: G-O-L-F. Thank you.
18 THE WITNESS: Golf Irrigation.
19 THE COURT: Okay. And do you have any personal
20 knowledge of the size of the irrigation system?
21 THE WITNESS: It covers -- it goes through the
22 restricted and non-restricted areas.
23 THE COURT: In their entirety?
24 THE WITNESS: I want to say 100%, no, because
25 they're in the grass areas.
26 THE COURT: The grass areas are or are not
27 irrigated?

1 THE WITNESS: The grass areas are irrigated.
2 THE COURT: Okay.
3 THE WITNESS: Yes.
4 THE COURT: The tree rings?
5 THE WITNESS: Yes.
6 THE COURT: Both restricted and non-restricted.
7 THE WITNESS: I don't know about every one of
8 them, but yes.
9 THE COURT: Okay, thank you. Excuse the
10 interruption.
11 BY ATTORNEY PRITCHARD:
12 Q Mr. Novak, would you turn to the photograph at
13 Exhibit 68 in the photograph book, please?
14 THE COURT: That's still for ID.
15 THE CLERK: I'm sorry, Your Honor. I didn't
16 hear the docket number.
17 THE COURT: 68. Not the docket number but the
18 exhibit number. That's okay. It's getting to be
19 that time.
20 THE CLERK: It is still ID, Your Honor.
21 THE COURT: Okay.
22 BY ATTORNEY PRITCHARD:
23 Q Can you identify the subject matter of this
24 photograph?
25 A It's -- yes.
26 Q What is it?
27 A It's the Platners' barn, trees, field, driveway,

1 THE COURT: The witness's comments - saying I
2 don't know, some of it was, some of it wasn't - will
3 not make you a particularly helpful record, if you
4 don't mind comments from the peanut gallery.
5 ATTY. PRITCHARD: As opposed to the exhibits
6 themselves, which --
7 THE COURT: I don't understand what that means.
8 ATTY. PRITCHARD: I withdraw that.
9 THE COURT: My point is, the exhibits are a far
10 better record of your case than what we have been
11 doing with this witness, through no fault of the
12 witness.
13 DIRECT EXAMINATION BY ATTORNEY PRITCHARD:
14 Q Mr. Novak, did you perform services for Mr. and Mrs.
15 Platner in the woodland area of the property?
16 A Which woodland?
17 Q The woodland south of the house.
18 A Yes.
19 Q Did you mow in that area of the property?
20 A Yes.
21 Q And did you blow leaves in that area of the
22 property?
23 A Yes.
24 Q And when you blew leaves, where did you blow them
25 to?
26 A We hauled -- we would -- I think we took them out.
27 We took out the leaves.

1 Q Did you pick up sticks and generally clean up the
2 woods?
3 A Yes.
4 Q Okay. I'm going to ask you to turn to Exhibit 80,
5 please. Do you recognize the subject matter of Exhibit 80?
6 A Yes.
7 Q What is it?
8 A It's a picture of a woods at the Platner property.
9 ATTY. PRITCHARD: I move this exhibit into
10 evidence, Your Honor.
11 ATTY. MENDOZA: Objection.
12 THE COURT: Sustained.
13 BY ATTORNEY PRITCHARD:
14 Q Is this a fair and accurate presentation of a
15 photograph of the woods on the Platner property?
16 ATTY. MENDOZA: Objection, leading.
17 THE COURT: Ground?
18 ATTY. MENDOZA: Leading.
19 THE COURT: Overruled. He may say yes, he may
20 say no.
21 THE COURT: Do you remember the question?
22 THE WITNESS: Yes.
23 BY ATTORNEY PRITCHARD:
24 A Yes, this is -- I can recognize the subject.
25 ATTY. PRITCHARD: I move the exhibit into
26 evidence, Your Honor.
27 ATTY. MENDOZA: May I?

1 number?
2 THE WITNESS: Page 3.
3 ATTY. PRITCHARD: Page 3, Bates number 3.
4 BY ATTORNEY PRITCHARD:
5 Q Do you see the item there, sand per ton, 22.5?
6 A Which date?
7 Q It's on August 3, 2007.
8 A August -- page -- I'm sorry, I'm on the wrong page.
9 Okay, August 27th --
10 Q August 3, 2007.
11 A Okay, yes.
12 Q On that date, did you sell Mr. and Mrs. Platner 22.5
13 tons of sand?
14 A Yes.
15 Q Do you see the item above it that reads weeded beach
16 and spread sand?
17 A Yes.
18 Q Trimmed grapevine, filled bluestone walkway, and
19 trimmed deadwood.
20 A Yes.
21 Q Did you put 22.5 tons of sand or thereabouts on the
22 beach and spread the sand?
23 A No, it says backfilled bluestone walkway.
24 THE COURT: I couldn't hear you. Say again.
25 THE WITNESS: It says backfilled bluestone
26 walkway.
27 THE COURT: Yes, and trimmed deadwood.

1 THE WITNESS: Mm-hmm.
2 THE COURT: So your testimony about the sand is
3 what?
4 THE WITNESS: He's asking me if I put 22 ½ tons
5 of sand on the beach.
6 THE COURT: Yes, and you said no.
7 THE WITNESS: Because it says backfilled
8 bluestone walkway.
9 THE COURT: With 22 tons of sand?
10 THE WITNESS: Yes, it could order -- sure.
11 THE COURT: How long is the walkway that takes
12 22 tons --
13 THE WITNESS: I don't even know which walkway it
14 is, to be honest with you.
15 THE COURT: How many --
16 THE WITNESS: I don't remember, but that's what
17 it says.
18 THE COURT: Okay. Your biggest truck is five
19 tons, right? Five yards.
20 THE WITNESS: Yes.
21 THE COURT: Okay. And what's the weight of your
22 biggest truck?
23 THE WITNESS: About a ton per yard, roughly.
24 THE COURT: Okay. So we're talking, if your
25 trucks are three to five yards, therefore -
26 THE WITNESS: Yes, five trucks.
27 THE COURT: To backfill the world's longest

1 bluestone driveway --
2 THE WITNESS: Yes.
3 THE COURT: -- it's going to take five
4 truckloads of sand.
5 THE WITNESS: You could use a lot more than five
6 loads of whatever when you're building stuff.
7 THE COURT: Okay.
8 THE WITNESS: I don't remember this date.
9 THE COURT: Okay.
10 THE WITNESS: So I can't -- I mean, I'm just
11 reading what it says.
12 THE COURT: So you're telling me that you could
13 use that much to backfill a driveway as opposed to
14 filling the beach.
15 THE WITNESS: Yes, if not less or more. Yes.
16 BY ATTORNEY PRITCHARD:
17 Q Mr. Novak, what does this item - weeded beach and
18 spread sand - refer to?
19 A It says weeded beach and spread sands, trimmed
20 grapevine, backfilled bluestone walkway, and trimmed
21 deadwood. John, I don't remember this. I mean, I can't --
22 I'm just telling you what I'm reading; whatever it says, it
23 says.
24 Q Mr. Novak, I'm going to ask you to turn to Exhibit
25 76.
26 THE COURT: Repeat the number, please.
27 ATTY. PRITCHARD: Exhibit 76. I'm going to

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 3, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, New London, Connecticut, before the Honorable Joseph Q. Koletsky, Judge, on the 3rd day of March, 2015.

Dated this 20th day of March, 2015, in New London, Connecticut.

Melanie Pearce
Court Recording Monitor

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 4, 2015

TRIAL

BEFORE THE HONORABLE JOSEPH Q. KOLETSKY, JUDGE

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Recorded & Transcribed by:
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Court Recording Monitor
70 Huntington Street
New London, Connecticut 06320

1 Q Okay. You would assume that your dump trucks used
2 this road coming through the photograph in order to bring
3 the dirt to the hydro-seeded area, correct?
4 A I don't know exactly where it was dumped and spread,
5 but this area.
6 Q Okay. Let me turn back, Mr. Novak, to Exhibit 72,
7 which is another photograph marked full. Can you identify
8 whether this is a photograph of a portion of Mrs. Platner's
9 property?
10 A Yes.
11 Q And what portion of that property is it?
12 A It's along the cedar grove.
13 Q Can you see in the middle of the property whether
14 there is a beach area there?
15 A Yes.
16 Q Did the Novak Brothers bring large trunks of trees
17 and place them along the perimeter of the Connecticut River?
18 A I don't believe we installed the large driftwood
19 that came in. I have repaired them. I've never -- I don't
20 think we did the installation.
21 Q Can you describe for the Court the driftwood that is
22 placed near the Connecticut River?
23 A It's driftwood from the Connecticut River, and it's
24 placed along the edge of the Connecticut River.
25 THE COURT: What do you mean, placed?
26 THE WITNESS: Do you see it? Could I show you?
27 THE COURT: Well, you're on 72?

1 THE WITNESS: Can I stand up?
2 THE COURT: Yes, of course, but hang on, because
3 I want everybody to see what it is you're going to
4 show me.
5 THE WITNESS: See the wood right there, the
6 logs?
7 THE COURT: I'll take a closer look. Okay.
8 THE WITNESS: That's wood that replaced --
9 THE COURT: So you built some --
10 THE WITNESS: I don't believe we built it.
11 THE COURT: Okay.
12 THE WITNESS: I don't.
13 THE COURT: What you're showing me is
14 driftwood --
15 THE WITNESS: Yes.
16 THE COURT: -- placed so as to be a barrier --
17 THE WITNESS: Kind of, yes.
18 THE COURT: -- or a support for the ground.
19 THE WITNESS: Yes, that's basically -- I mean, I
20 don't know if it's a barrier. I don't know why. I
21 mean, I didn't do the installation. Sometimes, the
22 high tides will pop them up and I'll place them back.
23 THE COURT: Okay.
24 THE WITNESS: You know what I mean? So I mean,
25 have I maintained them? Yes. Have I installed them?
26 No. I'm pretty sure I did not install them.
27 THE COURT: And how high are they from the sand?

1 THE COURT: Are you done with the demonstrative?
2 I think the witness would be more comfortable on the
3 stand.
4 BY ATTORNEY MENDOZA:
5 Q Yes, you may resume the witness stand. Thank you.
6 A The driveway is probably a quarter of a mile long.
7 Q From the entrance of Selden Road to the house.
8 A To the house, yes.
9 Q Now, Mr. -- the plaintiff's counsel asked you a lot
10 of questions about planting that you did on a hillside near
11 Selden Road; do you recall that, sir?
12 A Yes.
13 Q Okay. And you testified yesterday that you and your
14 workers planted a number of shrubs at the hillside near the
15 road; is that correct?
16 A Yes.
17 Q I would like to ask you, what was there before you
18 planted the shrubs? What vegetation? Can you describe it?
19 A There was a -- on the hillside of the neighbor's
20 house, there was a lot of vines growing up through trees
21 that we pulled out. That was probably bittersweet and,
22 like, poison ivy vines, because there -- and there was some
23 pricker bushes that we would take out. There was -- but
24 with that, a lot of the area with the vegetation was on -- I
25 would say it was, a lot of it, was into Judy's hill. I
26 mean, most of the trees in the woods is Judy's.
27 Q Are you saying that your testimony yesterday when

1 you planted those shrubs?
2 A Yes.
3 Q What are prickers?
4 A They're -- I forget the -- I don't -- the multiflora
5 rose. They're -- I think -- I believe they are invasive.
6 They're a multiflora rose that just grows up and gets really
7 prickery and --
8 Q So it's your testimony that you removed prickery
9 invasives from the hillside and replaced them on the Platner
10 property with shrubs.
11 A Yes.
12 Q Okay. Now, another question: With respect to that
13 same hillside and the work that you were questioned about
14 yesterday, does some of the property on which you planted
15 shrubs belong to the Town of Lyme?
16 A Yes.
17 Q Again, with respect to Exhibit 36, where you were
18 asked about all your invoices and all the shrubs that you
19 planted on the hillside, were some of those shrubs planted
20 on the property of the Town of Lyme?
21 A Yes.
22 Q And is there any way somebody looking at your
23 invoices can tell which shrubs went on the Town of Lyme
24 property or which shrubs went on the Platner property?
25 A No.
26 Q I would like you to open the book again to Exhibit
27 63, which is Plaintiff's Exhibit 63; that is a full exhibit

1 a small, small area in the field, but the major field was
2 done once. The overall field was done once.
3 Q And yesterday, Mr. Pritchard showed you the invoice
4 from that slice-seeding, correct?
5 A That slice-seeding was done once.
6 Q And that invoice was dated 2009; is that correct?
7 A Okay. I --
8 THE COURT: And where -- what field was that?
9 THE WITNESS: That was when you pull in to the
10 right --
11 ATTY. MENDOZA: Am I pointing to the right area,
12 to the right of the --
13 THE WITNESS: The right -- as you pull out the
14 driveway, the right -- all the way down, and then
15 the -- I believe to the left, too.
16 BY ATTORNEY MENDOZA:
17 Q And when you slice-seeded that area, sir, what was
18 the seed you used in that area?
19 A Double Eagle.
20 Q And yesterday, your testimony was that Double Eagle
21 was 100% rye grass; is that correct?
22 A Yes.
23 Q And 0% bluegrass, correct?
24 A Correct.
25 THE COURT: 0% anything.
26 BY ATTORNEY MENDOZA:
27 Q In the eight years that you have been working at the

1 Platners' property, have you -- what have you observed in
2 the way of flooding?
3 A Every year, almost every year.
4 Q Okay, and where does the flooding occur?
5 A I've seen the -- almost three quarters of the
6 driveway completely under water.
7 Q And where does the water come from?
8 A It comes from the river, the cove, Selden cove, it
9 comes from the Selden Creek there, it comes right around the
10 entire property.
11 Q And is your testimony that it happens every year?
12 A Some are worse than others, yes.
13 Q And has your Novak Brothers equipment been involved
14 in any of the flooding incidents? Have you ever been stuck
15 or --
16 A One of my guy's cars - it wasn't a Novak Brothers
17 car - it was one of my guys who met us there. We were
18 working on the property, but when we left, the guy couldn't
19 -- the guy -- it was the guy -- he didn't get out of the
20 driveway. His car completely stalled right before you go up
21 the hill. His car was in -- I think we ended up pushing him
22 out or something because of the floods.
23 Q What kind of damage does the high tide do to the
24 grassy areas on the Platner property?
25 A What happens is, it brings in a ton of debris,
26 natural debris and garbage. You name it - tires, a lot
27 of -- believe it or not, there's a lot of needles in the

1 Connecticut River; it's pretty disgusting and you've got to
2 be careful. And it brings it into the grass areas, and we
3 clean it up.
4 Q Now, is it your responsibility to repair the damage
5 to the grass done by the high tides?
6 A Yes.
7 Q And is that repaired by hydro-seeding?
8 A Some areas we hydro-seeded, yes, due to the flood
9 damage.
10 Q And before you put the hydro-seed, do you have to
11 cover the damaged area with topsoil?
12 A Yes.
13 Q And yesterday, plaintiff's counsel questioned you
14 about topsoil.
15 A Yes.
16 Q And were some of those purchases, is it fair to say,
17 related to repairing damage caused by high tides and
18 floodwaters?
19 A Yes.
20 Q Let me ask you this. How many square feet is seeded
21 by one tank of hydro-seed?
22 A Approximately 2,500 square feet, one tank.
23 Q Okay, so one tank is 2,500 square feet.
24 A Yes.
25 Q How many gallons in one tank?
26 A Seven hundred and fifty. How many gallons?
27 Q Yes.

1 damaged grass? Is that fair to --
2 A We repaired damaged grass, yes.
3 Q Okay. I would like to ask you about the
4 construction that you've observed in the unrestricted area.
5 Have the Platners engaged in construction in the eight years
6 that you have been working at the property?
7 A Probably every year.
8 Q Okay.
9 A Yes.
10 Q Can you describe the construction that you recall?
11 A Yes.
12 Q What is the first construction project you recall?
13 A The gas tanks and generator.
14 Q Okay, what is the next one that you recall?
15 A The barn.
16 Q Has there been construction at the house?
17 A The carriage house was done one year, and the house
18 was done several years. The geothermal wells were all on --
19 there's got to be 40 geothermal wells that we - but that's
20 all on unrestricted area - that we've repaired, replaced.
21 There's --
22 Q Okay. So with respect to the construction that you
23 describe, did the construction in the unrestricted area
24 affect the grass?
25 A Yes.
26 Q And was it your responsibility after this
27 construction to repair the grass after the construction?

1 A Yes.
2 Q When you describe geothermal wells, were they dug on
3 the unrestricted area?
4 A Yes.
5 Q On the invoices that plaintiff's counsel showed us
6 yesterday - and I see a lot of seeding, topsoil, hydro-
7 seeding - is there a way to tell whether that was on the
8 restricted area, or was it related to this construction that
9 you describe in the unrestricted area? Is there any way to
10 tell from the invoices?
11 A Do you know how many invoices there are? I don't
12 think so.
13 Q Okay. Now --
14 A If -- I mean, if it's --
15 Q Okay, I'm -- there's no question. I would like to
16 refer you to the pictures, Exhibit 71, 72, and 73, which
17 plaintiff's counsel asked you about earlier today.
18 THE COURT: Which of the three do you wish him
19 to have open in front of him, if any?
20 BY ATTORNEY MENDOZA:
21 Q I would like to have you look especially at 72.
22 A Mm-hmm.
23 Q And plaintiff's counsel asked you -- first of all,
24 do you know the year this was taken?
25 A No.
26 Q When you went to the property in November of 2014,
27 did the property look like this in November of 2014? When

1 THE COURT: But have you ever heard of inorganic
2 topsoil?
3 THE WITNESS: No, I think it's all organic,
4 topsoil, yes.
5 BY ATTORNEY MENDOZA:
6 Q And where do you get it from?
7 A We get it from -- we purchase it from Seymour.
8 Q Is placing topsoil damaging to the existing dirt?
9 A No.
10 Q Is it beneficial?
11 A It's beneficial in many ways.
12 Q How?
13 A Well, in some of the low areas, which -- topsoil
14 helps break down some of the clays, which helps drainage.
15 Q And is this property needing of help with drainage?
16 A Yes, sure. Yes.
17 THE COURT: And does it drain better now, or
18 does it still flood every year?
19 THE WITNESS: Actually, the area that the
20 flood -- that we've spread some topsoil in that the
21 floods have killed, it has -- the grass hasn't died,
22 so I would say yes, it has helped.
23 THE COURT: Wait until this spring.
24 THE WITNESS: You're exactly right. Ask me in
25 the springtime.
26 BY ATTORNEY MENDOZA:
27 Q I would like to ask you a little bit about mowing.

1 THE WITNESS: Yes.
2 BY ATTORNEY MENDOZA:
3 Q Have you ever removed a live, healthy tree from the
4 Platner property?
5 A No.
6 Q What trees do you remove?
7 A Dead ones, ones that have been blown over from
8 storms. One time we had a storm and, believe it or not,
9 eight trees were flipped over on the side of the riverbank,
10 and we removed all those. Diseased trees, dying -- I mean,
11 you know, dying trees.
12 Q Do you identify it as dying, or does someone else
13 identify it?
14 A Dying? I don't identify it; somebody else does.
15 THE COURT: Who's that?
16 THE WITNESS: His name's Paul Grace. He'll --
17 if a tree's dying -- he's the arborist.
18 THE COURT: He works for you?
19 THE WITNESS: No.
20 THE COURT: Okay.
21 THE WITNESS: He's --
22 THE COURT: He just comes by and says that's a
23 dying tree? I mean, what --
24 THE WITNESS: He's a plant healthcare person
25 that comes in and inspects trees, shrubs --
26 THE COURT: Is he employed? And if so, by whom?
27 THE WITNESS: He has his own company. He's

1 We'll do it, all of us.
2 THE WITNESS: In this picture, this portion, I'm
3 almost certain, is on the town property. And he just
4 asked about the driveway; I told him the house was
5 over here, and he asked about those cars, and that's
6 where the dock is, but I don't know exactly.
7 ATTY. MENDOZA: All right, can I --
8 THE WITNESS: I mean, some of -- the dock is on
9 the Platner property. I believe - I don't know
10 this - but I believe people have access to the dock,
11 but that's only a few -- but I can't tell you that.
12 I mean, they can --
13 ATTY. MENDOZA: Thank you.
14 THE WITNESS: -- tell you that.
15 THE COURT: Don't speculate.
16 THE WITNESS: Yes.
17 BY ATTORNEY MENDOZA:
18 Q Thank you. I would like to ask you about trash.
19 Yesterday you testified about --
20 THE COURT: About what?
21 BY ATTORNEY MENDOZA:
22 Q -- trash.
23 THE COURT: Trash.
24 BY ATTORNEY MENDOZA:
25 Q Yesterday, you testified about your invoices with
26 respect to trash. Where is the trash removed from?
27 A The high tide areas where the flooding comes

1 through, through the field, through the woods.
2 Q Is trash removed from the woods?
3 A Yes.
4 Q And do you spend time - your workers - removing
5 trash from the woods?
6 A Yes.
7 Q Is that on an annual basis?
8 A Any time there's trash, we remove it.
9 Q And what kind of trash?
10 A I would say we've -- there's a ton of tires that
11 come up from the floods; they're just tires. A lot of
12 Styrofoams, like Styrofoam floating objects; we've pulled
13 out a gas tank before.
14 THE COURT: A what?
15 BY ATTORNEY MENDOZA:
16 A A propane tank, a smaller one. You name it, I've
17 seen a 1,000-gallon propane tank floating down the river. A
18 lot of natural debris. Like I said, we always find needles,
19 which is pretty disgusting.
20 Q Okay, thank you. And the Platners pay you to do
21 this.
22 A Yes.
23 Q And they pay you for significant hours performing
24 this.
25 A Whatever it takes. Some are much -- some floods
26 are -- take a lot longer than others, yes.
27 Q And this is mainly conducted in the woods area

1 Q Do you see that? What services were you performing
2 under that item?
3 A Are you asking me why I did it?
4 Q Why did you do it? That's a good question.
5 A Okay, because when you put down fresh seed, you use
6 starter fertilizer. It's the only time in Connecticut
7 you're allowed to use phosphorous.
8 Q And what is the composition of 18-24-12 starter
9 fertilizer?
10 A 18% -- 18 pounds of nitrogen in 100 pounds of
11 fertilizer, 24 pounds of phosphorous in 100 pounds, and 12
12 pounds of potassium, and that's all in 100 pounds each.
13 THE COURT: What's the rest of it?
14 THE WITNESS: That would be clay -- just a
15 carrier, something to carry the nutrients.
16 THE COURT: Thank you.
17 THE WITNESS: You're welcome.
18 BY ATTORNEY PRITCHARD:
19 Q Would you look at the third entry on that same
20 invoice dated December 12, 13, and 14, reading applied lime
21 to field.
22 A Yes.
23 Q Did you apply lime to the entire field in the
24 protected area?
25 A Yes, I did.
26 Q And what is the purpose of applying lime to a field?
27 A Applying lime to any lawn gets the pH right so the

1 nutrients are used more efficiently. If you're putting
2 fertilizer and things on lawns and the pH is way too low,
3 your fertilizer doesn't get used. You might as well just
4 throw it away.
5 Q Would you look at the right side of this page we're
6 reviewing. Do you see the first item that reads November
7 19, 2009, fertilized field with 28-0-3?
8 A Yes.
9 Q Is that again fertilizing the field in the protected
10 area?
11 A I honestly don't remember, but from looking at the
12 price, I would say no.
13 Q What is 28-0-3?
14 A That's a fertilizer that we put down in the fall.
15 It strengthens the roots of the grass, and you can have a
16 nice lawn in the spring. It also protects against some
17 types of diseases such as snow mold, which we'll probably
18 have this year, and things like that.
19 Q Would you turn, Mr. Grace, to Exhibit 38, please.
20 Can you identify this document?
21 A More invoices for 66 Selden Road.
22 Q And what's the date of the first invoice?
23 A 1/30/10.
24 Q Can you flip through the pages and tell me whether
25 these are the invoices that you sent to Mr. and Mrs. Platner
26 during 2010?
27 A Yes, they are.

1 ATTY. PRITCHARD: I move this exhibit into
2 evidence, Your Honor.
3 ATTY. MENDOZA: Objection, relevance.
4 THE COURT: Overruled.
5 BY ATTORNEY PRITCHARD:
6 Q Mr. Grace, did you apply fertilizer on some sort of
7 a regular schedule over the course of the years that you
8 worked on -- for Mr. and Mrs. Platner?
9 A I don't understand the question. Could you say that
10 differently?
11 Q I'll rephrase it.
12 THE COURT: Or say it differently.
13 ATTY. PRITCHART: Or say it differently, yes.
14 BY ATTORNEY PRITCHARD:
15 Q Let's go through the invoices instead. Would you
16 look, Mr. Grace, at the item four items down from the top of
17 the left-hand side that reads four --
18 THE COURT: Excuse me, which page of Exhibit 38
19 are we dealing with?
20 ATTY. PRITCHARD: The first page, Your Honor.
21 THE COURT: Thank you. Now, you're asking him
22 to look four lines down on the left.
23 ATTY. PRITCHARD: I'm sorry. We're looking at
24 Page 2, the second page.
25 THE COURT: I'm sorry. Did I hear incorrectly?
26 ATTY. COLLINS: Your Honor, for your
27 information, these are Bates-stamped in the upper

1 right-hand corner of your book.
2 THE COURT: So they are. Okay.
3 Do you see on the top left of the Exhibit 38
4 that 001 and 002? Those are called Bates stamps for
5 handling [indiscernible] documents, so counsel may
6 refer to Bates number 002, and if he does --
7 THE WITNESS: That's how you find it.
8 THE COURT: -- that's how you find it.
9 THE WITNESS: Thank you.
10 THE COURT: You're welcome.
11 BY ATTORNEY PRITCHARD:
12 Q So now, yes, Mr. Grace, I am referring to 002 in the
13 left-hand side of that page, four items down, which reads
14 April 7, April 8, fertilized field and lawn for crabgrass
15 and -- for crabgrass control; is that correct?
16 A That is correct.
17 Q And what type of fertilizer do you use for
18 fertilizing the field and lawn for crabgrass control?
19 A That would be a fertilizer that we call Dimension,
20 and basically it has an herbicide in it which keeps the
21 crabgrass seed down and some broadleaf weeds - not 100%, of
22 course, but --
23 Q What is the composition of Dimension?
24 A The chemical?
25 Q Yes.
26 A I have no idea.
27 Q Is Dimension a fertilizer as well as an herbicide?

1 A It is.
2 Q What is the fertilizer -- what is the content of the
3 fertilizer in Dimension?
4 A 13-0-5.
5 Q And what does that mean?
6 A Thirteen pounds of nitrogen per 100 pounds and five
7 pounds of hot ash per hundred pounds, no phosphorous.
8 Q Okay, would you look over at the right-hand side of
9 Exhibit 37, 002, and the second line up from the bottom
10 reads April 22, April 26, Cal-Turf on lawn and field; do you
11 see that?
12 A Yes.
13 Q What is Cal-Turf?
14 A Cal-Turf is a quick-acting lime. It's a new product
15 that I think had come out that year, in 2010, and we started
16 using it.
17 Q Let me ask you to turn to Page 3 of Exhibit 37.
18 THE COURT: Are you referring to the Bates
19 number?
20 ATTY. PRITCHARD: I am referring to the Bates
21 number, Your Honor.
22 BY ATTORNEY PRITCHARD:
23 Q And let me direct your attention to the last entry
24 on the right-hand side of the page, May 27, 2010, spray
25 weeds in lawn and fields; do you see that?
26 A Yes.
27 Q What product did you use to spray the weeds in the

1 field?
2 A I don't remember because I didn't note it in the
3 bill. I have it in my records, and I have to report to the
4 DEP, but I don't have it here so I can't tell you.
5 Q Well, did you -- is this a herbicide that we're
6 talking about?
7 A Yes, it would have been a post-emergent herbicide
8 for broadleaf weeds, and basically we would take a backpack
9 sprayer and go around and spot-spray.
10 Q And the point was to kill anything that is subject
11 to this herbicide; is that correct?
12 A Right, any broadleaf weeds. Exactly.
13 Q Could you turn to Page 003, please, June --
14 THE COURT: Aren't we there?
15 THE WITNESS: We're on -- oh, I'm sorry.
16 THE COURT: The witness and I have been on Bates
17 number 003 for the last few questions.
18 ATTY. PRITCHARD: Not on my copy, Your Honor,
19 but --
20 THE COURT: Well, I think the record will be
21 fairly clear.
22 ATTY. PRITCHARD: Yes.
23 THE COURT: You were reading spraying weeds in
24 lawn and field, and that entry is on Bates 003.
25 ATTY. PRITCHARD: Let me just straighten this
26 out, Your Honor.
27 THE COURT: That would be good.

1 BY ATTORNEY PRITCHARD:
2 Q Let me direct your attention, Mr. Grace, to 004 of
3 Exhibit 37, the second item on the left-hand side of the
4 page, reading June 3, 2010, applied iron 5-10-3 to lawn and
5 field. What is iron 5-10-3?
6 A That is a product that we use to give a lawn a nice
7 green color.
8 Q Did you apply iron 5-10-3 to the grasses in the
9 field in the protected area?
10 A Yes, it says applied to lawn and field.
11 Q Directing your attention to the right-hand side of
12 004, let me refer you to the third item, June 10, 2010,
13 applied Merit for grub control to lawn and field. What is
14 Merit?
15 A Merit is a product that we use to kill grubs. The
16 technical name of it is imidacloprid, and basically what
17 that does is get rid of grubs, and then you don't have a
18 mole problem.
19 THE COURT: I'm going to ask you to spell the
20 full name for the monitor, if you can.
21 THE WITNESS: Imidacloprid?
22 THE COURT: Yes.
23 THE WITNESS: Yes. I-M-I-D-C-L-O-P-R-I-D [sic].
24 I won't use those words anymore.
25 THE COURT: Well, you -- it's fine to use them,
26 but you're likely to have to spell them. If that
27 isn't a deterrent, I don't know what is.

1 BY ATTORNEY PRITCHARD:
2 Q Let me refer you now, Mr. Grace, to the next item
3 below the one that you just testified about, June 14, 2010,
4 reading Heritage granular fungicide on lawn and field. What
5 is Heritage granular fungicide?
6 A Heritage granular fungicide is a fungicide that we
7 use to treat a disease called Pythium, which is in lawns.
8 Q And what is in that product?
9 A I don't know the chemical name right off the top of
10 my head.
11 Q Could you refer to 006, please, in the same exhibit.
12 The item I'm referring -- want you to look at is the second
13 one, June 29, 2010, fungicide on lawn and field.
14 A Mm-hmm.
15 Q What is the fungicide that you used?
16 A I could only guess. I'd have to look back at my
17 notes.
18 Q What is the purpose of fungiciding a lawn?
19 A To either prevent or eradicate a disease called
20 Pythium, which is our common lawn disease in Connecticut.
21 Q And then two items down from that, July 1, 2010, it
22 says fertilized lawn and field; do you see that?
23 A Yes, I do.
24 Q And what fertilizer were you using in July of 2010
25 to fertilize the field?
26 A Well, that I do remember because of the time of
27 year. It would have been a fertilizer called 24-0-11.

1 Q What is 24-0-11 composed of?
2 A Twenty-four pounds of nitrogen per 100 pounds and 11
3 pounds of hot ash per 100 pounds.
4 Q And what is the purpose of fertilizing a lawn with
5 that product?
6 A At that time of year, just to keep the lawn healthy
7 and growing.
8 Q Is that also designed to keep the lawn green?
9 A Yes, it would. It definitely would keep a lawn
10 green.
11 Q The next item, July 1, 2010, it reads fungicide on
12 lawn and field; is that a reapplication of the fungicide
13 that you applied on June 29, 2010?
14 A Yes.
15 Q Let me refer you to Page 008. Do you see the item
16 reading -- the third item down reading -- that's -- is that
17 8/2/2010, August 2, 2010, fungicide on lawn and field?
18 A Mm-hmm.
19 Q Is that again a reapplication of that same type of
20 fungicide to the lawn and the field?
21 A It was a reapplication, probably a different
22 product.
23 Q Do you recall what that product was?
24 A It was a lawn fungicide. I could only guess what I
25 used.
26 Q Let me refer you to the next item. It says August
27 3, August 4, fertilized lawn and field with 24-5-11; do you

1 see that?
2 A Yes, I do.
3 Q What is 24-5-11?
4 A Twenty-four pounds of nitrogen per 100, five pounds
5 of phosphorous per 100, and 11 pounds of potassium.
6 Q Same thing.
7 A Right.
8 Q And the function of that fertilizer is what, again?
9 A To keep the lawn healthy and green.
10 Q Then on August 12, 2010, on the right-hand side of
11 that page, it reads sprayed weeds in lawn and field; do you
12 see that?
13 A Yes.
14 Q Do you recall what you sprayed these weeds with?
15 A A broadleaf herbicide. I can't recall which one I
16 used.
17 Q The item after that, August 16, 2010, reads sprayed
18 lawn and field for Pythium; do you see that?
19 A Yes.
20 Q Is that the same treatment that you have -- the same
21 fungicide treatment that you mentioned before?
22 A Yes.
23 Q Then on August 19, 2010, there's an item reading
24 sprayed weeds in lawn and field; do you see that?
25 A Yes.
26 Q What does that item refer to?
27 A Again, with the backpack sprayer, spraying broadleaf

1 herbicide.
2 Q Would you turn to Page 008, please.
3 THE COURT: We are on 008, aren't we?
4 BY ATTORNEY PRITCHARD:
5 Q Well, let's do it this way. Would you turn to your
6 invoice dated September 27, 2010.
7 A Mm-hmm.
8 Q Do you see the third item, September 15, 2010?
9 A Yes.
10 Q It says fertilized lawn and field.
11 A Yes.
12 Q What fertilizer did you use on the lawn in the field
13 on that date?
14 A 24-0-11.
15 Q For the same purposes that you've used 24-0-11 in
16 the past.
17 A Yes.
18 Q And then do you see on your statement dated October
19 31, 2010, the second item, October 29, 2010, fertilized lawn
20 and field with 34-3-11?
21 A I'm a little lost. What date is it?
22 THE COURT: This is Bates number 016. No,
23 you're on 1-0, ten. He's switched from Bates numbers
24 to the date of your invoice, so I understand why you
25 might find that confusing.
26 BY ATTORNEY PRITCHARD:
27 A So we're talking about 10/29/10; is that correct?

1 Q 10/29/10.
2 A Yes, that would be the fall fertilizer to strengthen
3 the roots again.
4 Q Now, we've been looking at the invoices, your
5 invoices, for the year 2010 for activities in the protected
6 areas of the field, correct?
7 A You know, I didn't have any idea that was a
8 protected area.
9 Q We're not here to criticize anything you've done,
10 Mr. Grace, you can be certain of that. Did you apply
11 essentially the same fertilizing, herbiciding, and
12 fungiciding program to the lawn and the field in succeeding
13 years?
14 A No, I -- actually, it became less, because once you
15 start treating lawns and get them growing properly, you
16 don't really have to do that much weed control, so that
17 would be less, and I believe we fertilized less.
18 Q What -- why is it that you don't need as much weed
19 control once you really get a lawn going?
20 A Well, the healthy grass chokes out the weeds.
21 Q And in terms of the fertilizing regime that you have
22 applied to the property since 2010, what in general were the
23 fertilizing applications during the course of the growing
24 season?
25 A Okay, we would start with the product called Cal-
26 Turf, which was that quick-acting lime to get the lawn set
27 up for using the fertilizer. Then we would do two

1 applications of Dimension in the spring, early spring, and
2 then -- you know, in April and then again in late May, and
3 then two applications of 24-0-11, and then the 28-0-3 in the
4 fall for the strengthening of the roots and trying to
5 prevent some diseases.
6 Q Before the field became a lawn, were you doing any
7 fertilizing in the field?
8 A No.
9 Q Were you doing any herbiciding in the field?
10 A No.
11 Q Were you doing any pesticiding in the field?
12 A No.
13 Q Were you doing any fungiciding in the field?
14 A No.
15 Q Now, Mr. Grace, when spreading these products, how
16 is that done?
17 A We have a machine that we drive that holds the
18 fertilizer.
19 Q Okay, and do you actually ride the machine?
20 A Yes.
21 Q Mr. Grace, are there any aspects of the services
22 that you performed on the -- Mrs. Platner's property
23 required to be reported to the DEP?
24 A Yes.
25 Q What are those?
26 A I have to report at the end of the year all the
27 chemicals that I've -- all the pesticides that I've used and

1 the amounts.
2 Q And do you understand the purpose for that
3 reporting?
4 A I think they just want to keep track of what's being
5 used.
6 Q Okay. Mr. Grace, would you take a look at Exhibit
7 69 in the photograph book. Can you identify the subject
8 matter of that photograph?
9 A Yes, that's a gentleman that worked for me at one
10 time, and he's applying fertilizer.
11 Q Can you tell what property he's supplying the
12 fertilizer on?
13 A Where? Is that what you're asking?
14 Q No, what -- who owns the property that he's
15 supplying the fertilizer on?
16 A That looks like Selden Road.
17 Q Mrs. Platner's property?
18 A Yes.
19 Q Is this picture a fair and accurate depiction of the
20 conditions that it shows?
21 A The conditions of the property?
22 Q Everything in the picture.
23 A Yes.
24 ATTY. PRITCHARD: I move this photograph into
25 evidence, Your Honor.
26 THE COURT: I assume you're objecting.
27 ATTY. MENDOZA: You're Honor, it's already been

1 Q Who -- you do the test, but who reads the test?
2 Where do you --
3 A Oh, I do. I look at the results.
4 Q Do you consult with other soil scientists?
5 A Yes, I work closely with the agricultural station.
6 They do soil tests for us.
7 Q And what is the --
8 THE COURT: But you don't actually do the
9 soil -- they do the testing, don't they?
10 THE WITNESS: Yes.
11 THE COURT: And you read the results.
12 THE WITNESS: Exactly.
13 THE COURT: Okay.
14 BY ATTORNEY MENDOZA:
15 Q And when you consult with the DEP agricultural
16 station, do they make recommendations to you?
17 A They do.
18 Q And do you follow those recommendations?
19 A I would say yes, but I modify them.
20 Q And what kind of recommendations do they make?
21 A They make -- you know, they'll say apply this much
22 nitrogen per 1,000 square feet or this much lime per 1,000
23 square feet.
24 Q Based upon the results of the soil test.
25 A Exactly.
26 Q Would you describe the Platner lawn as a bluegrass
27 lawn?

1 G E O R G E M O O R E ,
2 of 23-3 Joshuatown Road, Lyme, Connecticut, called as
3 a witness by the Plaintiff, being first duly sworn, was
4 examined and testified under oath as follows:
5 DIRECT EXAMINATION BY ATTORNEY PRITCHARD:
6 Q Good afternoon, Mr. Moore. Do you currently have a
7 position with the Lyme Land Conservation Trust?
8 A Yes, I'm the executive director.
9 Q And how long have you held that position?
10 A Since 2012.
11 Q And what are your duties in that position?
12 A I'm responsible for the day-to-day running of the
13 land trust and also to, I call it plugging holes if --
14 for -- if the chairman of the committee were to leave, I
15 would leave until we found a replacement.
16 Q Okay, and have you ever been a member of the board
17 of directors of the land trust?
18 A Yes.
19 Q When did you first become a member of the board?
20 A In 2003, I became a volunteer director.
21 Q Did you ever become an officer of the board of
22 directors?
23 A Yes, that would have been in 2006 at our summer
24 meeting, I became president of the land trust.
25 Q And what were your duties as the president of the
26 land trust?
27 A We didn't have an executive director at the time, so

1 Q Have you reviewed that certificate of incorporation?
2 A I have, yes.
3 Q Is the land trust a charitable 501(c)(3)
4 organization?
5 A Yes, it is.
6 Q And has the land trust received a so-called
7 exemption letter from the Internal Revenue Service
8 recognizing its status as such?
9 A Yes, we have.
10 Q Has the charitable status of the land trust ever
11 been questioned?
12 A No.
13 Q What is the core mission of the land trust?
14 A It's to conserve and protect open space in Lyme for
15 the benefit of not only the people in Lyme, but for people
16 in the region. It involves also the stewardship of the
17 easements and lands that we hold.
18 Q And how many conservation restrictions on property
19 in Lyme does the land trust hold?
20 A I think it's in the mid-sixties.
21 Q Does the land trust have a stewardship committee?
22 A Yes, very much so.
23 Q And what is the function of the stewardship
24 committee?
25 A The function of the committee is to make annual
26 inspections of not only the easements, also of the
27 properties we hold in fee - more often if necessary, but

1 they do a detailed walk of the property taking photographs,
2 writing up a report on what they noted, identifying any
3 problems that need further action, if need be.
4 Q And how often does the land trust steward its
5 conservation restrictions?
6 A These days, on an annual basis.
7 Q Was it always the case that the conservation
8 restrictions were stewarded on an annual basis?
9 A No, back in about 2006, my -- the past president
10 before me had instituted a study of our organization by the
11 Land Trust Alliance and to upgrade our efforts in many
12 areas, and one of them was to become very consistent on the
13 stewardship visits.
14 Q Did the stewardship committee of the land trust
15 steward properties prior to this 2006?
16 A Yes.
17 Q But not as often and consistently as they do now; is
18 that your testimony?
19 A That is correct.
20 Q What -- do you understand the term baseline report?
21 A Yes.
22 Q What is a baseline report?
23 A A baseline report is filed by an expert that in
24 effect states the condition of the property at a given point
25 in time, making a general assessment of the topography, the
26 flora, the probable existence of certain forms of wildlife,
27 and just kind of a mark in time, this is what it is and what

1 it looks like.
2 Q And what's the purpose of -- at what point in time
3 in connection with a conservation restriction currently are
4 baseline reports prepared?
5 A At the time we assume ownership of the easement or
6 the property.
7 Q And what is the stewardship purpose for preparing
8 such a baseline report?
9 A To have a means of comparison, a bench stick.
10 Q To determine whether there have been changes in the
11 property.
12 A Fifteen years from now, if you go and do a
13 stewardship, you can look back at the baseline report and
14 see what it was then.
15 Q Was a baseline report done in connection with the
16 conservation restriction at 66 Selden Road?
17 A Not at the time we acquired the easement, no.
18 Q And do you recall when that easement was acquired?
19 A I'm not really good on dates. I think it was in the
20 1980s, I believe.
21 Q And had the land trust ever acquired a conservation
22 easement prior to acquiring the easement on 66 Selden Road?
23 A No, it was the first.
24 Q How is this easement referred to within this land
25 trust?
26 A E1.
27 Q Are all the easements that the land trust has

1 referred to by number?
2 A By number and by the original grantor, or sometimes
3 by the location.
4 Q In the course of monitoring the 66 easements that
5 the land trust has in Lyme, have there been any violations
6 of the easements other than the one we're talking about
7 here?
8 A Yes.
9 Q And how have those -- how has the land trust
10 resolved those violations?
11 A By meeting with the land owner and reviewing the
12 situation and where the infringement or violation has taken
13 place and what the suggested steps are to remedy the
14 situation.
15 Q Has the land trust ever sued a landowner with
16 respect to such a violation prior to this case?
17 A Not prior to this case, no.
18 Q Did there come a time when you served as the steward
19 at the land trust for the property at 66 Selden Road?
20 A For one year, for the summer of '06 until the summer
21 of '07.
22 Q And was that -- you became the steward prior to the
23 time Mrs. Platner purchased the property; is that correct?
24 A Yes.
25 Q And when you became the steward of 66 Selden Road,
26 what did you learn concerning the stewardship concerns and
27 interests with respect to the property, if anything?

1 A Well, as I read the file, which consisted of
2 previous stewardship reports and a property management plan,
3 it was evident that an important aspect for the land trust
4 was the treatment of the field - mowing to happen once or
5 twice a year either side of the nesting season in order to
6 protect the wildlife, the birds - and that the goal was to
7 maintain it in a natural state.
8 Q And do you know whether the prior owners who
9 preceded Mrs. Platner in ownership agreed with the land
10 trust to abide by such a twice-a-year mowing schedule?
11 ATTY. LAMBERT: Objection, Your Honor,
12 irrelevant.
13 THE COURT: Calls for a yes or no. Well, it's
14 not irrelevant. The question calls for a yes or no
15 answer. Overruled on relevance as to this question.
16 Do you know?
17 THE WITNESS: Yes.
18 BY ATTORNEY PRITCHARD:
19 Q Do the records of the land trust reflect that the
20 prior owners did abide by the twice-a-year mowing regime?
21 ATTY. LAMBERT: Objection, Your Honor,
22 relevance.
23 THE COURT: Sustained, hearsay.
24 You're asking him what the records show.
25 BY ATTORNEY PRITCHARD:
26 Q Do you know, Mr. --
27 THE COURT: Well, he already said he knows --

1 remember the question --
2 THE WITNESS: I'd like to be refreshed.
3 THE COURT: I think that would be a good idea.
4 Mr. Pritchard, do you remember the question?
5 ATTY. PRITCHARD: Yes.
6 THE COURT: Prior owners.
7 BY ATTORNEY PRITCHARD:
8 Q What did the prior owners do with respect to the
9 field in the protected area of the conservation restriction?
10 ATTY. LAMBERT: Your Honor, may I object on this
11 on foundation as to what he knew.
12 THE COURT: This is the same question. He said
13 he knew ten questions ago. Overruled on foundation.
14 It's a little hard to follow, but believe me, the
15 foundation is there in the record. So, finally --
16 BY ATTORNEY PRITCHARD:
17 A The prior two owners abided by the recommended
18 mowing schedule.
19 Q Okay. Did there come a time when you as the steward
20 for 66 Selden Road made a monitoring visit to the property?
21 A Yes. I didn't go on the property because it had
22 just changed hands. The Platners had bought it. I hadn't
23 had an opportunity to meet with them, but it's quite visible
24 from Selden Road, and I noticed that mowing was taking place
25 outside of the preferred period that prior owners had
26 adhered to.
27 ATTY. LAMBERT: Your Honor, move that that be

1 A The best recollection I have is that I met them for
2 the first time at a Joshuatown Association social meeting,
3 which probably was in August of '07, and indicated that I
4 had noticed the mowing and we should probably get together
5 to discuss it. And then I believe further communications
6 were in writing.
7 Q Would you turn to Exhibit 14, please, which is
8 marked full.
9 A It's not one of the pictures.
10 Q No.
11 A Okay, yes.
12 Q Would you turn to the second page of the exhibit.
13 And can you identify the email dated September 14 from
14 George Moore to Beverly Platner, copied to Emily Fisher.
15 A Yes, I can.
16 Q What is that?
17 A It was a written communication that -- after I had
18 reviewed more closely the land trust files and had spoken
19 with Attorney Gahagan, who represents the land trust, I was
20 stating what our expectations were with regard to the mowing
21 schedule in the protected area.
22 Q Okay. Now, if you'll look at the next to the last
23 paragraph, did you indicate to Mrs. Platner that there did
24 appear to be some contradictory statements in the
25 conservation restriction with respect to the mowing issue?
26 Next to the last paragraph on Page 2, sorry.
27 A Yes.

1 Q And what did you pass along to her concerning the
2 land trust's interpretation with respect to this subject?
3 A Just basically that we acknowledged that people
4 could have differing interpretation as to the mowing, in
5 which case one should look at the purpose of the
6 conservation easement, which was to maintain the protected
7 area of the field in a natural state, and that was achieved
8 by mowing once or twice a year.
9 Q And did Mrs. Platner agree with that interpretation?
10 A No.
11 Q Would you refer to the top of Page 2 of Exhibit 14.
12 A Yes.
13 Q Can you identify the email there?
14 A That was a response to my email from Mrs. Platner.
15 Q And what was Mrs. Platner proposing in response to
16 your email?
17 A That -- buying us out, I guess, asking if there's
18 something we wouldn't rather have than that particular
19 easement.
20 Q And did you get back to her with respect to that
21 question?
22 A Yes, I did. It was in the next email in the string
23 on Page 1.
24 Q And what was your response, generally?
25 A Basically that we did not have the ability to
26 extinguish the easement. It wasn't our right. It was -- I
27 explained the basis on which it was accepted, and that we

1 A Yes, I did.
2 Q For what purpose were the photographs taken?
3 A To document things that we observed which we
4 believed at the time to be possible violations.
5 Q Was there any other purpose for taking those
6 photographs?
7 A Well, we were in the absence of a baseline report.
8 We were trying to start building material to create such a
9 report.
10 Q Okay. Did you see during the course of your visit a
11 disturbed area in the southwest corner of the property?
12 A Yes.
13 Q Would you turn to photograph 67 -- 66, please.
14 A Six-six?
15 Q Seven-six.
16 A Seven-six.
17 Q Can you identify the subject matter of this
18 photograph?
19 A Yes, this would appear to be in that north -- looks
20 to me like it's in the northeast corner where Selden Creek
21 enters into Selden Cove in the protected area.
22 Q Did you observe this scene during the course of your
23 walk on the -- on September 28 on the property?
24 A Yes.
25 Q Do you know who took this photograph?
26 A These were taken by Fritz Gahagan.
27 Q Was he also present during the course of the walk?

1 A Yes.
2 Q Can you -- is this a fair and accurate description
3 of the condition that you observed on that date?
4 A In that particular spot, yes.
5 ATTY. PRITCHARD: I move the entry of Exhibit 76
6 into evidence, Your Honor.
7 ATTY. LAMBERT: No objection, Your Honor.
8 THE COURT: Full exhibit, 76.
9 BY ATTORNEY PRITCHARD:
10 Q Would you please turn to Exhibit 77. Can you
11 identify the subject matter of this photograph?
12 A Yes, I can.
13 Q And did you observe this same scene during the
14 course of your monitoring visit on September 28th, 2007?
15 A Yes.
16 Q Do you know who took this photograph?
17 A This again was taken by Attorney Gahagan.
18 Q To save time, did Attorney Gahagan take all of the
19 photographs taken that day on the monitoring visit?
20 A No, I took some, and I believe maybe Emily Fisher
21 took some.
22 Q Okay, and you -- is this photograph a fair and
23 accurate representation of what you saw at Mrs. Platner's
24 property that day?
25 A In that spot, yes.
26 ATTY. PRITCHARD: I move this document into
27 evidence.

1 THE COURT: Objection?
2 ATTY. LAMBERT: No objection, Your Honor.
3 THE COURT: 77 is full.
4 BY ATTORNEY PRITCHARD:
5 Q Did this disturbance occur in the protected area?
6 A Yes.
7 Q And in the land trust's view, did it constitute a
8 violation of the conservation restriction?
9 A Yes, we did.
10 Q Did -- do you know whether this also came to the
11 attention of the Inland Wetlands Commission?
12 A I believe it did, yes.
13 Q Do you know whether there were hearings with respect
14 to the remediation of this portion of Mrs. Platner's
15 property at the Inland Wetlands Commission?
16 A That's my knowledge, that it was a site visit by the
17 zoning or the enforcement officer, Bernie Gigliotti, and
18 then there was a subsequent meeting that the Inland Wetlands
19 had with the Platners to discuss remedial action in this
20 area.
21 Q And in fact was that area remediated?
22 A I believe it was, yes.
23 Q And was it remediated to the satisfaction of the
24 land trust?
25 A We were never consulted on it, but I seem to recall
26 that on a subsequent report by one of our people that they
27 were satisfied with what had been done there.

1 Q Do you know what types of plants were planted in
2 order to remediate this area?
3 A No, I don't.
4 Q Did the land trust note any other violations, what
5 it deemed to be violations of the conservation restriction
6 during the course of this site visit?
7 A There was a few areas. There was -- one starts on
8 Selden Road, the slopes or hills, as they're referred to.
9 There had been some -- I particularly noticed on the -- on
10 this map that's in front of this, as if you were walking up
11 the driveway towards Selden Road, on your right, that
12 embankment or hill that had been cleared of vegetation. If
13 you walked around the field close to the white area, which
14 is the non-restricted area where the house and driveway is,
15 we noticed in our protected area heavy damage to the grass
16 from heavy trucks that had obviously gone around the house
17 to the other side. We also noticed evidence of a sprinkler
18 system where we had not noticed it before in the protected
19 system [sic], and then down on along Selden Creek, we
20 noticed some cutting - what we perceived to be cutting of
21 trees and some clearing in the understory.
22 Q Did you notice the installation of lawn in the
23 protected area?
24 A Yes, it was starting to move into the protected
25 area. It wasn't entirely covered.
26 Q Let me refer you, Mr. Moore, to Exhibit 72. The
27 exhibit is full.

1 BY ATTORNEY LAMBERT:
2 A I have it.
3 Q And on the second page, you wrote there mowing is
4 limited to twice a year.
5 A Yes.
6 Q Is there anywhere in the declaration of restrictive
7 covenants, Exhibit 8, that says that?
8 A No.
9 Q And as a matter of fact, different people had
10 different ideas as to when it should be. You said, for
11 example, in there, I believe you say in early April and in
12 October.
13 A Correct.
14 Q And were you here for Fleur Hahne Lawrence's --
15 A Yes.
16 Q And she said July and after Thanksgiving.
17 A I think she also had -- yes, she did. She had it
18 either side of the nesting season.
19 Q My point is, there is no time limited for -- in the
20 declaration of restrictive covenants, there is nothing that
21 limits mowing to twice a year.
22 A No.
23 Q And you talked about a baseline report and that it
24 is common to make it at the time you obtain the easement.
25 THE COURT: I'm sorry. I see you nodding; is
26 that a yes?
27 THE WITNESS: I'm sorry. Yes.

1 BY ATTORNEY LAMBERT:
2 Q And am I correct that there was no baseline report
3 for this in 1981?
4 A That is correct.
5 Q And there was -- there has in fact never been any
6 baseline report for this at any time.
7 A I would observe that the documented evidence that
8 we've collected in our various walks, if compiled, form a
9 baseline report.
10 Q There has never been a baseline report, though,
11 done, correct?
12 A In that -- not in our normal format, no.
13 Q Didn't you tell us that a baseline report has to be
14 prepared by an expert?
15 A Not by. An expert has to be consulted on it.
16 Q And there is no such in any of -- in your report,
17 there is no reference to any expert consultation, is it?
18 A At that time, no. When I did this report, no.
19 Q Okay, and the flora and fauna are not identified at
20 any time as to what existed -- excuse me. Well, let me
21 rephrase it. In 1981, there is absolutely no indication of
22 what flora or fauna was on the Selden property when he
23 signed the declaration.
24 THE COURT: Fauna? Wildlife?
25 ATTY. LAMBERT: There was no baseline report as
26 to anything being there.
27 THE COURT: Okay. Well, if there were any fauna

1 THE COURT: Let me hear the question back.
2 (Playback.)
3 THE COURT: I believe that he was on the way to
4 asking a leading a question.
5 ATTY. PRITCHARD: As I hear it now, I agree with
6 you, Your Honor.
7 THE COURT: Well, that's what I thought I was
8 hearing. But you are withdrawing the objection, or
9 would you like me to --
10 ATTY. PRITCHARD: I'm withdrawing my objection.
11 THE COURT: Very well. You can probably -- do
12 you --
13 ATTY. LAMBERT: I'd like to --
14 THE COURT: Do you understand the question?
15 THE WITNESS: I understand the question.
16 BY ATTORNEY LAMBERT:
17 A I'm troubled a little bit by the timing of it,
18 because you're focusing on -- I was steward for a period of
19 12 months, and as a steward, I made only two visits at the
20 top of the road by car. I was not a steward when we made
21 the walking inspection of the property.
22 Q That wasn't my question. My question was that
23 between 1981 when Mr. Selden signed the declaration of
24 restrictive covenants and 2007 when you first saw it, you've
25 already testified that the open area was nothing but grass
26 and the trees.
27 A That is correct.

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 4, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, New London, Connecticut, before the Honorable Joseph Q. Koletsky, Judge, on the 4th day of March, 2015.

Dated this 30th day of March, 2015, in New London, Connecticut.

Melanie Pearce
Court Recording Monitor

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 5, 2015

TRIAL

BEFORE THE HONORABLE JOSEPH Q. KOLETSKY, JUDGE

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1 B E V E R L Y P L A T N E R ,
2 of 66 Selden Road, Lyme, Connecticut, called as a
3 witness by the Plaintiff, being first duly sworn, was
4 examined and testified under oath as follows:
5 DIRECT EXAMINATION BY ATTORNEY PRITCHARD:
6 Q Good morning, Mrs. Platner.
7 A Good morning.
8 Q Are you presently the owner of 66 Selden Road in
9 Lyme?
10 A Yes.
11 Q And are you married to a Mr. Brian Platner?
12 A Yes.
13 Q When did you purchase the property?
14 A May of 2007.
15 Q At the time you purchased the property, were you
16 aware that it was subject to the terms of a conservation
17 restriction?
18 A I was aware of a restrictive covenant, yes.
19 Q I'm going to ask you to turn in the binder there to
20 your left to Exhibit 1, which has been marked full. Can you
21 identify this document?
22 A Yes, it's a warranty deed.
23 Q Is it the warranty deed pursuant to which you
24 purchased 66 Selden Road?
25 A Yes.
26 Q Would you turn to Schedule A. That's Page 3,
27 please.

1 A To -- we were interviewing various contractors for
2 different services, and we started with the list that Fleur
3 and Jerry Lawrence had given us from their previous
4 ownership of the house.
5 Q Did you interview the Novak Brothers?
6 A Yes, we did.
7 Q And you ultimately retained the Novak Brothers.
8 A Yes, I guess.
9 THE COURT: How about hired instead of retained.
10 THE WITNESS: Hired. Yes, exactly. We didn't
11 pay them a monthly service fee, no.
12 BY ATTORNEY PRITCHARD:
13 Q Did you give the -- did you or your wife give the
14 Novak Brothers a scope of work at the time that you hired
15 them?
16 A When you say scope of work -- being from my business
17 profession, I would say no, but in terms of a loose
18 definition of scope of work, I would say yes.
19 Q Okay, and what was the loose definition you --
20 A The Novak Brothers took us to several properties
21 that they were currently maintaining and had developed, and
22 we were very impressed with their work and in general said,
23 we would like our property to resemble those other estates
24 in the neighborhood.
25 Q Okay, and which estates did the Novak Brothers take
26 you to?
27 THE COURT: If you can remember.

1 Yes.
2 BY ATTORNEY PRITCHARD:
3 Q Okay, well, I'll adopt 21.5 tons of sand, there.
4 A Whatever. Sure.
5 Q You were aware that he sold you and Mrs. Platner
6 that tonnage of sand back in 2007?
7 A It was on his bill.
8 Q And do you know what Mr. Novak did with that 22.5
9 tons of sand?
10 A I have a general idea, yes.
11 Q Okay, well, what is your general idea?
12 A My general idea is that behind the house - and the
13 house is a little over 200 feet in length; it's a big,
14 long -- we call it the big, long, white house - we had hired
15 a stonemason to redo the whole patio. The patio was sinking
16 and full of weeds and was not done with any great care, and
17 so we had the entire patio around the pool, around the back
18 of the house and to the -- all the way -- the whole length
19 of the house - it's a very big patio - we had that patio
20 reconstructed. And in the process of the work, the
21 stonemason frequently would give direction to the Novak
22 Brothers for their services, and so they would bring in, I
23 think, some sand, I think. They would do some excavating
24 for them sometimes if they needed it. They would pretty
25 much kind of do whatever they want, whatever they needed.
26 The two of them tended to work very closely together on many
27 projects on the property, so I believe that the sand was

1 requested by the stonemasons.
2 Q Would you turn to Page 85 in the -- I'm sorry, 84 in
3 the binder, Mr. Platner.
4 A Which? There's no 85.
5 Q I'm sorry, in the photo binder.
6 THE COURT: The high numbers are the photographs
7 on the floor. We judges get a little sensitive about
8 the bench.
9 THE WITNESS: Yes, I understand. My wife is the
10 same way about her desk.
11 THE COURT: Oh, I didn't say I was that bad.
12 THE WITNESS: 85?
13 ATTY. PRITCHARD: 85 -- 84, I'm sorry.
14 THE COURT: 84.
15 ATTY. PRITCHARD: Marked full.
16 BY ATTORNEY PRITCHARD:
17 Q Do you recognize that photograph as the beach at
18 Mrs. Platner's property?
19 A I recognize the photo, yes.
20 Q What does the photo depict?
21 A Part --
22 THE COURT: 84 is full.
23 ATTY. PRITCHARD: Full.
24 THE COURT: Okay.
25 BY ATTORNEY PRITCHARD:
26 A Part of the beach. The beach is rather expansive.
27 Q Could you turn to 85, please, also full.

1 Q Okay, so the high tide mark is behind the person who
2 is standing in the picture?
3 A The person in the picture is roughly standing around
4 the high tide mark, maybe a little bit below.
5 Q At the time you purchased the property, was there a
6 beach of the size depicted inland of the high tide line?
7 A Oh, absolutely.
8 Q You did nothing to expand the size of this beach.
9 A The size?
10 Q The size.
11 A Absolutely not.
12 Q And that 22.5 tons of sand didn't get deposited on
13 this beach and make it more beach-like?
14 A There would be no reason to. I wasn't there when
15 they deposited the sand, but there would be no reason to.
16 We had actually turtles' tracks numerous times in that whole
17 beach area. We still do. And that beach area actually
18 continues, and Mrs. Lawrence - Fleur - was very good when
19 she said -- she called this area the dunes when she referred
20 -- referenced the dunes. The dunes is the area between that
21 tree, behind the person in the photo, and that row of trees;
22 they kind of keep going back, and you can see where the
23 grass is kind of brownish there, but then it starts to turn
24 a little bit darker green. That whole area is what I would
25 refer to, what she was referring to as the dunes. It's an
26 extremely sandy area, and to further discuss that, there's a
27 species of plant called leatherleaf that we've been

1 Q Can you tell what that pipe that is extending across
2 the field is?
3 A No.
4 Q Was it necessary, Mr. Platner, so far as you know,
5 to install an irrigation system in the protected area north
6 of the house in order to make sure that the lawn there was
7 adequately watered?
8 A No.
9 Q Why was -- why did you have an irrigation system
10 installed in the areas north of the house?
11 A To keep the grass growing and green and plush
12 throughout the entire summer season. There's a -- our
13 house before we bought this house didn't have an irrigation
14 system in a large part of the lawn, and it would brown up in
15 the summer and wasn't really very useable, so we irrigated
16 that so that it was useable all year long -- I mean all
17 summer long.
18 Q Did there come a time when you and Mrs. Platner
19 hired Mr. Paul Grace?
20 A I believe so, yes.
21 ATTY. PRITCHARD: And Your Honor, my co-counsel
22 has reminded me that I did not move Plaintiff's
23 Exhibit 68 for identification into evidence.
24 THE COURT: Yes.
25 ATTY. MENDOZA: Is he referring to 66?
26 ATTY. PRITCHARD: I move it into evidence.
27 THE COURT: I thought he was.

later, I found out he was actually working for us, and I know that he assists the Novak Brothers in maintaining the landscape on the property.

Q Did you know that he was engaged in fertilizing the lawn in the protected areas north of the house?

A I really wasn't sure what he was doing.

Q So you don't know whether he was -- I withdraw. Did there come a time, Mr. Platner, when you and/or Mrs. Platner hired personnel to remove invasive plants from the woods?

A We didn't hire people specifically to remove invasive plants, but people that were working for us in one fashion or another were used to remove invasives in the woods.

Q And who was supervising those personnel who were removing invasives in the woods?

A Well, we were operating underneath an Inland Wetlands permit, and that was being overseen by Richard Snarski by the request of Inland Wetlands, and also he was supposed to be working with Bernie Gigliotti, the zoning enforcement officer. I know that was a longwinded answer, but they were really the supervisors of what took place in that invasive removal project.

Q You're testifying that Inland Wetlands supervised the removal of the invasive wetlands [sic]?

A Inland Wetlands gave us --

Q The invasive plants.

A Inland Wetlands granted us a permit to do the

1 invasive removal, and as part of that approval, they
2 required us to have Richard Snarski oversee it and report to
3 Bernie Gigliotti, the zoning enforcement officer. I don't
4 believe Bernie is a member of Inland Wetlands; I think he
5 was the town zoning enforcement officer.
6 Q And who is Richard Snarski?
7 A Richard Snarski is -- I'm not sure of all the
8 letters behind his name. He's a guru when it comes to
9 environmentally sound practices in this area.
10 Q Did you understand that the Inland Wetlands permit
11 was to -- specifically directed to the removal of invasive
12 species?
13 A I'm not really sure. Generally, yes.
14 Q Was -- did the Inland Wetlands have any interest, so
15 far as you know, in ensuring the retention of healthy
16 understory in the woodlands?
17 A I -- the majority of the understory were pricker
18 bushes, which I was told were invasive, so most of the
19 understory was invasive, I believe.
20 Q Would you please turn to Exhibit 33, Mr. Platner.
21 A I'm sorry. It's not a photograph.
22 Q That's in the -- it's not a photograph.
23 A Okay.
24 ATTY. PRITCHARD: This is an exhibit that's in
25 full, Your Honor.
26 BY ATTORNEY PRITCHARD:
27 Q Do you recall writing a letter to Mr. Paul Armond,

1 A Yes.
2 Q And Mr. Snarski's writing to give a status report
3 concerning the removal of exotic invasive plants at the
4 Platners' land; do you see that?
5 A Yes.
6 Q Further on down in that paragraph, Mr. Snarski
7 reports on May 7, 2008, I inventoried the plant species in
8 the forested area, and the following is a list of the plant
9 species present; do you see that?
10 A Yes.
11 Q He lists a number of trees, correct?
12 A Yes.
13 Q And he lists a number of shrubs.
14 A Yes.
15 Q Do you understand what the asterisks are beside
16 certain of the shrubs?
17 A I believe it's referenced in this letter somewhere.
18 On Page 2, it says, denotes exotic invasive plant species.
19 Q Okay, and do you see on the second page that he also
20 reports on the herbaceous plant species that he found during
21 his inventory?
22 A Okay, yes.
23 Q And you understand he was reporting on plant species
24 and flora that he found in the wooded area.
25 A Yes.
26 Q Do you recall requesting the Novak Brothers to mow
27 the woods?

1 if you think that's a different irrigation system
2 than the one you're eliciting testimony about, this
3 would be a good time to straighten me out, because --
4 You have to wait for a question. We discourage
5 volunteering from you or anybody else.
6 Go ahead. Excuse the interruption.
7 BY ATTORNEY MENDOZA:
8 Q The -- you testified that someone, one of your
9 contractors, discovered irrigation heads in the large field;
10 is that your testimony?
11 A Yes.
12 Q And how did that come to your attention?
13 A Somebody from the group told me.
14 Q Okay. And what did that -- those irrigation heads
15 look like?
16 A It was a while ago. They were metal as opposed to
17 the plastic that's used today, so it was very old, I guess.
18 Q Were they working?
19 A Not to my knowledge, they were not working.
20 Q So you never observed those old irrigation heads in
21 use.
22 A No.
23 Q And what did you instruct your contractors to do
24 with those old irrigation heads?
25 A To either bury -- to make it go away by either
26 burying it or pulling it out.
27 Q Why did you want them to go away?

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 5, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, New London, Connecticut, before the Honorable Joseph Q. Koletsky, Judge, on the 5th day of March, 2015.

Dated this 7th day of April, 2015, in New London, Connecticut.

Melanie Pearce
Court Recording Monitor

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 9, 2015

TRIAL

BEFORE THE HONORABLE JOSEPH Q. KOLETSKY, JUDGE TRIAL REFEREE

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Horton, Shields & Knox

Recorded & Transcribed by:
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1 G L E N D R E Y E R ,
2 of 27 Dunbar Road, Quaker Hill, Connecticut, called as
3 a witness by the Plaintiff, being first duly sworn, was
4 examined and testified under oath as follows:
5 DIRECT EXAMINATION BY ATTORNEY COLLINS:
6 Q Good morning, Mr. Dreyer.
7 A Good morning.
8 Q Where are you employed?
9 A I'm employed at Connecticut College.
10 Q What do you do there?
11 A I'm director of the Arboretum, and I'm executive
12 director of the Goodwin Niering Center for the Environment.
13 Q And can you explain to the Court what the Arboretum
14 is and the Goodwin Niering Center.
15 A The Arboretum is -- all of the Connecticut College
16 property is 770 acres in New London and Waterford, and we
17 have a number of different responsibilities on the campus,
18 including managing about 600 of the acres - not the main
19 campus landscape but the surrounding land and plant
20 collections; and we also have an educational program, a
21 public educational program to provide academic support for
22 teaching and research at the college.
23 Q How long have you been director of the Arboretum at
24 the college?
25 A Since 1988.
26 Q And how long have you been director of the Niering
27 Center at the college?

1 the field. There are subtle -- the field is brown. It's a
2 dormant time of year. The vegetation is dormant and the
3 tops are dead, and you can see subtle variations in color in
4 the field that would indicate different kinds of plants
5 growing in different locations -- different shades of brown,
6 I guess it is, really.
7 Q So I'm going to stop you there, Mr. Dreyer, because
8 I'm going to ask you questions about the field.
9 A Okay.
10 Q Do you have an opinion of what was in that field
11 prior to 2007?
12 A Yes, I do.
13 Q And what is that opinion?
14 A Well, I think it was predominantly composed of
15 native and non-native grasses with some forbs, some
16 broadleaf plants, and some small amounts of woody plants,
17 trees and shrubs that would have been mowed down and not
18 visible from aerial photos but were -- would be present
19 because of the management of the field. I was told that it
20 was mowed on an annual basis, and with that kind of
21 maintenance, it would be a fairly large diversity of
22 different kinds of plants, but the dominant ones appear from
23 the images to be grasses.
24 Q Okay, and specifically what grasses appeared in that
25 field, in your opinion?
26 A Based on the color, based on my observations of the
27 edges of the restricted area sort of in here, when I

1 visited, it --
2 Q When you're pointing to in here, where are you
3 referring --
4 A So I'm pointing to areas within about 100 feet of
5 the Connecticut River, so on the western portion of the
6 restricted area or field. These were areas that were not
7 converted to sod, to turf, and so I was able to see. It was
8 mowed; I was able to see plants in there, and based on the
9 coloration of the photos, based on what I saw in that zone I
10 just referred to, I would say there were probably --
11 predominantly warm season grasses, native warm season
12 grasses like little bluestem and broomsedge, with probably
13 some mixture of non-native pasture and hayfield grasses.
14 Q In your field, do you also refer to what we've been
15 calling the field as a meadow?
16 A Yes, I often would refer to this kind of vegetation
17 as a meadow.
18 Q What makes it a meadow or a field?
19 A In some senses, the definitions are the same, but I
20 think a field -- field is a much more generic term, so you
21 can have a cornfield, you can have a baseball field, and so
22 it's -- meadow is somewhat more restricted to a natural kind
23 of vegetation, often near a river, that's dominated by
24 grasses and soft stem plants, so it's all -- it could be
25 referred to as a field, but meadow is a little more
26 specific. You don't talk about a baseball meadow or a corn
27 meadow, so it's, you know, more descriptive of the kind of

1 vegetation that I think was there.
2 Q Would you -- you just referred to the word natural.
3 Would you describe the field prior to 2007, based on your
4 research and based on the photograph in evidence, as a field
5 or a meadow? A natural field or meadow, I'm sorry.
6 A I think I'd need to kind of define the word natural
7 in order to do that. Would that be permissible?
8 Q Yes.
9 A Okay. In terms of landscape management and
10 landscape composition, I think there's kind of a spectrum
11 between a natural landscape and a more artificial landscape.
12 A natural landscape's being dominated by native species,
13 maybe exclusively native species at the far end of that sort
14 of spectrum, and with minimal human intervention in terms of
15 maintenance, mowing, mulching, that kind of thing, and
16 chemical applications. That would be a more natural end of
17 the landscape. The more artificial end of the landscape
18 would have many, if not all, exotic plants, it would have
19 high intensity human intervention with chemical treatments,
20 and plantings and mulchings and weedings and mowings and
21 that kind of thing. So to finally answer your question, at
22 the -- in terms of what was there in, say, 2006 and before,
23 it was very much more of a natural landscape.
24 Q Do you have an opinion whether or not the
25 landscape - again, I'm still referring to the field and the
26 meadow - had native grasses in it?
27 A I believe it did.

1 Q Now, Mr. Dreyer, I'm going to ask you to direct your
2 attention toward the forest area of the property. And can
3 you tell us what was in the area which is described on the
4 map as large hardwood and shrubs, which is south of the
5 Platners' house in the southwest corner of the property?
6 A You're asking what it was like prior to?
7 Q Yes.
8 THE COURT: Prior to what?
9 ATTY. COLLINS: I'm sorry, prior to 2007.
10 BY ATTORNEY COLLINS:
11 A Well, one can't see the understory from aerial
12 photos of the -- there was a forest there. It was, as you
13 can see from Exhibit 55, it was a deciduous forest. This is
14 at a time when the leaves have dropped, so the evergreens --
15 there are a few evergreens right at the very edge of that
16 forest near the northern edge along the driveway, but the
17 natural forest was predominantly a variety of hardwood
18 trees; and assuming the understory wasn't managed, it would
19 have been composed of mainly native and some invasive exotic
20 species of shrubs and vines and soft stem plants.
21 Q I'm going to ask if you could turn to Exhibit 34,
22 which is a full exhibit. In your book there, it would be in
23 Volume 1.
24 A Okay.
25 Q Have you seen this document before?
26 A I'm not sure. I think I have.
27 Q Okay.

1 A Yes.
2 Q Can you tell us what an exotic invasive plant specie
3 is?
4 A Yes. The term exotic refers to plants that are not
5 native to a region, and invasive refers to the plant's
6 behavior, the way it reproduces on its own in an
7 uncontrolled manner and takes over large areas.
8 Q Is it fair to say in your profession that it's
9 undesirable to have an exotic invasive plant species in an
10 understory?
11 A Yes.
12 Q Mr. Dreyer, I'm going to draw your attention to the
13 map on the easel. And do you have an opinion as to what
14 would be on the right side -- well, no, I'll say the eastern
15 side of the driveway in the protected portion of the
16 property prior to 2007?
17 A Well, I think it would have been very similar to
18 what was on the east side of the driveway.
19 Q Being a field or a meadow.
20 A Yes.
21 Q And do you have an opinion on what would have been
22 on the west side of the house down toward the river?
23 A This area?
24 Q Yes, prior to 2007.
25 A Well, based on the photographs, it looked like there
26 was probably lawn from the house out to around the boundary
27 of the protected area, darker green, managed turf area, and

1 of July 2013 - on the Platner property. And that was the
2 Court inspection on July 30, 2013.
3 THE COURT: Court-ordered.
4 ATTY. COLLINS: Court-ordered.
5 BY ATTORNEY COLLINS:
6 Q And in these questions, I'm going to ask you to turn
7 to Exhibits 59 in Volume 1 -- or Volume 2, sorry.
8 THE COURT: I'm sorry.
9 ATTY. COLLINS: Volume 2.
10 THE COURT: Okay.
11 BY ATTORNEY COLLINS:
12 A Okay, I found it.
13 Q Okay. So in your report, you say the section of the
14 restricted area between Selden Road and the unrestricted
15 area to the south, and then you go on to describe it. Is
16 that the area in this photo that you were describing in
17 number 59?
18 A Yes.
19 Q And can you tell the Court what opinions you formed
20 with regard to that area, which we've commonly been
21 referring to as the field or the meadow north of the house
22 in the protected area?
23 A Well, when I visited the site, it was no longer a
24 field. It had been converted into a turf lawn with
25 ornamental planting beds in various places.
26 Q And what's the difference between a turf or a lawn
27 and the meadow you had been referring to earlier?

1 A Well, the species of grasses and the way those
2 grasses grow in this kind of turf, one uses sod-forming
3 grasses, which spread -- a single plant spreads out with
4 stolons and fills in very tightly, whereas in the field, it
5 would have been dominated by different species of grasses
6 that form clumps but don't spread into sod, so there's
7 space, kind of, between each plant. It doesn't form a
8 continuous carpet.
9 Q Okay, and what you saw there that day, the lawn that
10 you're describing, would the field grasses that were below
11 it back in 2007 have been destroyed by the installation of
12 that lawn?
13 A Well, they were no longer present. I think that
14 would be a fairly safe assumption.
15 Q Okay.
16 THE COURT: I'm not sure what it is you're
17 trying to say. Is there something different than the
18 questioner posed that you're trying to tell us?
19 THE WITNESS: Well, could you repeat the
20 question?
21 ATTY. COLLINS: My question --
22 THE COURT: Were what was there in 2007 and
23 before destroyed by the installation of what's shown
24 in Exhibit 59?
25 THE WITNESS: I believe so.
26 BY ATTORNEY COLLINS:
27 Q Is that your opinion?

1 the property. Can you describe to the Court what you found
2 in the forest?
3 A Well, there were trees, and they were essentially
4 the trees that Mr. Snarski listed on that memo that we
5 discussed earlier. It was a more or less closed-canopy
6 forest, so the trees at the top touched each other. It was
7 quite shady. The understory had been mowed fairly recently
8 to a rather short height. It was very easy to walk through,
9 but there were no -- very few of the plants that I could
10 identify were the understory kind of plants that were in Mr.
11 Snarski's memo that one would expect to find in an
12 undisturbed or a less disturbed forest understory.
13 Q Would mowing regularly destroy those shrubs that you
14 would expect to see in an understory?
15 A Well, if it was done often enough, it would. If it
16 was done on a weekly basis, it would pretty much destroy
17 most of those kinds of understory plants. Once a year, it
18 would probably not destroy them; it would just make them
19 shorter.
20 Q How about once a month?
21 A I think if it was done on a long-term basis, once a
22 month would probably eliminate a lot of them.
23 Q Okay, and I'm asking you to look at Plaintiff's
24 Exhibit 80.
25 A Okay.
26 Q And that's been marked as a full exhibit. Do you
27 recognize what's in this photograph?

1 A Yes, that looks like the understory when we visited
2 in July of 2013.
3 Q And can you -- do you see the stakes going up the
4 left side?
5 A I see two stakes, yes, at least.
6 Q The area that we're looking at in this photograph,
7 Exhibit 80, is that in the restricted area or the protected
8 area of the Platner property?
9 A Yes, it is.
10 Q Where?
11 THE COURT: Well, no, it's a --
12 THE WITNESS: Except for the area to the left of
13 the stake.
14 THE COURT: It was an either/or.
15 THE WITNESS: Sorry.
16 THE COURT: Oh, did you say restricted or
17 protected?
18 ATTY. COLLINS: Yes.
19 THE COURT: I'm sorry. You were just leading
20 him. Okay, I apologize.
21 BY ATTORNEY COLLINS:
22 A The answer is, almost the entire photograph is in
23 the restricted area except for what can be seen to the left
24 of the stakes.
25 Q And do you have an opinion about how this area had
26 been managed sometime between 2007 and -- or 2008 during Mr.
27 Snarski's report of what was there and the date of our site

1 visit in 2013?
2 A Well, I can say that it has been mowed, and
3 recently. I don't know on what frequency, really.
4 Q And I apologize to the Court, I forget if I asked
5 this question. But would the shrubs that would have been
6 there have been destroyed by the mowing? I did ask that
7 question.
8 THE COURT: You did.
9 BY ATTORNEY COLLINS:
10 Q Now I'm going to ask you to look at photograph
11 number 81 or Exhibit number 81, which is also a full
12 exhibit.
13 A Yes.
14 Q And do you recognize this photograph?
15 A Yes.
16 Q What does it show?
17 A It also shows the understory of the forest in the
18 restricted area.
19 Q Specifically where?
20 A Can I use the --
21 Q Where on the Platner property?
22 A Can I use the map, or --
23 Q Yes, please.
24 A I believe it's -- the photographer is standing
25 somewhere around the boundary between the restricted and the
26 unrestricted area somewhere near the house and looking this
27 way towards the river, so the photograph would be showing

1 this part of the woods.
2 Q And what is the green grasses that -- what are the
3 green grasses that appear in that photo, Mr. Dreyer?
4 A I really couldn't say. There -- I recall seeing a
5 lot of Japanese stiltgrass there. The grass in the
6 foreground is not Japanese stiltgrass, I believe, so it
7 would have -- it almost looks like maybe lawn grasses that
8 seeded into there, but I can't really say.
9 Q While we're on the subject of Japanese stiltgrass,
10 what is Japanese stiltgrass?
11 A It is an invasive exotic plant from Japan, and it is
12 an annual grass, so it grows from seed every year. It is
13 not perennial, and it is very widespread.
14 Q What are different ways to manage Japanese
15 stiltgrass, or manage their growth?
16 A You're asking how to control Japanese stiltgrass?
17 Q How to control it is a much better way to say it,
18 yes.
19 A The most effective way is to mow it late in the
20 season, because the plant flowers very late in the season.
21 It flowers in September and sets seed after it flowers, and
22 it needs the seeds for the next generation of plants, so by
23 mowing late in the season, there is not enough time before
24 the temperature drops for it to regrow enough to flower and
25 fruit, so you're preventing it from setting seed,
26 essentially, and thereby reducing the amount of regrowth the
27 next year. The seeds do live in the soil for a number of

1 years, so there -- depending on how long it had been
2 present, there still could be stilgrass coming up the next
3 year, but you would have prevented that annual crop of seeds
4 from being there the next year.
5 THE COURT: So the Japanese stiltgrass is an
6 annual, but it reseeds itself.
7 THE WITNESS: It's an annual. Right, that --
8 right.
9 THE COURT: Isn't that what a perennial does?
10 THE WITNESS: No, a perennial grows from an
11 existing root system and comes back up the next year,
12 so it survives under the surface of the soil.
13 THE COURT: That's where the seeds of your
14 annual survive.
15 THE WITNESS: Right, so one plant has the same
16 root system year after year after year and just grows
17 a new top. That's a perennial. An annual -- the
18 whole plant dies. All that lives is the seed. The
19 seed grows an entirely new plant every year.
20 THE COURT: Okay.
21 BY ATTORNEY COLLINS:
22 Q Mr. Dreyer, do you have an opinion about how one
23 would effectively control the Japanese stiltgrass in an
24 understory such as the Platners'?
25 A There are various ways. You could hand-weed it, I
26 suppose, meaning just pull out the plants as you see them.
27 You could do what I just described and mow late in the

1 season to prevent the seeds from being created, and then
2 probably have to do that multiple -- a few years in a row,
3 because the seeds can live for multiple years - a few years,
4 at least, in the ground, so they would come up. So that's
5 one way. Some people use a kind of a torch thing to burn
6 the grasses instead of mowing them. There are various ways.
7 You want to -- basically, you want to kill the plants before
8 they flower and set seed, or remove them.
9 Q Okay. All right, you say in your report, there was
10 almost no understory of shrubs or saplings in this area, and
11 the ground appeared to have been periodically mowed during
12 the growing season, creating a very artificial-appearing
13 woodland.
14 A Yes.
15 Q Can you describe that portion of your report?
16 A Well, in a woodland that isn't mowed, you see a
17 diversity of plants of various heights and various kinds -
18 ferns and shrubs and taller perennials - and there was
19 basically none of that over the majority of that understory.
20 Instead, it was mowed to a few inches high, had a --
21 appeared to have a lower diversity than one would expect of
22 various kinds of plants.
23 Q And do you have an opinion regarding the condition
24 of the restricted areas of the Platner property and whether
25 or not those areas could be considered to have been left in
26 their natural condition?
27 A Are you talking about the entire restricted area?

1 field? You can look at Page 4 of your report.
2 A Yes. Are you --
3 Q And the first thing that you say is, the existing
4 turf and ornamental planting beds must be removed or killed.
5 A Yes.
6 Q And how would that be done?
7 A Well, there's various options. You could do a --
8 use a sod cutter, which would remove the turf like kind of a
9 carpet that you could roll up and potentially utilize
10 elsewhere. You could spread ten acres of black plastic over
11 it and wait a year and it would probably die underneath the
12 black plastic, which is not in my report. You could use
13 herbicides such as Roundup to kill the grasses.
14 Q And do you have to kill it because now you're
15 competing with the already-established root system in the
16 lawn?
17 A Yes, the field species that we would be replacing
18 the turf with can't really compete with the dense sod, so
19 that removal would be necessary to reestablish a field.
20 Q What would you do once -- what would you recommend
21 once the lawn is removed or killed?
22 A I think the first thing to do would be to get a soil
23 test to see what the nutrient levels and pH and organic
24 matter levels are of the soil in order to be able to
25 successfully grow other plants there.
26 Q And do you have a recommendation regarding the
27 irrigation system?

1 A Yes, it wouldn't be necessary in a field, and I
2 would think it should be removed.
3 Q Then you go on to say that you recommend a list --
4 there's a list of native plant species that should be
5 planted there.
6 A Well, yes, I said that a list should be identified
7 and orders placed for acquisition, so I didn't really
8 specify a species mix.
9 Q What's your recommendation as to how to put native
10 grasses back in that field?
11 A The most economical way would be by seed, by
12 purchasing seed and using a -- probably using a seed drill,
13 which is a machine that you tow behind the tractor to --
14 that spreads the seed out and compacts it down into the
15 soil, so it gets good contact with the soil.
16 Q Is that also called slice-seeding?
17 A No, slice-seeding is when you slice the sod and drop
18 the seed into an existing -- existing vegetation. You're
19 slicing the existing vegetation to add more seed in, so it's
20 a different technique.
21 Q And would a more expensive technique be to actually
22 plant the plugs into the field?
23 A Yes, you could buy partially grown plants, which are
24 called plugs, or you could buy fully grown plants in pots,
25 which would be much more expensive, but it would also be a
26 much quicker result.
27 Q How did you do it with the meadow that you created

1 at the college?
2 A The most recent meadow we did by seeding with a
3 drill seeded. I've also seeded by hand on smaller meadows,
4 and in one meadow, we transplanted plants from an area that
5 was going to be developed nearby and relocated them into an
6 area in the Arboretum.
7 Q And then you go on to talk about maintenance. How
8 would you maintain this during the first year of
9 remediation?
10 A So during the first year, you'd need to mow probably
11 about on a monthly basis at a height of approximately six
12 inches, because in addition to the plants that were put down
13 on purpose by seed, you would -- I would expect there also
14 to be many weeds coming up, undesirable plants which -- many
15 of which would be annuals that would grow quickly, and you
16 want to prevent those. Much like with the Japanese
17 stiltgrass, you want to cut them off before they flower and
18 create seed and spread, so you're essentially reducing the
19 competition for the plant -- the desirable plants that
20 you've planted by seed by mowing periodically at a height
21 that's above the newly growing plants.
22 Q And once you've established the new plants, how
23 often would you recommend the area being mowed in order to
24 complete your remediation?
25 A Well, what I would recommend is that it be mowed
26 once a year in early spring.
27 Q And do you recommend mowing at all between July 1st

1 and October 1st?
2 A No, I don't.
3 Q Why?
4 A Well, because many of the native species are
5 blooming at that time, especially the warm season grasses,
6 which are some of the common native grasses in our area, and
7 many of the goldenrods and asters and, you know, common New
8 England meadow species would be just reaching their maturity
9 at that time each year.
10 Q Do you know what the cost would be to restore the
11 meadow?
12 A I have an estimate of what I think it might cost.
13 Q What is that?
14 A Approximately -- I would say between 90- and
15 $100,000.
16 Q And what is that based on?
17 A That's based on trying to cost out the various steps
18 involved in removing the existing vegetation and replanting.
19 Q And is that your experience based on establishing
20 the meadow at Connecticut College?
21 A Some of it is. Some of it is based on knowing what
22 needs to be done and trying to find prices for things that I
23 haven't done and trying to find current costs of things.
24 Q Your estimate is -- what number of acres is your
25 estimate based on?
26 A Ten acres. This is restoration just for the former
27 field area north of the house and south of Selden Road.

1 A Right, so that would have -- depending on how much
2 of it is there, it could potentially be pulled, it could be
3 spot-herbicided, or it could be mowed, perhaps with a string
4 trimmer, just in the patches where the stiltgrass is and not
5 in the entire understory.
6 Q Is there any season at which you would prohibit
7 mowing altogether to reestablish the understory?
8 A I would -- yes, during the entire growing season, I
9 would say, and then perhaps some selective mowing might be
10 necessary at the end of the season in September, October for
11 stiltgrass control.
12 Q Specifically what seasons or what dates would you
13 prohibit mowing? From what date to what date?
14 A From November 1st to September 1st.
15 ATTY. COLLINS: I have no further questions,
16 Your Honor.
17 THE COURT: I'm sorry, that date was from
18 November 1st to when?
19 THE WITNESS: Through September 1st, so mowing
20 in September and October would be allowed.
21 THE COURT: It's ten of. Why don't we start
22 your -- I'm assuming you're going to have more than a
23 couple of questions.
24 ATTY. BROOKS: Yes.
25 THE COURT: Well, let's start at two o'clock.
26 Luncheon recess.
27 (Recess.)

1 Q Is it beneficial to the woods to have exotic
2 invasive species as part of the dense understory?
3 A No, I don't think it's beneficial.
4 Q Is it a detriment?
5 A Yes, I think it's a detriment.
6 Q Now, your restoration plan isn't the only set of
7 plantings that would satisfy the declaration, is it?
8 A I don't really know. I was asked to do -- create a
9 restoration back to a prior time, so that's what I did. I
10 wasn't -- I don't -- I'm not sure.
11 Q Okay. Were you asked to design a vegetation plan
12 that was scenic?
13 A No, I don't believe that was mentioned.
14 Q Were you asked to design a plan that was
15 agricultural?
16 A No, I don't believe so.
17 Q You don't believe that the planting of exotics,
18 exotic vegetation in general is inappropriate in
19 Connecticut, do you?
20 THE COURT: Is inappropriate?
21 ATTY. BROOKS: Is inappropriate.
22 BY ATTORNEY BROOKS:
23 A I guess --
24 Q I said exotics, not exotic invasives.
25 A Right, I think it depends on where one's planting
26 them, but in general, I would say there are places they can
27 be planted, sure.

1 current mowing regime of the lawn - that is, the lawn is the
2 area close to the house, the length of the house,
3 riverward - based on the current owners' mowing regime.
4 Would your restoration plan change if you knew the mowing
5 regime of a previous owner in 2007 or 2006?
6 A I don't think so, because I wasn't necessarily
7 trying to reproduce the conditions in 2006. I mean, I was
8 looking at aerial photos and trying to understand, pretty
9 much from the time that the restriction went in up to 2006.
10 ATTY. BROOKS: Just a moment, Your Honor.
11 BY ATTORNEY BROOKS:
12 Q In your plan, you recommend the technique of removal
13 of the grass; and does your plan take into account the
14 periodic flooding of the floodplain at that point of the
15 river?
16 A I don't mention that in my plan, in my report.
17 ATTY. BROOKS: Thank you, no further questions.
18 ATTY. COLLINS: We have no redirect, Your Honor.
19 THE COURT: Thank you very much. You may step
20 down.
21 ATTY. COLLINS: Your Honor, the plaintiff is
22 about to rest, but before we do, we do have one more
23 housekeeping matter, and I'll never use that word
24 again. We're going to withdraw our motion to
25 bifurcate that we filed this morning.
26 THE COURT: All right.
27 ATTY. COLLINS: And after that, the plaintiff

1 K A T H E R I N E T H R O C K M O R T O N ,
2 of 294 Nod Hill Road, Wilton, Connecticut, called as a
3 witness by the defendant, being first duly sworn, was
4 examined and testified under oath as follows:
5 DIRECT EXAMINATION BY ATTORNEY BROOKS:
6 Q Ms. Throckmorton, how are you employed?
7 A I'm a licensed landscape architect and certified
8 professional in erosion control at Environmental Land
9 Solutions in Norwalk, Connecticut.
10 Q And how long have you been employed there?
11 A Sixteen years.
12 Q And what is your educational background as a
13 landscape architect?
14 A I've got a bachelor's degree in landscape design
15 from the University of Connecticut.
16 Q And what kinds of courses or concentration did you
17 engage in in education?
18 A It's a broad range of study that includes biology,
19 botany, hydrology, soil study, art, history, and design.
20 Q Is there a state certification for landscape
21 architects?
22 A Yes.
23 Q Do you have that?
24 A Yes.
25 Q And what kind of work have you done as a landscape
26 architect?
27 A I've worked on a broad range of projects, from

1 THE COURT: I just wasn't sure which word you
2 said. Do you have the question? Thanks.
3 THE WITNESS: Could you repeat it? I'm sorry.
4 BY ATTORNEY BROOKS:
5 Q What is growing there now?
6 THE COURT: After you were informed of the
7 removal of the invasive species, what was it like
8 now?
9 BY ATTORNEY BROOKS:
10 A Okay, well, the primary groundcover is Japanese
11 stiltgrass but includes yellow iris and ferns. The midstory
12 was very thin. There was some native replanting that I
13 noted, and then the rest of the trees were closed-canopies.
14 Q And did you say something about -- or maybe I didn't
15 hear. What is Japanese stiltgrass?
16 A Japanese stiltgrass is known in this area as a non-
17 native invasive annual plant.
18 Q Do you have an opinion based on your education and
19 training whether the removal of the exotic invasive plants
20 from the woodlands on the Platner property had any impact on
21 that wooded wetland?
22 A Yes.
23 Q And what is your opinion?
24 A I would say that it's beneficial. Generally, if
25 you're managing any woodlands in Connecticut, that's usually
26 part of your regime, to remove invasives or diminish the
27 invasives and increase native plants.

1 Q And how deep are those roots?
2 A Well, it's an established turf area.
3 Q Could you describe the grade of the field.
4 A I would call it undulating, gently undulating.
5 Q And can you explain whether undulations are expected
6 in a floodplain?
7 A Yes, floodplains generally are close to level, but
8 there's nothing really level in nature. But floodplains are
9 undulating in that because they are floodplains, they
10 receive waters at least annually, and with those waters
11 usually comes some type of sediment that gets deposited in
12 these areas, so generally there's usually a low undulation
13 of six to 12 inches throughout the area.
14 Q And I'm sorry if you've already answered this
15 question and I wasn't paying careful enough attention: Which
16 months did you visit in?
17 A July.
18 THE COURT: July of 2014.
19 BY ATTORNEY BROOKS:
20 Q Can you expect to see the full range of plants in
21 those months?
22 A Most of them. There may not be all of them, but
23 most of them, in July.
24 Q What plants did you see in the field?
25 A It was a mix of cool-season grasses that is being
26 maintained as a lawn, and it was inclusive of some other
27 forbs and clovers.

1 Q Can a field be managed to eliminate broadleaved
2 herbaceous material?
3 A Yes.
4 Q And are any of the things that you said that you
5 observed examples of broadleaved herbaceous material?
6 A I saw broadleaf herbaceous material in the field.
7 Q When you described forbs, clover, and I may have
8 missed something else, are any of those examples of
9 broadleaf herbaceous material?
10 A Yes, they are.
11 Q And can you approximate how -- what percentage
12 within the field those broadleaved materials occupied?
13 A I didn't take a scientific measurement, but by an
14 educated guess, I would say five percent.
15 THE COURT: Are any of those things what we call
16 weeds?
17 THE WITNESS: Some people --
18 THE COURT: Not we, what an uneducated person
19 might call a weed.
20 THE WITNESS: Some people would refer to them as
21 weeds. If you're -- yes.
22 THE COURT: Thank you.
23 BY ATTORNEY BROOKS:
24 Q Did you examine the neighboring property across the
25 street from the driveway?
26 A Yes.
27 Q What did you observe about that property?

1 A I would --
2 THE COURT: Have you happened to remember the
3 question after all of that?
4 THE WITNESS: Yes, I do.
5 THE COURT: Okay.
6 BY ATTORNEY BROOKS:
7 A I would say in my opinion, scenic is essentially a
8 view of natural and man-made elements that are composed and
9 pleasing to the eye.
10 Q Can you give some examples of the breadth of that?
11 THE COURT: The what of that?
12 ATTY. BROOKS: The breadth.
13 THE COURT: Breadth.
14 BY ATTORNEY BROOKS:
15 A Well, I would say scenic is used broadly in that it
16 can include one's back yard, it can include a formal garden,
17 it can include a scenic byway, a scenic highway, a scenic
18 railroad, and it --
19 THE COURT: A scenic railroad? Scenic?
20 THE WITNESS: Well, a railroad --
21 THE COURT: Or is it a railroad that goes by
22 scenic views?
23 THE WITNESS: Well, probably a railroad that is
24 scenic, but I would imagine if you're a railroad
25 aficionado, you could probably think that railroads
26 are pretty scenic, too. But I would say it usually
27 composes landscape elements that you can view from

1 afar.
2 BY ATTORNEY BROOKS:
3 Q And what natural elements would be part of such a
4 definition?
5 A All the natural elements that are outside a
6 building, including trees, lawns, grass, rivers.
7 Q Are there manuals with objective principles for
8 scenic commonly used in the field of landscape architecture?
9 A No.
10 Q How is the term scenic gauged?
11 A It's subjective. It's in the eye of the beholder.
12 Q So the highly maintained gardens of the Connecticut
13 Arboretum could be scenic?
14 A Yes.
15 Q Unmanaged fields along the water body can be scenic.
16 ATTY. COLLINS: Objection, Your Honor.
17 THE COURT: Sustained. Facts not in evidence?
18 ATTY. COLLINS: Yes, Your Honor.
19 THE COURT: I haven't been to the Arboretum for
20 a while, but I don't ever recall any highly managed
21 gardens when I used to take my kids there, but maybe
22 it's changed. In any event, there's no evidence
23 about the highly managed gardens of the arboretum,
24 and so I'll sustain the objection.
25 BY ATTORNEY BROOKS:
26 Q Okay, when you were at the property, the Platner
27 property, during one of the site visits that you made, did

1 Your oath is still binding. Just have a seat,
2 make yourself comfortable. We'll see if we can't get
3 you out of here on your schedule.
4 BY ATTORNEY BROOKS:
5 Q Do invasives come back after the first time they are
6 removed?
7 A Yes.
8 THE COURT: Well, it depends how they're
9 removed.
10 THE WITNESS: Yes, and actually, it depends on
11 the plant.
12 THE COURT: Yes.
13 THE WITNESS: Correct.
14 THE COURT: Other than that, though, it's a yes.
15 THE WITNESS: Yes.
16 BY ATTORNEY BROOKS:
17 Q How fast do they come back?
18 A Well, it depends on the plant and it depends on how
19 thoroughly they were removed.
20 Q Is there a scenic vista looking from the road to the
21 river?
22 THE COURT: Is there a what vista?
23 ATTY. BROOKS: Scenic vista from the road to the
24 river.
25 BY ATTORNEY BROOKS:
26 A In my opinion, yes.
27 Q Can you tell if a land has been previously graded

1 A I did not.
2 Q So is it your belief that those are the regulations
3 that were in effect in 1981?
4 A Yes.
5 Q Are you familiar with the town wetlands map?
6 A Yes.
7 Q Are you familiar with 66 Selden Road?
8 A Yes.
9 Q Are you -- looking at the map there next to you
10 that's marked Exhibit 39 with the green and the white, are
11 almost all of the soils at 66 Selden Road wetlands soils?
12 A It's my understanding the definition of wetland
13 soil --
14 Q Yes.
15 A -- they are alluvial and would qualify as wetlands
16 soils.
17 Q Thank you.
18 THE COURT: All soils?
19 THE WITNESS: Yes.
20 THE COURT: Okay.
21 BY ATTORNEY LAMBERT:
22 Q You said you're the Zoning Enforcement Officer also.
23 A Yes, sir.
24 Q Do you know whether this -- is this land zoned
25 residential -- zoned as a residential block?
26 A Yes.
27 Q And do you know the minimum acreage in this zone?

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
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v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 9, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, New London, Connecticut, before the Honorable Joseph Q. Koletsky, Judge, on the 9th day of March, 2015.

Dated this 15th day of April, 2015, in New London, Connecticut.

Melanie Pearce
Court Recording Monitor

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 10, 2015

TRIAL

BEFORE THE HONORABLE JOSEPH Q. KOLETSKY, JUDGE TRIAL REFEREE

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1 lived in. So in addition to the main house, after college I
2 lived in the -- there was a series of farmhouses. There was
3 a barn and two farmhouses here that had actually been
4 brought up in the 1930s by my grandfather - from Greenwich
5 of all places; it must have been a sight - and then there
6 were these outhouses, other barns where there used to be
7 chicken coops. And then -- it's no longer visible here.
8 There used to be chicken pens and cages going out into the
9 field.
10 Q And at the time you purchased -- what was the year
11 you purchased the land that is known as 66 Selden Road?
12 A Well, it must have been '81, I think.
13 Q And at that time, did there exist a driveway on
14 this --
15 A There was a driveway down to the dock area.
16 Q And did the dock area exist?
17 A The dock area existed, yes. It was really just a
18 bulkhead. I think we may have had some floating docks that
19 came off of that.
20 THE COURT: You began the answer with blank had
21 two floating docks.
22 THE WITNESS: I think the bulkhead.
23 THE COURT: The bulkhead.
24 THE WITNESS: Right, and then off of that, there
25 was a floating dock.
26 THE COURT: Right, I understand. That was all I
27 asked you. Thank you.

1 BY ATTORNEY BROOKS:
2 Q And looking still at this map in the area where the
3 words lot number 6, 20.0 A C --
4 A Acres, right.
5 Q Acres. In that area --
6 THE COURT: I'm sorry, how many acres did you
7 say?
8 THE WITNESS: It's 20 acres.
9 THE COURT: I understand. I asked what counsel
10 said.
11 ATTY. BROOKS: I was trying to identify a place
12 on the map.
13 THE COURT: I understand, but --
14 ATTY. BROOKS: 20.0.
15 THE COURT: Let me hear the -- what?
16 ATTY. BROOKS: 20.0.
17 THE COURT: I heard something different. May I
18 have the answer -- may I have the question back,
19 please.
20 (Playback.)
21 THE COURT: Thank you. Go ahead, please.
22 BY ATTORNEY BROOKS:
23 Q Do you recall the nature of that land? Let's start
24 with the '50s when you were a child.
25 A Well, in the '50s, it was largely scrub brush and
26 some trees - a lot of trees down by the inlet from the river
27 going into the creek - and tall bushes, prickly thorn, a lot

1 of -- it was very wild. Great place to play as a kid.
2 Q And in the 1960s, did it stay that way?
3 A No. My father, when he put in the road down and put
4 in the bulkhead, he had the -- he had it mowed, and much of
5 the brush kind of thinned out, and then he would
6 periodically do that every two or three years.
7 Q And did you say that you lived for some extended
8 period of time in this area?
9 A Yes. So after -- from '71 to '74, for the four
10 years there, I lived up in the property there on one of the
11 houses.
12 Q And in what condition was that same lot number six
13 area? As designated on that map, what condition was it in
14 in the '70s?
15 A Well, it hadn't been mowed in many years, so it had
16 grown up some. There were still the bushes. It -- you
17 know, it depended. Certain areas flooded, so they had a
18 different kind of growth to them than the rest of the
19 property. But I would say it was essentially unchanged,
20 just -- it would get a little wilder as the years went by.
21 Q Was there a cedar grove near the river in that
22 portion of the property?
23 A There were cedar trees. I don't know whether I
24 would call them a grove, at the time.
25 Q Do you recall when the dock was built?
26 A This dock as opposed to this dock?
27 Q The dock on Selden Cove.

1 were you physically located?
2 A I was in New York at the time.
3 Q And were you actively asking to see progress reports
4 from Attorney Tighe and making decisions about the
5 salability of the property?
6 A I must say I was probably extremely ambivalent about
7 it; and no, I was not overly involved in the details of what
8 was going on.
9 Q What did you understand you needed to do to make
10 this a sellable -- make it a lot where you could put a house
11 on it?
12 A Well, the idea was that there had to be an available
13 lot site -- building site. The soil scientist's job was to
14 somehow demonstrate that not all of the plant life there was
15 typical of wetlands, so that it wasn't all wetlands. There
16 were some obvious elevated areas, and so the house site was
17 identified, and then there was a kind of deal, I guess,
18 made. We had to kind of involve the Wetlands Commission and
19 the land trust, and it was -- you know, if you want to do
20 it, then you have to assign some of the stuff outside the
21 house site to them.
22 Q What do you mean, a deal was made?
23 A Well, it seemed to me that that's what getting the
24 house site was contingent upon. At least -- that's just how
25 I remember it.
26 Q Was it your idea to give an easement on this
27 property?

1 the developers.
2 A I did, yes.
3 Q Were you familiar with wetlands law, in general?
4 A Yes.
5 Q Did you ever draft any wetlands regulations or
6 zoning regulations?
7 A Yes, some.
8 THE COURT: Is that wetlands and zoning?
9 THE WITNESS: Mostly zoning regulations and
10 subdivision regulations, but -- and some wetlands
11 regulations as well.
12 BY ATTORNEY LAMBERT:
13 Q Did there come a time in 1981 when Paul Selden hired
14 you to do work?
15 A Yes.
16 Q And do you recall what time of year that was?
17 A Probably in the late summer.
18 Q And what was the scope of the work or the charge
19 that he gave you that he wanted done -- wanted you to do?
20 A He wanted me to get wetlands permission to build a
21 single-family dwelling on this piece of property you see on
22 this Exhibit 9.
23 Q And are you the one that made the deal that he was
24 speaking about, if you know, to -- that if he restricted
25 something, he could do that?
26 A Am I the one who made the deal? I don't understand.
27 Q Okay. And you know what? I'm not sure I understand

1 A Because I had been told that this permit would not
2 be granted by this agency unless Arthur Howe approved of the
3 restrictions to be placed on it.
4 Q So let me then ask you to look at Plaintiff's
5 Exhibit -- I think it's 51, Your Honor, a letter dated the
6 same date to Arthur Howe.
7 THE COURT: 51 is full.
8 ATTY. LAMBERT: Yes, I believe so.
9 ATTY. COLLINS: It is, Your Honor.
10 THE COURT: The exhibit is redacted.
11 ATTY. LAMBERT: Yes. I believe, Your Honor, it
12 was a number of stray marks.
13 THE COURT: What -- the what?
14 ATTY. LAMBERT: Stray marks, notes, handwritten
15 notes.
16 THE COURT: I don't know. I just wanted to be
17 sure that --
18 ATTY. LABMERT: Yes, they're -- I believe that
19 it is redaction.
20 THE COURT: If I could finish. I just wanted to
21 be sure that the original exhibit has the same
22 redaction as the bench copy. Thank you. Please put
23 a question.
24 BY ATTORNEY LAMBERT:
25 Q Yes, directing your attention to that -- well,
26 directing your attention to the bottom of the whole thing,
27 CMT:EDP after your signature on the second page.

1 THE COURT: Sustained. There's no indication --
2 you have assumed that paragraph 3.1 was at the
3 direction of Mr. Howe; and I don't think the witness
4 has testified to that, and that's why I'm sustaining
5 the objection.
6 BY ATTORNEY LAMBERT:
7 Q Then let me ask you, did Mr. Howe have comments to
8 you to add a right of access?
9 A Yes.
10 Q And is that right of access incorporated in the
11 final version of 3.1?
12 A Yes.
13 Q And are the other paragraphs in the final version
14 simply renumbered versions of what you had in the Exhibit W1
15 that is marked draft?
16 THE COURT: I'm so sorry, I don't understand the
17 question, so --
18 THE WITNESS: I don't.
19 THE COURT: Neither does the witness, so would
20 you re-put the question.
21 BY ATTORNEY LAMBERT:
22 Q Looking at the final draft, recorded versions, are
23 the paragraphs that succeed after 3.1, are those reflected
24 and simply renumbering of what had been 3.1, et cetera, in
25 the earlier -- in other words -- let me put it simpler. Is
26 3.2 of the final draft the same as 3.1 of W1?
27 A Yes.

1 Q And so on and so forth until the end of the 3s.
2 A Yes.
3 Q Thank you. I'm sorry for being so clumsy in how I
4 asked. And can you compare the language in the other
5 paragraphs mentioned to Mr. Holth, compare the language of
6 the draft to the recorded version?
7 A Shall I go one by one, that is, paragraph 1.3 first?
8 Q Yes.
9 A All right.
10 Q Do you notice, for example, that in the final
11 version, the word soil --
12 A Yes.
13 Q -- and the words mineral substance have been --
14 A Yes, I see that.
15 Q Okay.
16 A And in the final version, the word soil has been
17 inserted.
18 Q And the words mineral substance.
19 A Yes, and mineral substance has been inserted.
20 Q So comparing 1.7 of W1 with the final version --
21 THE COURT: I'm so troubled by the final
22 version, because your W1 is on file, because there's
23 a stamp from the clerk that it's somewhere in the
24 town clerk's office in Lyme.
25 ATTY. LAMBERT: Yes.
26 THE COURT: So I understand Exhibit 8 is
27 recorded, and I don't know what W -- what the status

1 of W1 is.

2 ATTY. LAMBERT: Other than that it's a public

3 record.

4 THE COURT: Yes.

5 ATTY. LAMBERT: And I'm trying --

6 THE COURT: And unsigned.

7 ATTY. LAMBERT: And unsigned.

8 THE COURT: So perhaps if you'll refer to them

9 as the signed and unsigned, it will be less grating

10 on my sense of the evidence to date, and I think it

11 will accomplish your stated purpose.

12 BY ATTORNEY LAMBERT:

13 Q Would you compare the unsigned W1 with the final

14 version of Exhibit 8; and I'm drawing your attention to

15 paragraph 1.7 in each of them.

16 A Yes.

17 Q In 1.7, do you see in the final version the words as

18 determined by grantee --

19 A Yes.

20 Q -- and the word non-commercial inserted before the

21 word forestry?

22 A Yes.

23 Q Looking -- comparing those two versions, the

24 unsigned and signed at 1.8, paragraph 1.8 --

25 A Yes.

26 Q -- do you see in the final version the insertion of

27 the words in the opinion of the grantee?

1 A Yes.
2 Q And then in the final version -- looking at 2.1 of
3 each of those --
4 A Yes.
5 Q -- do you see the deletion of the words existing and
6 future from the final, after the phrase to create and
7 maintain views and sightlines from? Do you see the deletion
8 of those?
9 A Yes.
10 Q Looking at 2.3, comparing those two.
11 A Yes.
12 THE COURT: I'm sorry, would you pause for a
13 moment. I'm confused by 2.1. Just give me a moment.
14 All right, now you wish to turn to 2.3.
15 ATTY. LAMBERT: Please.
16 BY ATTORNEY LAMBERT:
17 Q Mr. Tighe, do you see in the final version the
18 insertion of the word non-commercial?
19 A Yes.
20 Q Now, then, looking at 3.1 of the signed version, do
21 you see that that's entirely new from the unsigned version?
22 A Yes, I do.
23 Q And was that language from Mr. Howe?
24 A Yes.
25 Q Let me ask you this.
26 A I drafted the language. I drafted that language
27 because he wanted it in there.

1 Q I see. He --
2 A Yes.
3 Q Okay.
4 A As with any changes from this draft to the final
5 version [indiscernible], the changes were made pursuant to
6 Arthur Howe's direction.
7 Q I understand. So let me ask you about --
8 A As reported in my letter, which is marked as
9 Exhibit --
10 THE COURT: T1, I think. T2.
11 THE WITNESS: T2.
12 BY ATTORNEY LAMBERT:
13 Q Did Mr. Howe ask you to insert anything about
14 restricting the planting to native plants?
15 A No.
16 Q Did he ask you to - perhaps you've answered this -
17 to disallow non-native plants to be planted?
18 A No.
19 Q Did he ask you to disallow ornamental shrubs?
20 A No.
21 Q Did he ask you to disallow ornamental flowers?
22 A No.
23 Q Did he ask anything about -- for you to put in
24 anything about invasive plants being negative in this area?
25 ATTY. COLLINS: Objection, Your Honor,
26 relevance.
27 THE COURT: No, I'll hear it. Overruled.

1 BY ATTORNEY LAMBERT:
2 Q Did he ask you to make some sort of -- provide
3 anything about encouraging biodiversity on the site?
4 A No.
5 Q Did he ask you to include anything about threatened
6 wildlife or threatened plants?
7 A No.
8 THE COURT: I'm sorry.
9 ATTY. LAMBERT: Threatened.
10 THE COURT: I heard everything you said.
11 ATTY. LAMBERT: Oh, okay.
12 THE COURT: It just didn't make any sense.
13 Threatened wildlife or threatened plant?
14 ATTY. LAMBERT: Let me --
15 BY ATTORNEY LAMBERT:
16 Q Did he talk about endangered wildlife, or did he ask
17 you to put in anything about endangered plants?
18 A No.
19 Q Did he speak of there being any particular species
20 of wildlife that he wanted protected?
21 A No.
22 Q Did he speak of wanting you to incorporate a ban on
23 fertilizers?
24 A No.
25 Q Or pesticides?
26 A No.
27 Q Or insecticides?

1 A No.
2 Q Or fungicides?
3 A No.
4 Q Or herbicides?
5 A No.
6 Q Would you look at paragraph 2.2 of the reservation.
7 THE COURT: The signed reservation.
8 ATTY. LAMBERT: Pardon me?
9 THE COURT: The signed reservation.
10 ATTY. LAMBERT: Signed version, yes.
11 THE COURT: Exhibit 8.
12 BY ATTORNEY LAMBERT:
13 Q Well, before I leave that, are the changes that I've
14 gone over with you between the signed and unsigned versions
15 the only ones you know of?
16 A Yes.
17 Q So now looking to paragraph 2.2 of the reservations,
18 did Arthur Howe talk to you in any way about requiring Mr.
19 Selden or future owners to mow what this area to the west of
20 the driveway and north of where the house is, or the house
21 site on that map?
22 A No.
23 Q Did he speak to you about -- that you -- that there
24 should be any restrictions on how frequently it was mowed?
25 A No.
26 Q Did he speak to you about that he wanted any
27 restrictions on how high it was mowed?

1 A No.
2 Q Did he speak to you about any restrictions he wanted
3 on when it was mowed?
4 A No.
5 Q So turning your attention to the -- not mowing, but
6 the cultivation and harvesting of flowers and the planting
7 of trees and shrubs.
8 A Ask the question again, please.
9 Q I'm just asking you to turn your attention to that
10 part of it.
11 A Oh. What -- part of what?
12 Q The cultivation in 2.2.
13 A Okay.
14 Q The cultivation and harvesting of --
15 A Okay.
16 Q -- flowers and the planting of trees and shrubs.
17 A Yes.
18 Q Did Mr. Howe suggest that flowers needed to be
19 limited to the sale of flowers --
20 A No, no limitations.
21 Q And similarly with the planting of trees and shrubs,
22 was there any discussion or request from him that those be
23 any type, or that any type was forbidden?
24 A No. If he were interested in any of these things,
25 he would have told me because he told me about other things
26 that he wanted.
27 Q Did he --

1 THE COURT: That may be a bit of a conclusion.
2 THE WITNESS: Sorry.
3 THE COURT: But thank you for volunteering.
4 THE COURT: Sorry.
5 BY ATTORNEY LAMBERT:
6 Q Did he tell you what he thought any of these terms
7 meant?
8 A Arthur Howe?
9 Q Not in section -- in the whole document.
10 ATTY. COLLINS: Objection, Your Honor.
11 BY ATTORNEY LAMBERT:
12 A No.
13 THE COURT: Ground?
14 BY ATTORNEY LAMBERT:
15 A He never told me what he thought --
16 THE COURT: Just a moment, please.
17 ATTY. COLLINS: Objection, relevance. The
18 witness is getting into his interpretation of the
19 easement.
20 THE COURT: Yes, I'll sustain the objection.
21 That's irrelevant.
22 ATTY. LAMBERT: May I have the question read
23 back? I thought it was --
24 THE COURT: The question is, did Mr. Howe tell
25 you what he thought any of these terms meant?
26 ATTY. LAMBERT: And I would offer that as a
27 party admission, what --

1 THE COURT: It's not relevant, and that's why I
2 sustained the objection.
3 ATTY. LAMBERT: Oh, okay, very well. Thank you,
4 Your Honor.
5 THE COURT: I mean, if it was hearsay, then your
6 response, if invited, would have been very
7 appropriate.
8 ATTY. LAMBERT: Thank you, Your Honor.
9 THE COURT: But since it wasn't invited and the
10 objection was relevance, let's move on.
11 BY ATTORNEY LAMBERT:
12 Q Did Mr. Howe indicate that he did not -- that he
13 wanted a prohibition on watering of the large, open field
14 west of the driveway and north of where the house site is?
15 A No.
16 Q Did -- let -- I withdraw. That's not much of a
17 question to begin with, but I withdraw it anyway. Now,
18 looking back at Exhibit W1 marked draft --
19 A Yes.
20 Q Does that appear to be the draft that --
21 THE COURT: Well, you're saying marked draft.
22 ATTY. LAMBERT: The unsigned.
23 THE COURT: You're saying marked draft, and the
24 exhibit, a full exhibit, does have the word draft
25 written in handwriting.
26 ATTY. LAMBERT: Yes.
27 THE COURT: I don't -- there's been no evidence

1 A When it's very aggressive, it can limit the natural
2 native species to recolonize there -- not all of them, but
3 it will limit the native species from coming back on their
4 own.
5 Q Do you know what the recommended regime for the
6 control of Japanese stiltgrass is?
7 A You can use an herbicide or you can mow it so it
8 doesn't go to seed, because it's an annual; and if it
9 doesn't reseed, it won't come back aggressively the next
10 year, so either one of them.
11 Q Have you seen any evidence at the Platner property
12 in the southern woodland that mowing has occurred?
13 A Yes, there was mowing occurring on a portion of
14 it -- in a portion, the drier portion.
15 Q Did you have occasion to see -- how would you
16 describe the understory, what it looked like after these
17 exotic invasive species were removed? What would you
18 describe it as?
19 A It was open. The multiflora rose and Japanese
20 barberry was quite abundant in areas, taking up the majority
21 of the understory, so once they were eradicated -- as well
22 as the Morrow's honeysuckle. Once they were eradicated, the
23 understory was kind of open, because they were the dominant
24 understory woody vegetation plants at that time.
25 Q How often were you present during the removal of the
26 exotic invasive species?
27 A I conducted the removal, as I mentioned, on

1 multiflora rose, Japanese barberry, Morrow's honeysuckle,
2 and a few other ones. I wasn't present when the vines were
3 cut on the Asiatic bittersweet that were climbing in the
4 trees, but I was not present when I believe the Platners'
5 landscaper pulled them down. The Platners also hired, I
6 know, Habitat Services, which specializes in the eradication
7 of phragmites, which also occurs in that wetland, and that
8 was done by -- and I was not present when that was done, but
9 that was done by a professional company down in Madison
10 called All Habitat that specializes in the eradication of
11 phragmites.
12 Q And for the work that you were present during, was
13 there any removal of native plant species?
14 A I did not see any native woody species cut --
15 removed.
16 Q Did you have occasion to see areas --
17 THE COURT: I'm sorry, excuse me. You did not
18 see any native plant species, or you did not see any
19 native plant species that you removed?
20 THE WITNESS: I did not see any native plant
21 species removed. I said wood --
22 THE COURT: But there were native plant species
23 or not?
24 THE WITNESS: Right, but I did not see any
25 removed.
26 THE COURT: Okay, thank you.
27 BY ATTORNEY BROOKS:

1 THE WITNESS: Yes, I was wrong. I'm sorry.
2 Endangered --
3 THE COURT: Oh, I see.
4 THE WITNESS: I said --
5 THE COURT: She caught you giving --
6 THE WITNESS: Right, rare means -- there's
7 three --
8 THE COURT: -- the endangered answer to the rare
9 question.
10 THE WITNESS: Exactly. I'm sorry.
11 BY ATTORNEY BROOKS:
12 A Rare -- again, there's three categories of rare
13 plants in the State of Connecticut, so the definition of
14 endangered is the most -- rarest plant. Being endangered
15 means that there's less than five known locations where that
16 plant occurs in the State of Connecticut to be classified as
17 endangered.
18 Q Endangered. And for rare, do you know the
19 definition for that?
20 A For rare?
21 Q Yes.
22 A No.
23 Q Then I'll move on to, do you know species of special
24 concern?
25 A Yes.
26 Q And what is that?
27 A Species of special concern means that there's more

1 than ten known locations in the State of Connecticut - not
2 much more - but the populations are declining to be
3 considered species of special concern.
4 Q In doing your wetlands delineations at the Platner
5 property, did you locate any species of special concern?
6 A Yes.
7 Q What did you locate?
8 A Beech leatherleaf, which -- its botanical name is
9 Hudsonia --
10 THE COURT: May I have the non-technical name
11 again.
12 THE WITNESS: Beech leatherleaf.
13 THE COURT: Sorry, there was a cough. One more
14 time.
15 THE WITNESS: Beech leatherleaf.
16 THE COURT: Beech?
17 THE WITNESS: Yes, beech.
18 THE COURT: Leatherleaf. Thank you.
19 BY ATTORNEY BROOKS:
20 Q And can you describe the conditions in which it best
21 grows?
22 A It likes -- doesn't want any competition from any
23 other plants. The native populations generally grow in bare
24 sand without any other plants around it. That's what it
25 requires.
26 Q And using Exhibit 39 for identification, could you
27 point out approximately where you located the plant?

1 THE COURT: If you would hand it up here. Well,
2 if you'll --
3 THE WITNESS: Right here, in this -- it's
4 right here.
5 THE COURT: Yes, but I want everybody to see
6 where you're pointing.
7 THE WITNESS: Oh, okay.
8 ATTY. BROOKS: So hold it towards the --
9 THE COURT: I can hold it up here, if you could
10 point.
11 THE WITNESS: It's this patch that's right in
12 this area. It stands out differently than the other
13 grass species around it.
14 THE COURT: Yes, okay.
15 BY ATTORNEY BROOKS:
16 Q Can you -- do you recall approximately what year you
17 had first identified this stand of beech --
18 A I found it when I was delineating the wetland
19 boundary on the property, which was in '08.
20 Q And what did you recommend? Did you recommend that
21 the Platners do anything about the plant?
22 A Yes, I brought it up to the Platners. I brought to
23 their attention that it's a state-listed plant, and I --
24 there's a population across the river, which I moved with
25 this botanist preserve, and then they took interest in it;
26 and then I recommended to them what we could do expand the
27 patch, because it wasn't doing very good then, because it

1 was being out-competed by the grass species competing it
2 out. And basically, what you want to do is remove the grass
3 around it so it's bare sand, so the individual plants have a
4 chance to expand.
5 Q And did you have occasion to go back to the property
6 after 2008 to see how the plant's doing?
7 A Yes.
8 Q When did you go back and see it?
9 A Well, I went back quite a few times. Pretty much
10 every time I went down there to do some work, I looked at
11 it. The last time I was down there this fall was -- the
12 last time I went down there was this fall.
13 Q Fall of 2014.
14 A Yes.
15 Q And how would you say it's doing from the first time
16 you saw it in 2008?
17 A Oh, it's doing much better. The plants have
18 expanded in size and they've been filling in the bare areas
19 of approximately -- it's been expanded by about -- the
20 thickness of the beds have expanded by approximately
21 twofold, and the plants are more robust.
22 THE COURT: I'm sorry. By approximately --
23 THE WITNESS: Twofold.
24 THE COURT: Twofold.
25 THE WITNESS: The plants have expanded in size.
26 BY ATTORNEY BROOKS:
27 Q Okay, and now back to the driveway relocation. Were

1 BY ATTORNEY MENDOZA:
2 Q And with respect to how far you thought at that time
3 the restricted area was from the house, have you changed
4 that view now?
5 A Yes. The restricted area goes about 15 feet or
6 so -- I haven't done an actual measurement, but about 15
7 feet or so from the edge of the patio into the lawn, so
8 there's that slight discrepancy between those two.
9 Q And when you're describing the lawn, what are you
10 talking about?
11 A When you step off the patio -- that area is a little
12 bit smaller than the size of a football field. It's about
13 as wide as or it's about as deep as a football field as you
14 walk across to the river. It's about the same width as a
15 football field, and two thirds or so across is lawn or was
16 lawn, and then the last one third was -- it was grass, but
17 it was non-irrigated grass, so it tended to have some more
18 weeds and stuff in it.
19 Q Okay, and can you describe -- in that area, was
20 there irrigation when you purchased the house?
21 A Yes, there was.
22 Q And was the irrigation in both the restricted area
23 and the unrestricted area?
24 A Well, when we bought the house, we thought the whole
25 thing was in the restricted area, but it turns out that a
26 small portion is in the unrestricted area.
27 Q So my question is, was the irrigation in both the

1 restricted area and the unrestricted area?
2 A Yes.
3 Q And at the time, was that informing your
4 understanding of what was permitted in the restricted area?
5 A Yes, it had --
6 ATTY. COLLINS: Objection, Your Honor.
7 THE COURT: Sustained, leading.
8 BY ATTORNEY MENDOZA:
9 Q From the back of your house, do you have sightlines
10 to the creek area?
11 A From the back of the house to part of the creek
12 area, yes.
13 THE COURT: Really?
14 THE WITNESS: Well, the house --
15 THE COURT: Isn't the back of the house facing
16 the Connecticut River?
17 THE WITNESS: Well, the back of the house has
18 windows on the end, on the southern end.
19 THE COURT: I would call that the side, but --
20 THE WITNESS: Okay.
21 THE COURT: I mean, you're talking about the
22 south -- you're talking about the western side of the
23 house as the back of the house.
24 THE WITNESS: Yes, yes.
25 THE COURT: Okay, so from the western side of
26 the house --
27 THE WITNESS: Right.

1 We had done a lot of smaller renovations. We applied for a
2 major renovation on the main house through planning and
3 zoning, and they requested a site visit to the property.
4 And yes, Anthony Irving was there representing the land
5 trust.
6 Q Were you there during the site visit?
7 A Yes, I was there.
8 Q And did you assist the members of the plaintiff
9 corporation in touring the property on that day?
10 A No, I didn't have to assist anybody.
11 Q Did you -- were you granted a permit for your home
12 renovation?
13 A Yes.
14 Q Do you recall if the permit had conditions requiring
15 any planting?
16 A Yes, it did.
17 Q Okay. I would like to show the witness, Your Honor,
18 Exhibit G3.
19 THE COURT: Already a full exhibit.
20 ATTY. MENDOZA: Yes, Your Honor, and I have a
21 bench copy of the exhibit.
22 THE COURT: I'm assuming it'll be in the binder,
23 no?
24 ATTY. MENDOZA: Well, that one is so big that it
25 didn't fit.
26 BY ATTORNEY MENDOZA:
27 Q Can you explain to us what is depicted in Exhibit

1 G3?
2 A Yes, I can.
3 Q What is it?
4 A It's a lot of shrubs in the southwest corner of the
5 wooded area, and also a tree to be planted in the grass/
6 lawn area.
7 Q And were these plantings --
8 THE COURT: I don't see that. Could you
9 describe it --
10 THE WITNESS: Sure. The tree is almost to the
11 top of the drawing, in about four or five inches. It
12 says this -- I don't know that that's the --
13 THE COURT: Nyssa sylvatica.
14 THE WITNESS: Yes, it's called a tupelo honey
15 tree. That's why I remember it.
16 THE COURT: What?
17 THE WITNESS: A tupelo honey tree.
18 THE COURT: T-U-P-E-L-O.
19 THE WITNESS: Yes.
20 THE COURT: Like Mississippi.
21 THE WITNESS: Like the song from Van Morrison.
22 THE COURT: Clearly, we have vocabulary issues
23 between us.
24 BY ATTORNEY MENDOZA:
25 Q Sir, were these plantings a requirement of the
26 granting of your permit?
27 A Yes, they were.

1 Q And did you in fact plant them?
2 A Yes, we did.
3 Q And were they planted in the restricted area?
4 A Everything is in the restricted area in that --
5 THE COURT: I'm sorry, your house?
6 THE WITNESS: Oh, no. No, I'm sorry. All the
7 plantings. The plantings are all these little
8 circles.
9 THE COURT: I understand what the plantings are,
10 but some of them are existing, and some of them are
11 new.
12 THE WITNESS: Yes, the new plants were on the
13 restricted area.
14 THE COURT: What -- okay, thank you.
15 BY ATTORNEY MENDOZA:
16 Q Did you receive any correspondence or complaint from
17 the plaintiff corporation regarding these plantings?
18 A Not that I recall.
19 Q Okay, thank you. Sir, I would like to ask you about
20 your 2010 application to Inland Wetlands to install a fire
21 hydrant.
22 A Okay.
23 Q Is there a fire hydrant located anywhere on Selden
24 Road -- was there, in 2010?
25 A Not that I know of.
26 Q And in 2010, what did you want to do?
27 A We wanted to install a fire hydrant, kind of at the

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 10, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, New London, Connecticut, before the Honorable Joseph Q. Koletsky, Judge, on the 10th day of March, 2015.

Dated this 23rd day of April, 2015, in New London, Connecticut.

Melanie Pearce
Court Recording Monitor

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al	:	MARCH 11, 2015

TRIAL

BEFORE THE HONORABLE JOSEPH Q. KOLETSKY, JUDGE TRIAL REFEREE

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Recorded & Transcribed by:
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1 landings shall be located or used thereon.
2 Q Thank you, sir. Sir, I would like to refer to
3 Defendant's Exhibit M as in Mary.
4 A Okay.
5 Q Thank you, sir. And what is the date of this
6 exhibit?
7 A April 1st, 1992.
8 Q And can you explain what the purpose of this letter
9 was?
10 A I'm looking at it long after the fact, but it would
11 clearly be a letter from the then-president of the land
12 trust -- a letter to the then-president of the land trust,
13 Rufus Barringer, from the then-owner of 66 Selden Road,
14 Richard Whitehead, where he felt it was reasonable to limit
15 the cutting of the field to twice a year - early in the
16 spring and late in the autumn before the cold weather hits,
17 the end of October.
18 Q Sir, this document is very clearly memorializing an
19 agreement between --
20 THE COURT: I'm sorry. This document is very
21 clearly -- and then I just didn't hear.
22 BY ATTORNEY MENDOZA:
23 Q Memorializing the agreement between the Whiteheads
24 and the Lyme Land Conservation Trust; is that correct, with
25 respect to mowing?
26 A Yes, it's just confirmation that Mr. Whitehead
27 agreed to that.

1 Q And my question, sir, is, was this document publicly
2 recorded anywhere?
3 A No, it was just retained in our files. I don't
4 believe it was; that's my understanding.
5 Q And so it wasn't to be found, for instance, in any
6 records of the conservation -- Inland Wetlands Commission of
7 Lyme?
8 A No. No, only to the extent that, you know, if they
9 had copied somebody and didn't note it, I wouldn't know it,
10 so --
11 Q But the plaintiff organization had not sought to
12 publicize this agreement; is that correct?
13 A That's correct.
14 Q Okay, so only if you were perhaps on the staff or a
15 volunteer would you be aware of this document; is that fair?
16 A On the land trust? Apart from Mr. Whitehead, on the
17 land trust? The only people that would probably know better
18 would be those on the land trust.
19 Q So, sir, my question is, with respect to Mrs.
20 Beverly Platner, when she and her husband were researching
21 agreements and public records that concern the property, how
22 would she know about this agreement?
23 ATTY. COLLINS: Objection, Your Honor.
24 THE COURT: Sustained. As phrased, it's asking
25 the witness to draw a conclusion.
26 ATTY. MENDOZA: Okay. I'm sorry, Your Honor.
27 BY ATTORNEY MENDOZA:

1 Q With respect to this agreement -- and maybe you've
2 answered this, but with respect to this agreement, would
3 anyone outside of the land trust and Mr. Whitehead know
4 about this in a search of public records?
5 A Not a search of public records. I assume Attorney
6 Gahagan knew about it, because, if I recall, the property --
7 he represented Mr. Whitehead, so he may or may not have
8 known about it, but it wasn't in the -- it wasn't recorded
9 on the Lyme records.
10 Q But is it fair to conclude that when Mrs. Platner
11 bought the property, she would not have seen this?
12 A I don't know. I doubt it.
13 Q I'm sorry?
14 A I said I don't know, but I doubt it.
15 Q Okay, but it would be understandable if she was
16 unaware. She purchased the property on May 7th, and May 8th,
17 she would still be unaware of this agreement.
18 ATTY. COLLINS: Objection, Your Honor.
19 THE COURT: Sustained, calls for a conclusion.
20 He says -- I mean, you're beating a dead horse --
21 ATTY. MENDOZA: Thank you, Your Honor.
22 THE COURT: -- and, you know, as long as there's
23 no objection, it's going fairly quickly, but they're
24 clearly objectionable questions.
25 BY ATTORNEY MENDOZA:
26 Q Sir, I would like to refer you to Defendant's
27 Exhibit E, E as in elephant.

1 A Those are two of them, right.
2 Q And also a disturbance with the Novak Brothers
3 pulling out something at the cove. Was that the nature of
4 your issues at that time, sir?
5 A Some of them. There were others, like our right to
6 inspect without having permission.
7 Q Was there some interference with your right to
8 inspect at that time?
9 A No, but I'm saying these were some of the issues
10 that we wanted that are in the restrictive covenants that we
11 wanted to make sure that were understood. What we were
12 always after, and what we never got, was an opportunity for
13 us to say these are the concerns or -- yes, these are the
14 concerns of the land trust; what are your concerns? And
15 let's see if we can't work them out. It was always no, no,
16 no from the other side.
17 Q But when you say no, what do you mean? Did they say
18 no, I don't want to talk about it?
19 A Well, I mean, they were always willing to talk about
20 what they wanted to do, but they weren't willing to engage
21 us in conversation that would resolve the issues that
22 troubled us.
23 Q Well, with respect to the mowing, what did you tell
24 them you wanted?
25 A We told them that we would like them to adhere to
26 the custom that was practiced by the previous two owners.
27 Q And was that the practice -- perhaps signing a

1 letter such as Mr. Whitehead had signed? Did you ask them
2 to do that, or just to adhere to that practice?
3 A I can't recall if we asked for documentation, but we
4 asked them to adhere to that practice.
5 Q But that's what you definitely wanted at that time.
6 A That was one of the things, yes, an important one.
7 Q And you said you also wanted something about
8 inspections; what was that?
9 A Well, we -- it's our practice with conservation
10 restrictions, conservation easements that we have the right
11 to go on the property and make an inspection, but we don't
12 wish to abuse that, so we notify the landowner that we will
13 be there on certain days. It's not asking permission, it's
14 notification, and we encourage them to accompany us, but Mr.
15 Platner felt it was something that -- we didn't have the
16 right to do inspections without his permission.
17 Q But according to the document, you do.
18 A Yes, of course.
19 Q Isn't it clear that you do have that right?
20 A Right.
21 Q So what needed to be done to -- what were you
22 requesting of him?
23 A We weren't asking anything. It was he asking of
24 us -- we were notifying on occasion that we wanted to do an
25 inspection and -- no you can't, we're not going to be
26 there --
27 ATTY. COLLINS: Objection, Your Honor.

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BEVERLY PLATNER Et Al	:	MARCH 11, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, New London, Connecticut, before the Honorable Joseph Q. Koletsky, Judge, on the 11th day of March, 2015.

Dated this 30th day of April, 2015, in New London, Connecticut.

Melanie Pearce
Court Recording Monitor

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER, ET AL	:	JULY 14, 2015

HEARING

BEFORE THE HONORABLE JOSEPH Q. KOLETSKY, JUDGE TRIAL REFEREE

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1 it was mowed for another maybe 20 years without any
2 fertilizer or additions of any kind of chemicals. It hasn't
3 been mowed for at least ten years now, and that turf is
4 still pretty much in place, there are incursions of some
5 native species, some native grasses and forbs. But for the
6 most part it still looks like kind of an overgrown lawn.
7 Q Is that what the Platner property looked like
8 yesterday, an overgrown lawn?
9 A Well, I happen to know that's what it was having been
10 there when it was a lawn two years ago.
11 Q What types of grasses were there when you were there
12 two years ago?
13 A I believe there were typical sod grasses; fescue,
14 rye, one or two others.
15 Q Was Kentucky blue grass?
16 A Blue grass was probably one. I didn't actually
17 identify them, I was using the -- I couldn't identify them
18 because they were so closely mowed. But the evidence that
19 the landscapers submitted indicated what they had planted,
20 which seemed quite feasible.
21 Q Now, in your opinion is that what is there; rye,
22 fescue, and blue grass, but unmowed?
23 A That is the predominant vegetation in those areas,
24 yes, in my opinion. Having not actually been able to walk
25 down there and look at it.
26 Q Mr. Dreyer, you testified back in March regarding
27 your opinion of what was in the field back in 2007 before

1 Mrs. Platner purchased the property, correct?
2 A Yes.
3 Q Do you have your Exhibit 96 there?
4 A Yes.
5 Q Which is your report.
6 ATTY. COLLINS: Your Honor, would you like me to
7 retrieve that exhibit for you; Exhibit 96 that Mr.
8 Dreyer --
9 THE COURT: Yeah, I didn't bring my exhibits up.
10 All right, I have 96; thank you.
11 BY ATTY. COLLINS:
12 Q Can you tell the Court again, based on your report
13 here, what resources you consulted to determine what was in
14 the field prior to 2007; specifically May of 2007?
15 A Well, I looked at the property survey map, which is I
16 believe the exhibit on the easel. I looked at as many
17 aerial images as I could find on the internet from the State
18 of Connecticut, from Google Earth. I looked at some
19 photography that was supplied to me by the land trust that
20 was from real estate sources around the time that the
21 property was sold. I looked at various environmental
22 conditions, maps including soil, drainage classes, that sort
23 of thing, topography. I looked at a site inspection from
24 November of 2007, it was done by Anthony Irving, and I made
25 some observations myself on the property and across the
26 street from the property.
27 Q And what was your opinion regarding what the

1 vegetation was in the field prior to May 2007?
2 A That it would have been dominated by native and non-
3 native grasses, primarily; some warm-season native grasses,
4 and other kinds of native and non-native grass species with
5 less amounts of broad leaf plants, we call them forbs
6 sometimes, things you might call wildflowers. But
7 predominantly native and non-native grasses.
8 Q Is that still your opinion today?
9 A That that's what the vegetation was in 2007?
10 Q Correct.
11 A Yes, it is.
12 Q Now, Mr. Dreyer, are you aware that the Court ordered
13 that the Platner property be restored to its pre-May 2097
14 (sic) condition as a natural field?
15 A Yes.
16 Q Do you have an opinion whether to leave it like it
17 is, like you saw it yesterday, and mow it twice a year with
18 no fertilizers and no water, would restore it to its pre-May
19 2007 condition?
20 A No, I don't think it would be the same or similar.
21 Q Can you explain that to the Court.
22 A What is growing there now has a very low amount of
23 biological diversity; plant diversity. It is dominated by
24 three or four species of non-native cool-season turf
25 grasses. That's, in my opinion, not what dominated the site
26 prior to 2007.
27 Q You're making a recommendation today to the Court in

1 what -- in your opinion the way to restore the property to
2 its 2007 condition, May 2007 condition; is that correct?
3 A Yes, it's a way to do it.
4 Q Okay. And what is your way to do it?
5 A Well, to remove the turf grasses that are there.
6 Q How?
7 A Well, I had assumed that it would continue to be
8 mowed and that a side cutter could come in and remove the
9 sod and take away part of the root system and part of the
10 organic matter in the soil. I'm not sure how feasible that
11 is if it's an unmowed lawn, but at any rate my original
12 recommendation is based on what I saw in 2013 was that the
13 sod could be cut, removed, and that that site after erosion
14 control was installed, after soil analysis was performed
15 that a mixture of species -- meadow species could be seeded
16 in, and the site could be managed to eventually allow those
17 species that were seeded in to predominate.
18 Q Let's talk about erosion control. If you were to
19 leave that a bare field, if you were to strip all of the
20 grasses off and replant there, are you concerned about the
21 health of the Connecticut River and Selden Cove; what would
22 be your plan to prevent any erosion?
23 A Well, my plan would be to probably bring in an
24 erosion control expert to help because I am not an erosion
25 control expert. I can imagine that would want to prevent
26 any kind of -- first of all, I would be concerned about the
27 inland/wetland that crosses the driveway there, and the

1 slopes that lead up to Selden Road. You'd need erosion
2 control to protect that wetland for sure, and you'd need --
3 THE COURT: I'm sorry, you'd need a what?
4 MR. DREYER: You'd need erosion control to
5 protect that inland/wetland. You would also need to
6 get an inland/wetland permit from the town to proceed
7 with any of that kind of work. As far as the
8 Connecticut River goes, I think that you'd certainly
9 want to time this kind of procedure to avoid the
10 annual freshet that comes down from melt waters on
11 the Connecticut River. You wouldn't want to have the
12 site inundated while this happened.
13 BY ATTY. COLLINS:
14 Q What time of year would you recommend the sod be
15 rolled up?
16 A Well, I'd --
17 THE COURT: Well, I'm not hearing him say that
18 he's still recommending to have the sod rolled up.
19 ATTY. COLLINS: Okay.
20 THE COURT: So, while there's no objection, as a
21 trier of fact, my brain stopped.
22 ATTY. COLLINS: Thank you, Your Honor.
23 BY ATTY. COLLINS:
24 Q Are you still recommending that to the Court today in
25 light of the condition you saw the property yesterday?
26 A I would still recommend the turf be removed in some
27 fashion.

1 Q What is another way to remove the turf if you're not
2 going to remove it by rolling it up?
3 A I suppose you could use some kind of a tractor or pay
4 loader and scrape it off, or a bulldozer to do a light
5 scraping and just pile it up. You could chemically treat
6 it; I wouldn't necessarily recommend that, but you could
7 presumably use something like Roundup or a product that
8 would kill the grasses, and then you would need to remove
9 the dead organic matter.
10 Q Did you review some of the new reports prepared by
11 Mrs. Platner's new experts this morning?
12 A A very few of them, I believe, yes; I did look at
13 some of that material.
14 Q Okay. Was one of the recommendations to avoid
15 rolling up the sod to put plugs in the field?
16 A I believe that was given as a potential alternative
17 to stripping the site.
18 Q If you were going to go along with that plan as a
19 good way to return it back to its May 2007 condition, do you
20 have an opinion on what would be the best way to put plugs
21 in the field; the most ecologically sensitive way?
22 A Not really. There is not a lot of ways to put plugs
23 in, you need to make a hole and put the plant in.
24 THE COURT: You're saying plugs.
25 MR. DREYER: Plugs are small plants, smaller
26 than container plants. They're usually grown in
27 flats so that they're young plants, small plants, but

1 BY ATTY. COLLINS:
2 Q And on 101, the western line of the housing envelope
3 down to the river. When you were there in July 20 --
4 A 13?
5 Q In 2013 -- I'm just trying to get to the microphone.
6 Was that area the lawn, turf lawn, that we've been talking
7 about as the field; did it look the same?
8 A It looked -- the area that wasn't sand looked very
9 similar to the turf areas on the larger field.
10 Q Okay. So, when we're talking about remediating the
11 field, we're also talking about remediating wherever there's
12 lawn in all of the protected areas.
13 A That would be my assumption.
14 Q So, getting back to the beach. Are you recommending
15 that the sand that was deposited there be removed?
16 A Yes.
17 Q And are you recommending that native plants be
18 planted there?
19 A I think wherever there is either turf or sand it
20 needs to be removed, and whatever sort of treatment happens
21 to the larger field would be appropriate in that area as
22 well.
23 Q Do you think the logs that you're looking at in
24 Exhibits 84 and 85, do you recommend that those be removed?
25 A Yes.
26 Q That's all I have, Mr. Dreyer; thank you.
27 THE COURT: Cross-exam, Mr. Lambert?

1 ATTY. LAMBERT: Thank you.
2 CROSS-EXAMINATION BY ATTY. LAMBERT:
3 Q Let's start at the end there, Mr. Dreyer. You
4 actually don't know of your own examination of your own
5 study or testing or anything where any sand was placed on
6 the beach, do you?
7 A No.
8 Q You don't even know if there was sand placed on the
9 beach.
10 A I know sand was brought to the site, and I know that
11 the sandy shoreline near the house extends much farther
12 inland than --
13 THE COURT: Excuse me, Mr. Lambert; excuse me,
14 Mr. Dreyer. You're going to need to be in the
15 vicinity of a microphone, Mr. Lambert.
16 ATTY. LAMBERT: Oh, I'm sorry; I thought I'm
17 usually loud enough. Go ahead, I'm sorry.
18 MR. DREYER: I guess I was saying that I know
19 sand was brought into the site from the records, from
20 the landscapers, and that the area between the house
21 and the river has sand much farther inland than the
22 area north of that where there's a natural shoreline,
23 so that would be my assumption that that's where the
24 sand went.
25 BY ATTY. LAMBERT:
26 Q And if you calculated how -- what's the area that you
27 believe sand should be removed from?

1 A I have not calculated that.
2 Q So, you haven't calculated how thick a layer, 22
3 tons, if all of it went onto the beach would be.
4 A No.
5 Q Do you recall testifying that one of the -- one of
6 your -- one of the things you referred to in determining
7 what species were there in the large field was the MLS, the
8 real estate map; an oblique photo?
9 A There were some photographs from a real estate
10 source, yes.
11 Q Do you recall testifying that it appeared to be lawn
12 between the house and the river in 2007 -- am I close enough
13 to a microphone, Your Honor?
14 THE COURT: No, you're in the middle of the
15 courtroom as far from a microphone as it's possible
16 to get.
17 BY ATTY. LAMBERT:
18 Q In 2007, do you recall seeing that the area between
19 -- I'll withdraw that. Do you recall saying that the
20 grasses appeared dormant and colored shades of brown in the
21 large part of the field?
22 A Yes.
23 Q The area between the house and the river was, for
24 lack of a better word, very green.
25 A I don't recall saying that, but I could look at the
26 photograph again and be able to tell; it's probably an
27 exhibit.

1 Q That's readable and that's the big area, right?
2 A Right.
3 Q It has the cedar trees randomly spaced in it.
4 A Yes.
5 THE COURT: My compliments on getting back to
6 the microphone.
7 ATTY LAMBERT: Sorry it took me so long; I kept
8 talking.
9 BY ATTY. LAMBERT:
10 Q You didn't see, in 2007, you didn't see particularly
11 small brush there in your photo, did you; in the photos you
12 looked at in 2007.
13 A No, I couldn't make out anything but the cedars and
14 general brown vegetation I took to be dominated by grasses.
15 Q With some broad leaf forbs, I think you said.
16 A That was an assumption, but not visible in the
17 photographs I don't believe.
18 Q Right, but no brush was visible -- let me ask you
19 rather than making that statement. You wouldn't expect to
20 find small brush anymore if Mrs. Lawrence mowed it twice a
21 year, correct?
22 A I would expect to find woody plants which is what
23 brush is. I would expect to find small, mowed, woody plants
24 if you got down on your hands and knees and looked between
25 the grasses probably.
26 Q I understand. Would you call a two-inch high woody
27 plant brush?

1 A No, not necessarily.
2 THE COURT: Mr. Lambert, there is not the
3 slightest rush, but we are getting close to 11:30.
4 If you are close to finishing --
5 ATTY. LAMBERT: Oh no, I've got a lot more. If
6 you'd like to take your break --
7 THE COURT: Well, you're entitled to one, too;
8 we'll take our break. Morning recess.
9 (Recess).
10 THE COURT: Go ahead and be seated.
11 MR. DREYER: Thank you.
12 THE COURT: Continuing cross, Mr. Lambert.
13 ATTY. LAMBERT: Yes, please.
14 BY ATTY. LAMBERT:
15 Q Mr. Dreyer, earlier today -- in your testimony today
16 you talked about you would expect a mix of cool-season and
17 warm-season grasses.
18 A Yes.
19 Q Native and non-native would have been present in
20 2007.
21 A Yes.
22 Q Do you recall that in your report you said on page
23 two, "In my opinion, the field would have been dominated by
24 native warm-season grasses."
25 A So, it's native warm-season and naturalized non-
26 native grass species in that sentence.
27 Q So, the non-native naturalized ones; what are those?

1 A Those are things like Timothy grass and Orchard grass
2 which are cool-season grasses -- many of which are cool, not
3 all.
4 Q But it would have been dominated by --
5 A It would have been dominated by both of those groups,
6 warm-season and non-native naturalized species.
7 Q But your plan does not envision putting back any of
8 the dominant non-native naturalized grasses, does it?
9 A No, it does not.
10 Q So, wouldn't -- in the first year it certainly
11 wouldn't look anything like 2007.
12 A No, it would take many years to look like that again
13 probably.
14 Q So, we have mostly cool-season grasses there now,
15 correct?
16 A Yes, what's there now; yes.
17 Q And I believe what you're recommendation is that
18 because of the height and what not, you would bulldoze the
19 grass and the mat that forms underneath the grass or is part
20 of the grass, I guess.
21 A I don't understand the question.
22 Q I think you testified that it's not really feasible
23 given the Platners have not done anything to the field,
24 they've allowed it to grow.
25 A Yes.
26 Q It appears they haven't fertilized or watered it.
27 A Or mowed, apparently.

1 Q So, would you agree that when you go to get a permit,
2 if you ask to remove all the sod, a permit to remove the
3 sod, that you must present alternatives to that.
4 A That might be something that the wetlands commission
5 would want you to do, yes.
6 Q You were talking about putting plugs in, I believe,
7 as an alternative that you believe we've suggested, correct?
8 A I think I mentioned it as a possibility in my report
9 as well, I think there was mention of it in one of your
10 submittals.
11 Q Even if it took thousands of them, they only cost 50
12 cents apiece.
13 A Yeah, maybe; it depends what they are and I guess
14 where you get them.
15 Q If you put them in and tried to get them to grow,
16 wouldn't that create a lot less disturbance and eliminate
17 the need for an expert on soil and erosion control, for
18 example?
19 A I think that speaking about the turf area only, yes;
20 you're right. I think there's also the steep slopes with
21 the ornamental shrub and perennial plantings that would need
22 to be removed and that would need erosion control. That
23 might be a different situation.
24 Q Is your only goal in your recommendation -- is your
25 only goal in all of the things you're recommending to the
26 Court to create the 2007 condition or to create a preferable
27 ecological condition?

1 A I would say both.
2 Q So that in 2007 there was a preferable -- what is the
3 ecological condition you believe existed in 2007 that you
4 would be recreating, understanding that it's mowed in July
5 and November?
6 A Well, there would have been more differences in the
7 micro topography because before the turf was really
8 established there was a lot of topsoil brought in. So,
9 there would have been undulations in the surface that would
10 have been, given the low elevations, would have been -- it
11 would have created different microsites, so there would have
12 been damper areas and drier areas so that's one thing. I
13 would have expected the species diversity of the plant life
14 to be much higher which would allow for more insect and
15 other kinds of animal life diversity to be supported.
16 Q You talked about topsoil being brought in; you didn't
17 see any topsoil --
18 THE COURT: I'm sorry, you talked about?
19 ATTY. LAMBERT: Topsoil having been brought in.
20 THE COURT: Thank you.
21 BY ATTY. LAMBERT:
22 Q Correct?
23 A Yes, I just said that.
24 Q You didn't test anywhere at all, did you, to see
25 whether the topsoil was added in any one particular spot or
26 not, did you?
27 A I did not test for it, no.

1 Q And you weren't there to see it put in, correct?
2 A No, I did not see it put in.
3 Q So you don't really know whether topsoil is being
4 spread throughout the field, do you?
5 A I know that large amounts of topsoil were brought to
6 the site, and I know that there is less undulation of the
7 surface topography than I would have expected based on the
8 aerial photographs and just knowing fields that haven't been
9 filled in. So, I would say it's an assumption I made based
10 on that evidence.
11 Q That could also be done by just grading or raking
12 when you're planting, couldn't it?
13 A Potentially it could have, yes.
14 Q So, once again --
15 A Combined with the amount of topsoil that was brought
16 to the site; that's why I assumed that.
17 Q Again, but you don't know whether the topsoil was
18 used mainly in the unrestricted area or where, if at all,
19 was put in the --
20 A I did not see it placed in any particular location.
21 Q Wouldn't removing the sod remove, likely remove, soil
22 that was already there in 2007?
23 A Yeah, in some cases I'm sure it would.
24 Q So, removing it and planting would not restore it
25 then, would it?
26 A Well, you know we don't know exactly what was there
27 and we really don't -- we're never going to be able to make

1 it exactly the way it was. So, I guess the answer to your
2 question is yes, correct.
3 Q Going back to soil and erosion control, you have no
4 knowledge -- you talked about hiring an expert, I believe;
5 correct?
6 A Yes.
7 Q You have no knowledge whether the suggested order
8 would even be permitted under State law, putting up fencing
9 around this area, do you?
10 A Are you talking about the order being the fencing?
11 Q The order being proposed.
12 A You're talking about the proposed erosion control
13 measures?
14 Q Which is fencing I believe is what's there.
15 A Yes, I think that will be subject to regulatory
16 review.
17 Q And it may or may be allowed, and you wouldn't know,
18 right?
19 A No, I don't think I would know.
20 Q You talked about simply avoiding for stripping, I
21 think, the time that one would expect the freshets from ice
22 melt, correct? To avoid stripping the land at that time, is
23 that right?
24 A Well, I think the idea is that you would want to
25 avoid times where there is maybe more predictable flooding
26 of the site which would on an annual basis happen in the
27 spring.

1 woods was the part under essentially the closed canopy,
2 wasn't it?
3 A Well, the woods are the closed canopy; I don't
4 understand what you're saying.
5 Q There's areas that go clear down to the creek.
6 A Yes, I walked down into the lower area and walked
7 around a little bit briefly.
8 Q But you didn't see anything disturbed there, did you;
9 mowing down there?
10 A No.
11 Q And removal -- did you think anything was removed?
12 A I was with Mr. Snarski, he was talking about doing
13 some invasive moving at the time. I did see some invasives
14 still there.
15 Q So, if there were invasives in 2007, are you
16 recommending they be put back in?
17 A No.
18 Q Okay. So, we've gone through all of the shrubs
19 except the multi flora rose, the Japanese barberry, and the
20 -- help me, morrowii?
21 A Morrowii.
22 Q Morrow -- I'll let you say it; the honeysuckle.
23 THE COURT: Morrowii.
24 MR. DREYER: Morrow's honeysuckle it should be;
25 Morrow's honeysuckle.
26 BY ATTY. LAMBERT:
27 Q Okay, and those you recall Mr. Snarski said he

1 removal of invasive species?
2 A I would only assume that if it was solid invasives
3 and nothing else and they removed them all. I don't know
4 what the density of the invasive species were, I don't know
5 what techniques he used to remove them. That's a possible
6 scenario that it was densely full of invasives and then
7 stiltgrass came in after that.
8 Q Okay. But not knowing the density of it, you also
9 -- you cannot know the probability of other things being
10 removed from the canopied woods, can you?
11 THE COURT: I'm sorry, are you talking about
12 past, future?
13 BY ATTY. LAMBERT:
14 Q After 2008.
15 A After 2008, I can't know what was removed; you're
16 right, I can't know what was removed.
17 Q So, all you know is that you saw the stiltgrass was
18 mowed.
19 A Yes, I know that.
20 Q But the mowing of stiltgrass doesn't mean the mowing
21 or removal of any species, any understory species; does it?
22 A The fact that there was nothing there but stiltgrass
23 was I think -- I assumed that something had been removed.
24 Q So, is it your testimony here today that in the
25 canopied area, the closed canopied area, that there is
26 nothing there but stiltgrass?
27 A Well, there's a lot of trees.

1 Q Okay. Mr. Snarski's letter is dated May 9th, 2008,
2 correct?
3 A Yes, I believe that's correct.
4 Q And he identifies various -- in addition to the three
5 shrubs, there's the vinous Asiatic bittersweet, I believe?
6 A Yes.
7 Q And on the next page phragmites, right?
8 A Phragmites is there.
9 Q Isn't it fair to say that if he wrote this and says
10 there are a bunch of invasive species that need to be
11 removed in 2008, that they existed in 2007?
12 A Um, sure.
13 Q So, to restore this property to the 2007 condition
14 would be to replace the forest with -- replace all of these
15 invasive species, would it not?
16 A Not in my opinion. You know, it depends on a literal
17 interpretation I think of the Court saying it needs to be in
18 the condition it was in 2007. That depends on how literally
19 you interpret that, I guess, condition.
20 Q Well, you wouldn't call --
21 A I wouldn't recommend putting the invasives back.
22 Q And you wouldn't call those, multi flora rose,
23 Japanese barberry, morrowii honeysuckle -- excuse me, Your
24 Honor -- and the Asiatic bittersweet are not what you're
25 referring to as the natural understory.
26 A I'm not --
27 Q I refer you to your report.

1 correct?
2 A I think it's a special concern or threatened species
3 in the State, yeah.
4 Q And Mr. Snarski had done things from 2007 to
5 increase, to propagate, that.
6 A Yeah, I think he was advising the Platners on
7 management that would favor that plant, yes.
8 Q And to favor that plant, that plant is particularly
9 finicky, isn't it, that almost anything can outcompete it if
10 it's growing around it.
11 A I don't know, it grows in very sandy situations; it's
12 kind of restricted to very sandy soil.
13 Q If you were to find multi flora rose growing in
14 amongst it, multi flora rose is going to beat it out, won't
15 it?
16 A Yeah, it could shade it out I would think eventually;
17 possibly.
18 Q So, to restore the restricted area to its condition
19 in 2007, you would concede, means that we take out what
20 we've managed to increase there; correct?
21 A Are you talking about the threatened species?
22 Q The hudsonia tomentosa.
23 A No, I don't agree that you would take it out.
24 Q I didn't say -- what I said is to restore it if
25 there's more now than there was then, we'd have to take out
26 some; wouldn't we?
27 A I think if you were to follow a very literal

1 interpretation of trying to exactly reproduce the conditions
2 in 2007, then you could argue that.
3 Q But isn't not taking the literal one simply a human
4 choice, just like aesthetics?
5 A I don't really follow what you're asking me.
6 Q Nature isn't making the choice, is it? It's you.
7 A What choice?
8 Q The choice of not taking out the hudsonia tomentosa,
9 not restoring the invasive species, and putting in the mix
10 that you've put in which is all native or naturalized seed.
11 A Yes, those are human choices.
12 Q And they aren't the choices that Fleur Hana Lawrence
13 had made, are they?
14 A I don't think so; I don't really know.
15 Q Okay. So, if you were also to have heard testimony
16 that the woods contained tires, trash, and driftwood stacked
17 in it in 2007, restoring it would have to return those
18 things, too; wouldn't it?
19 A I guess if that's what the Court orders then that's
20 what you'd have to do.
21 Q But you wouldn't expect to find a stack of driftwood
22 in a natural understory of those woods, would you?
23 A Yeah, I would expect to find driftwood in a flood
24 plain part probably.
25 Q I said stacked driftwood as opposed to --
26 A Stacked by people, you mean?
27 Q Yeah.

A A heavy rainfall would be likely to cause some erosion.

Q In trying to determine what sort of -- I'm sorry, I'm going to start that over. Can we agree that nobody knows exactly what the condition was in terms of what species and their ratio, I'll call it, in 2007?

A Yeah, I think that's true.

Q That would be true in the woods and it would be true in the field, right?

A Right, I know of no actual inventory at that time; that would be the only good evidence of what exactly was there.

Q So, when you don't have direct evidence, isn't the way to determine what would have been there by using lines of indirect evidence?

A Yes.

Q Isn't one of those, for example, the -- help me with this, the National Soil Control or Natural Resources -- NRCS, is that right?

A That's an organization -- an agency of the USDA.

Q And they have agencies throughout the State on soil, don't they; soil conservation?

A They have soil conservationists in the State.

Q And they map the State for what kind of soil we have.

A There are soils maps, yes.

Q And then there's the county soils maps for wetlands.

A Yeah, I guess.

1 M I C H A E L K L E I N ,
2 called as a witness by the Defandant's attorney,
3 being first duly sworn, was examined and testified
4 under oath as follows:
5 MR. KLEIN: I do.
6 THE CLERK: Please state your full name for the
7 record, and state your business address.
8 MR. KLEIN: Michael, middle initial S, last name
9 K-L-E-I-N. 89 Belknap Road, West Hartford,
10 Connecticut.
11 THE CLERK: Thank you.
12 THE COURT: Make yourself comfortable, Mr.
13 Klein.
14 DIRECT EXAMINATION BY ATTY. LAMBERT:
15 Q Mr. Klein, can you tell the Court what you do
16 professionally.
17 A I have been an environmental consultant in
18 Connecticut since 1977, specializing in the impacts of human
19 activities on the natural environment. I am a biologist and
20 a soil scientist by education, a professional wetlands
21 scientist by trade and experience.
22 Q Do you own a company or do you work for one?
23 A No, I am the principal of Environmental Planning
24 Services in West Hartford, Connecticut.
25 Q As the principal of that company, do you have
26 employees?
27 A Yes, James Cowen and Eric Davison have been working

A Yes, I looked at the aerial photographic record extending back to 1934 and as recently as 2012.

Q What photograph is there of this site -- aerial photography of this site in 1934?

A State of Connecticut, I believe it was Fairchild Survey Company or aerial survey did a survey of the State in 1934.

Q And since that time, do you know approximately how many aerial fly overs of the State have been done or that you looked at, in any event?

A They were done again in '38 after the hurricane, they were done in the early '50s, they were done in 1965, '70, '75, '80, '86, '90, and then in 2004. Since 2004 they've been done fairly regularly, I think we have aerial photos from '06, '07, '08, 2010, not sure about '11, and also 2012.

Q So, is that photographic record useful to you in trying to determine what the condition was in 2007?

A Yes.

Q Are you -- based on all of the information you've looked at, can you definitively tell what species of grass or what the condition was in 2007?

A I can't determine the specific species that were there; but I can determine that in my opinion it was a predominantly cool-season, at least annually mowed meadow or hay field.

Q Well, let's go back to that. If you don't know exactly what was there, I asked Mr. Dreyer if you use

1 Dreyer. In your experience, have those typically been hayed
2 and/or pastured since Europeans have been here?
3 A They've either been hayed, pastured, or in row crop
4 production depending on their drainage class, primarily.
5 Row crop production could be food crops or tobacco.
6 Q So, if this were hay, though --
7 THE COURT: But you're not really going back to
8 the first Europeans are you?
9 MR. KLEIN: Yes. It was very likely that these
10 areas were very quickly converted to typical forage
11 grasses because the native grasses are not very high
12 in nutritional value, and they weren't what the
13 farmers were used to using.
14 THE COURT: The Colonial farmers.
15 MR. KLEIN: Right.
16 THE COURT: In the 1600's?
17 MR. KLEIN: Yes.
18 THE COURT: Okay.
19 BY ATTY. LAMBERT:
20 Q Indeed, if you were to read testimony that this
21 property had been in the Selden family for nearly 300 years
22 and the homestead is the house that you -- did you see a
23 house across the street?
24 A Yes, I did.
25 Q And that that house had been there since the 1700's,
26 would you make any conclusion or assumption that this would
27 have been used for agriculture as part of Selden farm?

1 A I would assume it would have been used for
2 agriculture as part of the farm, yes.
3 Q So, if it's used as -- historically and for centuries
4 used in haying, would you -- do you agree that haying
5 grasses are generally not native grasses?
6 A Yes.
7 Q Would you agree that farmers didn't find native
8 grasses productive enough?
9 A Yes.
10 Q Why is that?
11 A There are several reasons. One I mentioned just a
12 minute or two ago is that they're generally lower in forage
13 value and nutritional value. Another reason is that the
14 warm-season grasses start growing later in the year so that
15 a farmer could get probably at best two cuttings of low
16 value forage versus the cool-season grasses which green up
17 much earlier in the year and you could get three cuttings
18 most years of a high-quality forage.
19 Q Are grasses such as Timothy and orchard grass
20 European or native cool-season grasses?
21 A They're European cool-season grasses.
22 Q So, my question is did the U.S.G.S. mapping -- is the
23 U.S.G.S. mapping an indirect source of concluding what kind
24 of grasses would have been in an open field?
25 A Yes.
26 Q And what would your conclusion be?
27 A That it was most likely predominantly cool-season

1 forage grasses.
2 Q Did you examine the soils report that Henry Malder
3 (phonetic) did in 1980?
4 A Yes.
5 Q And did you examine the map there that was submitted
6 with that?
7 A Yes.
8 Q And based upon the mapping, I believe you said there
9 was NRCS mapping?
10 A Correct; Natural Resources Conservation Service.
11 Q What other mapping was there of soil types of 66
12 Selden Road?
13 A There's also the New London County soil survey which
14 predated the NRCS digital or web soil survey. That was
15 prepared by the soil conservation service, the predecessor
16 agency to the NRCS.
17 Q And do you remember what kind of soils were present
18 as indicated by these soil scientist reports and by the NRCS
19 report?
20 A The NRCS mapped the area as Pootatuck, Henry Malder's
21 report identified it, I believe as, Pootatuck and Suncook,
22 but I'd have to refer to it to be positive.
23 THE COURT: Spell the first of those two words.
24 MR. KLEIN: Pootatuck, P-O-O-T-A-T-U-C-K.
25 THE COURT: Thank you.
26 MR. KLEIN: I think; can I refer to my notes?
27 THE COURT: No, that's all right. If that's

1 Q So, if the testimony before the Court was that for
2 the ten years prior to the Platners' purchase in 2007, the
3 open field, the large field north and west of the driveway,
4 was mowed in July and in November, would that inform you as
5 to whether that would promote warm-season grasses?
6 A Yes, it would not promote warm-season grasses.
7 Q And why is that?
8 A Because the warm-season grasses are -- it would be
9 mowing them during the time that they were growing and being
10 productive, if you will.
11 Q So, in your experience, what is your recommendation
12 as to the earliest you would ever mow a warm-season grass
13 field?
14 A The earliest would be August 15th, but I'd prefer
15 that it not be until September.
16 Q Do you have a regime on what to do with respect to
17 rotating or staggering mowing?
18 A Yes.
19 Q What would that be?
20 A We would typically recommend a rotation so that a
21 third or a quarter of the field were mowed each year so that
22 there would be portions of the field that were freshly
23 mowed, portions that were one year old, and portions that
24 were two or three years old to allow for seed production and
25 reproduction of annuals, perennials, and biennials;
26 different kinds of vegetation.
27 Q So, did you inventory the number of different species

1 that are found today in July 2015 in the open field?
2 A Yeah, Mr. Cowen from my office did that and reported
3 it back to me.
4 Q And did you have a chance to read that report?
5 A Yes, I did.
6 Q And is there a way of describing diversity in your
7 profession; big, little, or do you use numbers. Is there a
8 way of describing diversity?
9 A Well, there's two different ways -- there are at
10 least several different ways. One is very qualitative,
11 highly diverse, low diversity, moderate diversity. Another
12 would be by species richness, the number of species that are
13 present.
14 Q So, let's ask about species richness. Did you
15 determine the species richness of the large open field at 66
16 Selden Road?
17 A Yes, if you'd allow me to --
18 THE COURT: In 2015.
19 BY ATTY. LAMBERT:
20 Q In 2015.
21 A That's correct. The meadow plant community had at
22 least 51 species in it.
23 Q So, would you agree or disagree with Mr. Dreyer that
24 there were three or mainly three species of grass?
25 THE COURT: You cannot ask a witness if he
26 agrees or disagrees with other testimony. The law is
27 black letter on that.

1 BY ATTY. LAMBERT:
2 Q Is 51 -- a species richness of 51 diverse?
3 A Yes.
4 Q Could anyone call this a monoculture?
5 A I wouldn't call it a monoculture.
6 Q Are the grass species that you see there
7 qualitatively different than what you would have expected to
8 see in 2007?
9 A No.
10 Q Is the habitat that you observed in July of this
11 year, would the habitat be essentially the same as what you
12 would have expected from the open field on the 1981 plan;
13 mowed twice a year in July and November, in 2007?
14 A It's structurally very, very similar.
15 Q So, let me ask you that. You used the term
16 structure; what do you mean -- I don't understand it, maybe
17 the Court does, but I don't. What do you mean by structure?
18 A The physical relationships of the different kinds of
19 vegetation, the presence or absence of herbaceous
20 vegetation, shrubs and trees, the presence or absence of
21 winter -- I'm sorry, deciduous versus coniferous trees, the
22 relative amounts of open ground versus vegetated ground,
23 bare soil versus vegetated soil. Those are structural
24 elements of a habitat that are -- that's one of the factors
25 that one would consider in determining habitat value.
26 Q So, let me ask you. There are red cedar trees, I
27 believe, you found to be there.

1 Q Is there any benefit from a structural point of view
2 or diversity richness in getting rid of those species and
3 replacing them with grass?
4 A No.
5 THE COURT: I'm sorry, the last word?
6 ATTY. LAMBERT: Replacing the tree rings with
7 grass.
8 THE COURT: The last -- grass?
9 ATTY. LAMBERT: Grass.
10 BY ATTY. LAMBERT:
11 Q What about the -- did you see ornamental shrubs, not
12 under the trees but elsewhere in the restricted area?
13 A There are shrub beds adjacent to Selden Road on a
14 steeply sloping area which represents the break between the
15 alluvial bottom land and the terrace, the higher soils, the
16 glacial outwash soils; we would call that a terrace
17 escarpment or terrace break from a soil standpoint. But on
18 that break, the slope is steeper and there were mulch beds
19 with ornamental landscaping in there.
20 Q Is there any structural benefit to ripping out any of
21 those ornamental shrubs in the restricted area?
22 A No.
23 Q Does replacing them with grass increase or decrease
24 species richness?
25 A It would depend on the number of species of grass.
26 Q And the number of species of shrubs?
27 A And the number of species of shrubs, that's correct.

1 were to restore, in your opinion, restoring this to its 2007
2 condition, would it be a cool-season grassland dominant or a
3 warm-season grassland?
4 A To restore it to its pre-2007 condition, it would be
5 cool-season dominant. From the standpoint of wildlife
6 value, it really makes no significant different whether they
7 were cool-season or warm-season dominated fields.
8 Q To create -- is it possible with intensive
9 management, to create warm-season grasses where they
10 wouldn't naturally grow?
11 A Yes.
12 Q And so here, in your opinion, what would you have to
13 do -- what would one have to do in order to make this a
14 warm-season dominant field?
15 A One would have to either remove or kill the cool-
16 season grasses, introduce warm-season grasses, and then
17 manage it over a period of three to five years to suppress
18 the cool-season grasses because you can never get rid of all
19 of them and there will be annuals that come in and there'll
20 be cool-season grasses that are in the seed bank, and
21 there'll be cool-season grasses that come in on the floods.
22 You would have to manage the field to suppress the cool-
23 season grasses until the warm-season grasses, which are
24 relatively slow-growing become well-established.
25 Q In your opinion, what needs to be done to restore the
26 large field to what you believe to be the best view of what
27 existed -- its 2007 condition?

1 A I think you would just abandon irrigation and resume
2 the prior mowing regime.
3 Q Meaning twice a year?
4 A Correct.
5 Q When you say abandon the irrigation, is there any
6 benefit, any significant benefit of removing the irrigation
7 as opposed to shutting it off?
8 A No, it's not harming anything where it is.
9 Q Is there any need if you just continue mowing it
10 under your suggested restoration, is there any need to
11 remove heads if it's turned off?
12 A No.
13 Q Would restoring it also require cessation of
14 fertilization?
15 A That's not quite as clear because many hayfields,
16 historically, have been fertilized if there was excess
17 manure beyond the needs of the cornfields or other crop
18 fields. So, some fertilization in the form of manuring
19 might have been practiced here in the past; not as heavy in
20 a row crop field. So, there might be a benefit in
21 eliminating fertilizer.
22 Q Let's try to be clear. You're talking about manure
23 which would be old time farming stuff, even though manure
24 meant lots of things in the old days. Manure is animal
25 feces that are dried out.
26 A And urine and hay mixed together.
27 Q So, those sort of I'll call it natural manuring, for

1 lack of a better term, manuring would be indicated as
2 acceptable in restoring this to 2007.
3 THE COURT: Acceptable to whom?
4 BY ATTY. LAMBERT:
5 Q Acceptable to creating the 2007 condition.
6 A I don't think it would be harmful, I don't know
7 specifically if it was manured but it could have been.
8 THE COURT: Are you asking about natural
9 fertilizer?
10 ATTY. LAMBERT: Yes.
11 THE COURT: Okay.
12 BY ATTY. LAMBERT:
13 Q Now, I'm going to ask the other. The type of bagged
14 fertilizer that comes with a ratio on it, would you suggest
15 that in addition to not irrigating, that you not put on any
16 sort of 10-10-10 or whatever?
17 A Yes, I would suggest not doing that.
18 Q But other than -- is there anything else that is
19 needed to have this restored to its 2007 condition other
20 than watering and stopping addition of some sort of
21 fertilizer.
22 A And the mowing.
23 Q The mowing, but twice a year mowing.
24 A Yeah, right. No, I do not believe there's anything
25 else that would be required.
26 THE COURT: Twice a year mowing, if I heard the
27 witness, on a staggered three year schedule.

1 A It is the least environmentally damaging alternative;
2 there are no other additional measures that could mitigate
3 potential adverse impacts and achieve the goal of
4 restoration, and the overall impact would be de minimus.
5 So, for all of those reasons, I can't think of any valid
6 reason for turning down a permit.
7 Q Did you have a chance to take a look at the invoicing
8 and the number of trucks of topsoil that were brought in
9 when the Platners were rebuilding their house?
10 A I looked at the transcripts of some of the testimony
11 that's been heard in this case prior, and saw references to
12 numbers of truckloads of sand and also of topsoil.
13 Q Do you remember 39 trucks of topsoil?
14 A Yes, I do.
15 Q Three to five cubic yards.
16 A That was the testimony, yes.
17 Q So, did you do a calculation that if you took all 39
18 truckloads of topsoil and they were all five cubic yard
19 trucks, and you spread it across the open field, how much
20 topsoil would have been added; what height would have been
21 added?
22 A Yes, I did a calculation; if I can just refer to my
23 notes. It would amount to over five acres it would amount
24 to just under three tenths of an inch; 29/100ths of an inch.
25 Q Is three tenths of an inch enough to have altered in
26 any significant way the undulations that appeared to have
27 existed to Mr. Dreyer prior to 2007?

1 A No, it's not enough.
2 Q Did you see undulations in the property, or were you
3 unable to because there's so much grass?
4 A No, you can still see undulations within the grass.
5 You can see the grass is uneven and it's most likely the
6 result of, in some cases, different growth heights and in
7 other cases different undulations in the land. It's
8 generally a flat alluvial flood plain with minor variations
9 in topography?
10 THE COURT: And how does one tell the difference
11 between undulations caused by differing growth
12 heights in grass and undulations caused by
13 undulations in the ground?
14 MR. KLEIN: When you walk across it, you can
15 feel that there are some undulations. The variations
16 that you see are sometimes correlated to colors of
17 the different grass species and sometimes they're
18 not. So, if they're within an area that all has the
19 same general color, it probably means the same
20 general species is either flowering or in seed at
21 that time. So, the height would generally be the
22 same without physical alteration or physical change.
23 BY ATTY. LAMBERT:
24 Q So, based on your calculation, based on your study,
25 et cetera, would you expect that if you cut the sod and
26 removed all of the sod from the open field, that it would
27 necessarily take some of the soils that were there prior to

1 2007 with the cutting?
2 A Yes.
3 Q Is there any reason to do that?
4 A No.
5 Q The beach, did you have a chance to examine the beach
6 or have any idea of what the measurement is of the area that
7 has logs nearby?
8 A I looked at the aerial photos and I heard the
9 testimony about the unrestricted area which essentially is
10 -- the north/south dimension is essentially the same
11 north/south dimension as the house and the beach has been
12 described as in front of the house.
13 Q And did you do any calculations as to the area that
14 you're talking about and adding 22 tons of sand as to how
15 much sand would have been added vertically?
16 A Yes, assuming that it was placed over an area of 50
17 by 150 feet, in other words, somewhat smaller than the
18 north/south dimension of the house, to be conservative 50
19 feet wide, that amount of sand is a little bit less than an
20 inch.
21 Q Did you see the patio that was built there at the
22 house?
23 A I've seen it from the photography, and I believe I
24 saw it when I was at the site once, yes.
25 THE COURT: When you were at what?
26 MR. KLEIN: The site once.
27 THE COURT: The site once. What was the -- as

1 2008 from Richard to Mr. Gigliotti (phonetic).
2 BY ATTY. LAMBERT:
3 Q Yes. So, looking at that and looking at the shrubs
4 there, you see the multi flora rose, Japanese barberry, and
5 the honeysuckle as being invasive.
6 A Yes, he designated those as invasive. In my opinion,
7 the indigo, the false indigo, is also invasive.
8 Q So, underneath the closed canopy of the woods as
9 opposed to the part near with the phragmites and what not
10 near the creek, what, if any, of the other shrubs there
11 would you expect to find in any significant numbers in a
12 shady area?
13 A Other than the three or four invasives that we
14 identified?
15 Q Yes.
16 A I wouldn't expect any of them to be there in
17 significant numbers.
18 Q And why is that?
19 A Smooth sumac is a sun-loving or edge species, and the
20 other species are wetlands species that want wet feet. By
21 wetland here I'm using in the traditional sense of poorly
22 drained or very poorly drained soils as opposed to the
23 Connecticut regulatory sense which includes moderately well
24 and well-drained alluvial soils.
25 Q So, did you -- I think you said you read Mr.
26 Snarski's testimony.
27 A Yes.

1 Q Do you recall him saying that with respect to this
2 proposal, he oversaw the removal of the vine; the Asiatic
3 bittersweet, the honeysuckle, the barberry, and the multi
4 flora rose?
5 A Yes.
6 Q And that it made up the majority of the understory.
7 A I don't know specifically whether I remember that,
8 but that would not surprise me. That's very typical,
9 unfortunately, in many of the woodlands in Connecticut.
10 Q So, if it was there it wouldn't surprise you.
11 A That's right. And if it was there it wouldn't
12 surprise me that it was dominant.
13 Q Because that's what invasives do; is that fair to
14 say?
15 A Yes.
16 Q Okay. So, if all of those things are removed from
17 whatever is the majority of the understory, would you expect
18 to have now exposed disturbed ground?
19 A Yes.
20 Q And in exposed disturbed ground, would it surprise
21 you that Japanese stiltgrass would grow up?
22 A No.
23 Q So, do you see any evidence other than the removal of
24 the invasive species, the removal of any understory by the
25 Platners in the understory if you assume that the majority
26 was all of this invasive species?
27 A That's correct, I don't see any evidence that

1 anything other than invasives was removed.
2 Q What sort of species richness did you find in the
3 woods?
4 A The woodland as a whole was, I believe, greater than
5 41 species that Mr. Cowen identified. I believe there were
6 a number of other species I identified while I was at the
7 site a few days later. Again, greater than 41 is accurate;
8 it's probably greater than 50 or 60 because that area is
9 very dense and a careful examination would likely turn up a
10 significant number of additional species that weren't
11 readily apparent on a reconnaissance survey.
12 Q I think Mr. Dreyer has testified that there was more
13 diversity in the closed canopy area near the river. Would
14 you agree with that?
15 A Yes.
16 THE COURT: Please don't do that.
17 ATTY. LAMBERT: Pardon me?
18 THE COURT: Please don't ask -- it really just
19 grates on the evidence here. It's actually error in
20 a criminal case to ask a witness was that other
21 witness telling the truth; that's what you're asking.
22 ATTY. LAMBERT: Well, I didn't mean to.
23 THE COURT: I understand that you didn't mean to
24 but--
25 ATTY. LAMBERT: Did you find more diversity --
26 THE COURT: You really ought not to talk over
27 me, Mr. Lambert. I've let it go three or four times

1 in the course of the day, but there's only going to
2 be one voice when it appears in the transcript when
3 we're talking simultaneously, and believe me it's not
4 going to be yours. So, please, if I'm talking,
5 please don't try to talk over me. It's off-putting
6 and probably not a good trial tactic. Please
7 proceed.
8 BY ATTY. LAMBERT:
9 Q Mr. Klein, did you find more diversity in the closed
10 canopy understory near the river?
11 A As compared to?
12 Q Not near the river; as compared to near the cove.
13 A The closed canopy area that's south of the house is
14 best described as having two levels. The area that's
15 furthest north is at an upper elevation closer to the
16 elevation of the house, and that area was substantially
17 lower in species diversity than the lower area which was
18 further south away from the house.
19 Q And we're talking -- when we say south of the house,
20 we mean south running east/west from the river to the cove,
21 aren't we?
22 A Yes.
23 Q The entire length east/west there along Selden Creek.
24 A Yes, if I could perhaps clarify maybe by referring to
25 Exhibit 101.
26 Q The Gates map might be simpler.
27 A Okay. Referring to Exhibit 9, within the area that's

1 labeled as large hardwoods and shrubs, there are essentially
2 two topographic regimes and those two topographic regimes
3 correspond to changes in soil drainage class and plant
4 species diversity. The area that is higher which is in the
5 northern portion of this area south of the house is higher
6 and lower in diversity, and has little shrub layer. Then as
7 one proceeds further south, the grade drops off, the soils
8 become wetter and there's a very, very dense native herb and
9 shrub layer in that area. That is the area that is much
10 more diverse than the area that's closer to the house.
11 Q Do you have a recommendation to whether anything is
12 needed to restore the woods along the south of the house, as
13 we're calling it right now, to a 2007 condition other than,
14 and let me finish my question, other than the reintroduction
15 of all of the invasive species?
16 A No.
17 Q You do not believe -- you have no evidence that
18 anything has been taken out other than what Mr. Snarski
19 testified was taken out.
20 A That's correct; I have no evidence otherwise.
21 Q And is there any accepted way of dealing with
22 Japanese stiltgrass?
23 A Virtually all of the recommendations that I've
24 examined in the restoration literature say that when you're
25 dealing with anything other than a very small patch, that
26 stiltgrass is largely uncontrollable with current
27 technology. It's an annual, there's likely to be a

1 substantial seed bank present which are seeds that are
2 dormant in the soil. It typically takes many, many years of
3 intensive management to eliminate that seed bank. So, it's
4 generally considered not amenable to control other than in
5 very, very small patches where you could hand pull it or mow
6 it and then repeat that year after year.
7 Q Is there any negative effect to mowing what's there
8 on a regular basis as distinct from once a year, and is
9 there any benefit to mowing it just once a year?
10 A I don't -- the only benefit would be to satisfy a
11 scientific curiosity that was an effective management
12 strategy.
13 Q So let me ask you another question. Would the
14 planting of upland species that may have been identified,
15 understory species, in open areas of the understory in your
16 opinion be restoration or creation, and I'm using a 2007
17 time frame.
18 A Yeah. Assuming, based on the evidence that's in the
19 record, it would -- the only way it would be restoration is
20 if it was planting the invasive shrubs.
21 Q Okay. Do you, in your materials, have any color
22 photography that you used; I'm going back to the field now.
23 A Yes.
24 Q And can you take a look at that.
25 A Yes.
26 Q What is it that you relied upon there?
27 A The Connecticut eco website that both I and Mr.

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER, ET AL	:	JULY 14, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, New London Judicial District, New London, Connecticut, before the Honorable Joseph Q. Koletsky, Judge Trial Referee, on the 14th day of July, 2015.

Dated this 11th day of August, 2015 in New London, Connecticut.

Tiffany N. Greene
Court Recording Monitor

NO: KNL-CV09-6001607-S	:	SUPERIOR COURT
LYME LAND CONSERVATION TRUST, INC.	:	JUDICIAL DISTRICT OF NEW LONDON
v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER, ET AL	:	JULY 15, 2015

POST-JUDGMENT RESTORATION HEARING - DAY 2

BEFORE THE HONORABLE JOSEPH Q. KOLETSKY
JUDGE TRIAL REFEREE

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1 the open field?
2 THE COURT: By whom?
3 ATTY. LAMBERT: By the questioning attorney
4 yesterday; by the examining attorney.
5 BY ATTY. LAMBERT:
6 A Yes. Mr. Pritchard referred to it as tawny.
7 Q Does the color in -- whether it's tawny, brown -- does
8 the color in 55 inform or suggest that -- of what species of
9 grass would be there in a leaf-off period?
10 A No.
11 Q Does looking at a photograph showing the field not
12 green change your opinion as to whether there are -- there
13 were warm-season grasses in the field?
14 A No.
15 Q Can you, looking at Exhibit 55, have any reliance that
16 it -- that it accurately shows the condition in 2007?
17 A No.
18 Q Why not?
19 A The -- it's been my experience in reviewing these
20 oblique photographs over the last five or ten years that
21 they've been available, that the -- the dates on them are
22 not the dates of the photography and so they're very
23 difficult to accurately determine what point in time they
24 show.
25 THE COURT: Well, that's not -- is that what you
26 asked him?
27 BY ATTY. LAMBERT:

1 specific mix of grasses could be determined in any
2 realistic way based on the evidence I've seen.
3 BY ATTY. LAMBERT:
4 Q Well, I'm hesitating with your use of the word Mother
5 Nature. You -- you said you have worked with alluvial flood
6 plains -- in Connecticut, I assume?
7 A Yes.
8 Q And what is your experience of the historical uses of
9 alluvial flood plain soils in Connecticut?
10 A They're prime farmland in Connecticut, so very likely
11 that these were either in crop, pasture, or hay for
12 centuries.
13 Q And so would you agree that that's not Mother Nature?
14 A I would agree with that statement. Yes.
15 Q Okay. So let me follow up. In restoring this, if
16 anything needs to be done, what would you do -- what would
17 you recommend be done to restore this?
18 THE COURT: To?
19 ATTY. LAMBERT: To its 2007 condition.
20 THE COURT: To restore it.
21 ATTY. LAMBERT: I didn't -- I'm sorry.
22 BY ATTY. LAMBERT:
23 Q -- to restore it to the 2007 condition?
24 A Again, based on my understanding and review of the
25 natural resource data and the evidence, assuming that this
26 was a cool-season grass meadow in 2007, I don't think
27 anything really needs to be done to restore it to that

1 condition because I believe that's the condition that it's
2 in today.
3 Q Well looking at MM, what were you taking -- what were
4 you attempting to depict or capture in this photo?
5 A This picture shows the hillside which I believe is
6 within the restricted area that lies near the northern
7 boundary of the site.
8 Q And what do you see there?
9 A This was a landscaped area that I believe was planted
10 with ornamental shrubs and wildflowers; and what I see there
11 is the meadow in the foreground, some ornamental wildflowers
12 it looks like just beyond the grasses, and then shrubs in
13 the background, and beyond that a woodland condition.
14 Q And if the testimony -- assuming the testimony was
15 that the hillside was largely covered with Multiflora Rose
16 in 2007, would you recommend removing these shrubs and
17 replacing it with Multiflora Rose?
18 A No. Absolutely not.
19 Q Are these hillsides amenable to being a warm-season
20 meadow?
21 A I -- I don't know the answer to that.
22 Q Do you -- well -- would you know whether warm-season
23 grasses would -- would typically dominate a slope in the
24 same way that they -- in the same way they are present in
25 the flat meadow below?
26 A If the soils are dry enough, sandy enough, gravely
27 enough to support warm-season grasses, it's possible you

1 that begins with m-o-r.
2 THE WITNESS: Um hum.
3 THE COURT: The --
4 THE WITNESS: Morrow's honeysuckle?
5 THE COURT: Yes. There were -- so there's not a
6 couple of i's on the end of it?
7 THE WITNESS: Well, that's the scientific name.
8 THE COURT: Oh.
9 THE WITNESS: So it's -- I'm sorry, Your
10 Honor --
11 THE COURT: So you mean we could have saved
12 ourselves all this torture by simply calling it
13 Morrow's Honeysuckle?
14 THE WITNESS: Morrow's Honeysuckle is the common
15 name. The Latin name is Lonicera morrowii.
16 THE COURT: Thank you.
17 ATTY. LAMBERT: Mr. Snarski's not here to
18 chastise. I'll take it.
19 BY ATTY. LAMBERT:
20 Q So based upon your observations in 2015 -- based upon
21 your read -- did you read the -- the testimony of Mr.
22 Snarski?
23 A I did not read his testimony. I read his letter.
24 Q Did you read Surhan (phonetic) Lawrence's testimony?
25 A I did not. I had a limited time to read the
26 transcripts. I apologize.
27 Q Based on what you have studied -- what you have looked

1 at, do you believe there's -- do you believe there's -- I
2 take that back. Do you believe there's any restoration that
3 is needed to restore this to 2007 other than if we were to
4 replace the invasive species?
5 A No.
6 ATTY. LAMBERT: I have no other questions for
7 this witness, Your Honor.
8 ATTY. PRITCHARD: No questions, Your Honor.
9 THE COURT: Well I'm not sure -- it's
10 different -- the forest to the -- along Selden Creek
11 is different now than when the Platners bought the
12 property.
13 THE WITNESS: I understand.
14 THE COURT: Are you agreeing with that or not.
15 THE WITNESS: I -- from what I have heard in the
16 testimony that there has been removal of invasives
17 and trash and driftwood.
18 THE COURT: And you think that's all that's been
19 done there?
20 THE WITNESS: That's all that I'm aware of that
21 is consistent with what I see.
22 THE COURT: All right. Thank you.
23 Questions in view of my questions?
24 ATTY. LAMBERT: No, Your Honor.
25 THE COURT: Thank you very much.
26 Further evidence?
27 ATTY. LAMBERT: No further evidence, Your Honor.

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v.	:	AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER, ET AL	:	JULY 15, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, in New London, Connecticut, before the Honorable Joseph Q. Koletsky, Judge Trial Referee, on the 15th day of July, 2015.

Dated this 9th day of September, 2015 in New London, Connecticut.

JoAnne Klingerman
Court Recording Monitor

CONNECTICUT GENERAL STATUTES

Sec. 47-42a. Definitions. For the purposes of sections 47-42b, 47-42c and 47-42d, the following definitions shall apply:

(a) "Conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.

(b) "Preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.

(1971, P.A. 173, S. 1; P.A. 04-96, S. 1; P.A. 05-124, S. 1.)

Sec. 47-42c. Acquisition of restrictions. Enforcement by Attorney General. Such conservation and preservation restrictions are interests in land and may be acquired by any governmental body or any charitable corporation or trust which has the power to acquire interests in land in the same manner as it may acquire other interests in land. Such restrictions may be enforced by injunction or proceedings in equity. The Attorney General may bring an action in the Superior Court to enforce the public interest in such restrictions.

(1971, P.A. 173, S. 3; P.A. 05-124, S. 5.)

Sec. 52-560a. Damages for encroachment on state, municipal or nonprofit land conservation organization open space land. Attorney General enforcement. Civil action. (a) As used in this section, "open space land" includes, but is not limited to, any park, forest, wildlife management area, refuge, preserve, sanctuary, green or wildlife area owned by the state, a political subdivision of the state or a nonprofit land conservation organization and "encroach" means to conduct an activity that causes damage or alteration to the land or vegetation or other features thereon, including, but not limited to, erecting buildings or other structures, constructing roads, driveways or trails, destroying or moving stone walls, cutting trees or other vegetation, removing boundary markers, installing lawns or utilities, or using, storing, or depositing vehicles, materials or debris.

(b) No person may encroach or cause another person to encroach on open space land or on any land for which the state, a political subdivision of the state or a nonprofit land conservation organization holds a conservation easement interest, without the permission of the owner of such open space land or holder of such conservation easement or without other legal authorization.

(c) Any owner of open space land or holder of a conservation easement subject to the provisions of subsection (b) of this section or the Attorney General may bring an action in the superior court for the judicial district where the land is located against any person who violates the provisions of said subsection with respect to such owner's land or land subject to such conservation easement. The court shall order any person who violates the provisions of subsection (b) of this section to restore the land to its condition as it existed prior to such violation or shall award the landowner the costs of such restoration, including reasonable management costs necessary to achieve such restoration. In addition, the court may award reasonable attorney's fees and costs and such injunctive or equitable relief as the court deems appropriate.

(d) In addition to any damages and relief ordered pursuant to subsection (c) of this section, the court may award damages of up to five times the cost of restoration or statutory damages of up to five thousand dollars. In determining the amount of the award, the court shall consider the willfulness of the violation, the extent of damage done to natural resources, if any, the appraised value of any trees or shrubs cut, damaged, or carried away as determined in accordance with the latest revision of The Guide for Plant Appraisal, as published by the International Society of Arboriculture, Urbana, Illinois, or a succeeding publisher, any economic gain realized by the violator and any other relevant factors.

(P.A. 06-89, S. 1.)

CERTIFICATION

Pursuant to Practice Book § 67-2(h), I hereby certify that: (1) the electronically submitted brief and appendices were emailed on April 13, 2016, to counsel of record listed below; and (2) that the brief and appendices do not contain any names or personally identifiable information that is prohibited from disclosure or that any such information has been redacted.

Pursuant to Practice Book § 67-2(i), I hereby certify that: (1) in compliance with Practice Book § 62-7, a copy of the foregoing brief and appendices were mailed, postage prepaid, to **The Honorable Joseph Q. Koletsky**, and the counsel of record listed below on April 13, 2016; (2) that the brief and appendices are true copies of the brief and appendices filed electronically pursuant to Practice Book § 67-2(g); (3) that the brief and appendices do not contain any names or personally identifiable information that is prohibited from disclosure or that any such information has been redacted; (4) and that the brief complies with all provisions of Practice Book § 67-2(i).

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CERTIFICATION

Pursuant to Practice Book § 67-2(h), I hereby certify that: (1) the electronically submitted brief and appendices were emailed on October 20, 2016, to counsel of record listed below; and (2) that the brief and appendices do not contain any names or personally identifiable information that is prohibited from disclosure or that any such information has been redacted.

Pursuant to Practice Book § 67-2(i), I hereby certify that: (1) in compliance with Practice Book § 62-7, a copy of the foregoing brief and appendices were mailed, postage prepaid, to **The Honorable Joseph Q. Koletsky**, and the counsel of record listed below on October 20, 2016; (2) that the brief and appendices are true copies of the brief and appendices filed electronically pursuant to Practice Book § 67-2(g); (3) that the brief and appendices do not contain any names or personally identifiable information that is prohibited from disclosure or that any such information has been redacted; (4) and that the brief complies with all provisions of Practice Book § 67-2(i).

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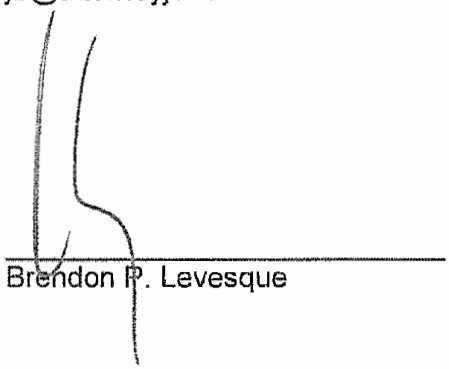

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