

CONSERVATION EASEMENT [#2]

Dated 12/15/93. Covers the Marsh.

Recorded in Volume 313 at page 595 of the Old Saybrook Land Records (Hudson & Kilby code is "Fenwick. Ce2")

KNOW ALL MEN BY THESE PRESENTS, that the BOROUGH OF FENWICK, a municipal corporation located in the Town of Old Saybrook, County of Middlesex, and State of Connecticut, for the consideration of One Dollar (\$1.00) and other valuable consideration received to its full satisfaction of the LYNDE POINT LAND TRUST, INC., a Connecticut corporation having its principal place of business in the Borough of Fenwick, Town of Old Saybrook, County of Middlesex, and State of Connecticut, does give, grant, and convey unto the said LYNDE POINT LAND TRUST, INC., its successors and assigns forever, the following:

A conservation easement to have all the force and effect of a "conservation restriction" as defined by Section 47-42a of the Connecticut General Statutes for the purpose of retention of the hereinafter-described land predominantly in its present scenic and open condition and for parkland and open space use in perpetuity.

The land subject to this conservation restriction consists of those pieces and parcels of land located in the Borough of Fenwick in the Town of Old Saybrook, County of Middlesex, and State of Connecticut, which are described as follows:

All those certain pieces or parcels of land, situated in the Borough of Fenwick in the Town of Old Saybrook, County of Middlesex, and State of Connecticut, as shown on a certain map or plan entitled: "Map of New Saybrook Scale, about 420 feet to one inch Wm. R. Clark, C.S." being the same plan sometimes referred to as "Map of New Saybrook No. 2," on file in the office of the Town Clerk of Old Saybrook, which are shown as follows:

Lots Nos. 108, 110, 112, 114, 134, 135, 136, 199 1/2, 282, 282 1/2, 284, 285, and 285 1/2.

A certain piece or parcel of land consisting of any portions of Lots Nos. 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, and 298, and of certain unmarked and unplotted land as shown on said map, that may be included within the boundaries described below: Bounded Northerly by property now or formerly of Morgan B. Brainard and Newton C. Brainard, being the northerly boundary line of Lot. No. 286 as shown on said map extended easterly; Easterly by a line thirty (30) feet above the mean high water level of the Connecticut River; Southerly by a boundary line described in an agreement between the Fenwick Hall Company and Laura C. Cunningham Estate et al., dated February 14, 1930 and recorded in Old Saybrook Land Records in Volume 32, page 575; and Westerly by the easterly line of Sequassen Avenue as shown on said map.

That portion of Pettipaug Avenue running from a line, which is the prolongation of the boundary line between Lots Nos. 133 and 134 in a southerly direction across said Pettipaug Avenue, in a northeasterly direction to its intersection with Neponset Avenue.

That portion of Agawam Avenue running from a line, which is the prolongation of the boundary line between Lots Nos. 133 and 134 in a northerly direction across said Agawam Avenue, in a northeasterly direction to its intersection with Pettipaug Avenue which may be owned by the Borough of Fenwick by virtue of its discontinuance of the portion of Agawam Avenue between Mohegan Avenue and Pettipaug Avenue.

All of that piece or parcel of land, presently shown as Lot 26 on Map 11 of the Old Saybrook Assessor's Maps, bounded generally as follows (said description is not made with reference to the above referenced map):

Northerly: by Sequassen Avenue;

Easterly,

Northerly, and

Westerly: by land formerly of Christina E. Potter and more recently of David Savin (being Lot 5 on said Assessor's Map 11);

Easterly: by Sequassen Avenue;

Southeasterly: by land now or formerly of Brenda W. Sullivan, et al; land now or formerly of Conrad D. Collins, et al.; land now or formerly of George A. and Reesa S. Longtin; land now or formerly of Jonathan D. Jarvis, et al.; land now or formerly of Marjorie E. Mathewson; and land now or formerly of Lighthouse Point Association - (being Lots 17, 18-1, 19, 20, 21 and 22, respectively, on said Assessor's Map 11);

Westerly,

Southerly, and

Easterly: by land now or formerly of William O. Webster, Jr., et al. (being Lot 23 on said Assessor's Map 11);

Southerly: by land now or formerly of the Fenwick Hall Company (being reserved in a deed from such Fenwick Hall Company to the Borough of Fenwick dated 9/17/42 and recorded in Volume 46, page 385); and

Westerly: by land now or formerly of Katharine Hepburn (being Lot 6 on said Assessor's Map 11), Pettipaug Avenue, and Neponset Avenue.

Within the said areas of land subject to such conservation restriction, without prior express written consent from the Grantee:

1. There shall be no construction or maintenance of buildings, camping accommodations, mobile homes, billboards or other advertising material, or other structures, other than those structures which currently exist or as specifically permitted below;
2. There shall be no filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any change in the topography of the land in any manner, except as specifically permitted below;
3. There shall be no removal, destruction or cutting of trees or plants, spraying with biocides, herbicides, or other agents inimical to plant, animal or insect life, grazing of domestic or farm animals, or disturbance or change in the natural habitat in any manner, except as specifically permitted below;
4. There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive material, and no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, except as specifically permitted below;

5. There shall be no manipulation or alteration of natural water courses, shores, marshes or other water bodies or activities or uses detrimental to water purity, except as specifically permitted below;
6. There shall be no operation of motorized vehicles, including snowmobiles, dunebuggies, and all-terrain vehicles, except to the extent necessary to carry out any specifically permitted activities;
7. There shall be no hunting or trapping except to the extent necessary to keep the animal population within the numbers consistent with the ecological balance of the area or to promote or protect the public health or prevent the spread of disease;
8. There shall be no construction, improvement, or upgrading of roads, carpaths, or footpaths except as necessary to maintain existing pathways in their current condition or as specifically permitted below; and
9. Prior to undertaking any changes in the use of the property, the owners of the servient tenements shall consult with the Grantee regarding the proposed changes to determine the effect of such changes on the natural values being protected on the property. Grantee shall have the right to approve such changes in use, but such approval shall not be unreasonably withheld.

The provisions of the preceding restrictions notwithstanding, the following uses and activities by the Grantor, and its successors and assigns, and any work or activity otherwise prohibited by the preceding restrictions which is reasonably necessary or appropriate in connection with such uses or activities, shall not be prohibited by this Conservation Easement or considered inconsistent with the intent of this grant and are specifically permitted:

- (a) The construction, maintenance and use of borough roads, public and private access roads, unsurfaced or unpaved pedestrian trails, and unpaved paths in a manner that does not interfere with the conservation purposes of this grant;
- (b) The placement of signs on the area for purposes of public safety and/or traffic control, indicating the ownership of the premises, or indicating rules and restrictions relating to the use of the premises;
- (c) Mowing of grass, cutting or burning of vegetation, and spraying or treatment for the control of insects consistent with sound and established principals for the management of natural areas or necessary for preservation of public health and safety; and
- (d) Installation, use, maintenance, repair, and replacement of utility lines and of wells and the construction, installation, use, maintenance, repair, and replacement of lines, pipes, and facilities, including pumping facilities, related thereto, provided, however, that such lines and pipes shall be located underground when this is reasonably possible and such lines, pipes, and facilities shall be located, designed, and constructed in a manner which is as consistent as possible with the purposes of this easement.

Except for such restrictions, such parcels may be used without hindrance by the owners of the servient tenements. This grant of Conservation Easement is intended to encompass the powers and rights granted pursuant to Section 47-42a through 47-42c of the Connecticut General Statutes as they may be amended from time to time, and the Grantee is hereby granted the right, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity the covenants hereinabove set forth, including, but not limited to, the right to require restoration of the Conservation Easement area to its condition immediately prior to any violation of the restrictions herein contained. The failure of the Grantee to act

in any one or more instances to enforce such rights shall not act as a waiver or forfeiture of its rights to take action as may be necessary to insure compliance with the covenants and purposes of this grant; provided, however, nothing herein shall be construed to entitle the Grantee to institute any enforcing proceedings against the Grantor or the owners of the servient tenements for any changes to the Conservation Easement area due to causes beyond the Grantor's or such owner's control, such as changes caused by fire, flood, storm or the unauthorized wrongful acts of third parties.

In the event that the Grantee becomes aware of an event or circumstance of noncompliance within the terms and conditions herein set forth, the Grantee shall give notice of such event or circumstance of noncompliance by certified mail, return receipt requested, to the owner of the servient tenement of the property involved at its last known post office address, such notice to contain a request for corrective actions reasonably required to abate such event or circumstance of noncompliance and restore the Conservation Easement area to its previous condition.

Failure by the said owner of the servient tenement to whom notice has been given to cause discontinuance or abatement or to undertake such other action as may be reasonably requested by the Grantee within thirty (30) days after receipt of notice shall entitle the Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement to require the restoration of the property to its prior condition, to enjoin such noncompliance by ex parte temporary or permanent injunction in a court of competent jurisdiction, or to recover any damages arising from such noncompliance. Such damages, when and if recovered, may be applied by the Grantee in its discretion to corrective action on the Conservation Easement area, if necessary.

If a court of competent jurisdiction determines that an owner of the servient tenement has failed to comply with the terms and conditions of this Conservation Easement, the said owner shall reimburse the Grantee for any reasonable cost of enforcement, including court costs and reasonable attorneys' fees, in addition to other payments ordered by such court. If such court determines that the said owner was in compliance with the terms and conditions of this Conservation Easement, the Grantee shall reimburse such owner for court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. The Grantor, for itself and all subsequent owners of the servient tenements, hereby waives any defense of laches with respect to any delay by the Grantee, its successors and assigns, in actions to enforce any restriction or exercise any rights under this grant.

The Grantor, and its successors in title as owners of the servient tenement of the property involved, shall indemnify and hold harmless the Grantee, and its successors and assigns, from and with respect to any causes of action, judgments, damages, claims, or demands made against the Grantee, or its successors and assigns, by virtue of or related to its capacity as grantee hereof or holder of any rights hereunder.

In the event of a condemnation or other taking of the property which is subject to this Conservation Easement, or any portion thereof, whether the same results in a total or partial taking, it is agreed that a portion of any award or payment of damages may be paid to the Grantee, its successors or assigns, in such proportionate share of the total award or payment for damages as may be determined to be appropriately allocable to the Grantee's interests in such property.

The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, and the Grantee hereby covenants and agrees that, in the event the Grantee transfers or assigns the easement it holds hereunder, the organization or entity receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for one of the conservation purposes defined in Section 170 (h)(4)(A) of the Internal Revenue Code, and further covenants and agrees that Grantee will undertake its best efforts to ensure that the terms of such transfer or assignment will require the transferee or assignee to continue to carry out in perpetuity the conservation purposes which the Conservation Easement was originally intended to advance.

