

STATE OF RHODE ISLAND  
WASHINGTON, SC.

SUPERIOR COURT

WATCH HILL FIRE DISTRICT; and THE  
WATCH HILL CONSERVANCY

Plaintiffs

C.A. No. WC-2023-\_\_\_\_\_

v.

TOWN OF WESTERLY; CINDY  
KIRCHHOFF, in her capacity as the Interim  
Director of Finance for the Town of Westerly;  
WILLIAM CONLEY, ESQ., in his capacity  
as Town Solicitor for the Town of Westerly;  
SHAWN LACEY, in his capacity as Town  
Manager for the Town of Westerly; the  
WESTERLY TOWN COUNCIL and  
EDWARD P. MORRONE, KEVIN J.  
LOWTHER, II, PHILIP M. OVERTON, JR.,  
WILLIAM J. AIELLO, JOY L. CORDIO,  
DYLAN J. LAPIETRA, and MARY E.  
SCIALABBA, in their capacities as members  
of the Westerly Town Council; THE  
MISQUAMICUT CLUB; WATCH HILL  
YACHT CLUB CABANA GROUP LLC;  
WATCH HILL YACHT CLUB; MARSHA  
ANDERSON FISKE, TRUSTEE OF THE  
MARSHALL ANDERSON FAMILY  
TRUST; ESTATE OF OSCAR B.  
CHAPMAN; GERALD C. DEMARIA and  
TERESA DEMARIA; ESTATE OF  
ROBERT GLENDINNING; HARRIET M.  
KNIFFIN in her capacity as TRUSTEE OF  
THE HARRIET CHAPPELL MOORE  
FOUNDATION; LOUIS B. CAPPUCCIO,  
JR., as TRUSTEE OF THE LOUIS B.  
CAPPUCCIO, JR. LIVING TRUST and  
LAWRENCE J. CAPPUCCIO, TRUSTEE  
OF THE LAWRENCE J. CAPPUCCIO  
LIVING TRUST; and STATE OF RHODE  
ISLAND ACTING BY AND THROUGH  
ITS DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Defendants.

## **COMPLAINT**

Plaintiffs, Watch Hill Fire District and The Watch Hill Conservancy, bring this action pursuant to the provisions of Chapters 7 and 16 of Title 34 and Chapter 30 of Title 9 of the Rhode Island General Laws to enforce the terms of the Conservation Easement protecting land on Napatree Point and to quiet title to certain real property located in or adjacent to Napatree Point against actions taken and claims asserted by the Town of Westerly. Plaintiffs seek declaratory and other equitable relief and damages, and state as follows:

### **THE PARTIES**

1. Plaintiff Watch Hill Fire District (“WHFD”) is a Rhode Island quasi-municipality chartered in 1901 organized in 1941 through the Rhode Island General Assembly. For decades, the WHFD has committed itself to preserving and conserving the unique and historic nature of the community and the fragile shoreline, including the conservation of Napatree Point. The stewardship by WHFD dates back to WHFD’s initial purchase of a majority of the parcels constituting Napatree Point in 1945 and later acquisitions of additional parcels. WHFD developed the first Coordinated Management Plan for portions of Napatree Point in 1972 and in 2013 granted a conservation easement in favor of The Watch Hill Conservancy encumbering certain of the parcels owned by WHFD (the “Conservation Easement”).

2. Plaintiff The Watch Hill Conservancy (“WHC”) is a 501(c)(3) charitable organization and Rhode Island non-profit corporation dedicated to preserving and conserving property in historic Watch Hill, owning property on Napatree Point identified as Assessor’s Plat 177, Lot 5; Assessor’s Plat 177, Lot 6; Assessor’s Plat 177, Lot 7 (as tenants in common with WHFD); Assessor’s Plat 178, Lot 10; and Assessor’s Plat 178, Lot 12. WHC also owns the conservation easement interest granted by WHFD encumbering the Napatree Point parcels

identified as Assessor's Plat 177, Lot 2; Assessor's Plat 178, Lot 2; Assessor's Plat 178, Lot 3, Assessor's Plat 178, Lot 4; Assessor's Plat 178, Lot 5; Assessor's Plat 178, Lot 6; Assessor's Plat 178, Lot 9; Assessor's Plat 182, Lot 1; and Assessor's Plat 185, Lot 31 (being the Limited Common Element of WHFD Beach Condominium allocated to Unit 1 owned by WHFD).

3. Defendant Town of Westerly (the "Town") is a municipal corporation in the State of Rhode Island and an interested party as owner of property on Napatree Point identified as Assessor's Plat 178, Lot 7.

4. Defendant Cindy Kirchhoff is the Interim Director of Finance, and equivalent of Treasurer, for the Town of Westerly and named solely in her capacity as Interim Director of Finance.

5. Defendant William Conley, Esq. is the Town Solicitor for the Town of Westerly and named solely in his capacity as Town Solicitor.

6. Defendant Shawn Lacey is the Town Manager for the Town of Westerly and named solely in his capacity as Town Manager.

7. Defendant Westerly Town Council ("Council") is an elected government body in the Town of Westerly with the power to manage the affairs and interests of the Town, pursuant to R.I. Gen. Laws § 45-5-1.

8. Defendants Edward P. Morrone, Kevin J. Lowther, II, Philip M. Overton, Jr., William J. Aiello, Joy L. Cordio, Dylan J. Lapietra, and Mary E. Scialabba are named in this Complaint solely in their capacities as members of the Council.

9. Defendant The Misquamicut Club is named as an interested party owning property on Napatree Point identified as Assessor's Plat 185, Lot 31-3, being Unit 3 of the WHFD Beach Condominium.

10. Defendant Watch Hill Yacht Club Cabana Group LLC is named as an interested party owning property on Napatree Point identified as Assessor's Plat 185, Lot 31-2, being Unit 2 of the WHFD Condominium.

11. Defendant Watch Hill Yacht Club is named as an interested party with a leasehold interest in a portion of the condominium property constituting a portion of Assessor's Plat 185.

12. Defendant Marsha Anderson Fiske, Trustee of The Marshall Anderson Family Trust is named as an interested party who owns property on Napatree Point identified as Assessor's Plat 177, Lot 3.

13. Defendant The Estate of Oscar B. Chapman is named as an interested party who owns a tenancy in common interest with WHFD in property on Napatree Point identified as Assessor's Plat 177, Lot 4.

14. Defendants Gerald C. DeMaria and Teresa DeMaria are named as interested parties who own property on Napatree Point identified as Assessor's Plat 177, Lot 8.

15. Defendant The Estate of Robert Glendinning is named as an interested party who co-owns property on Napatree Point identified as Assessor's Plat 178, Lot 3.

16. Defendant Harriet M. Kniffin in her capacity as Trustee of The Harriet Chappell Moore Foundation is named as an interested party who owns property on Napatree Point identified as Assessor's Plat 178, Lot 1.

17. Defendants Louis B. Cappuccio, Jr., as Trustee of The Louis B. Cappuccio, Jr. Living Trust u/d/t dated May 15, 2012 and Lawrence J. Cappuccio, Trustee of The Lawrence J. Cappuccio Living Trust u/d/t dated October 9, 2012 are named as interested parties who own property on Napatree Point identified as Assessor's Plat 178, Lot 8.

18. Defendant The State of Rhode Island acting by and through its Department of Environmental Management is named as an interested party owning property on Napatree Point identified as Assessor's Plat 178, Lot 11 and owning a conservation easement interest in Assessor's Plat 177, Lot 6.

19. Upon information and belief, all known and unknown persons who may claim an interest in the property to which this quiet title action pertains have been named as defendants in this action. WHFD and WHC have reviewed pertinent land records and deeds to ascertain the identity of any claimants. WHFD and WHC know of no other persons who will or may assert any claims relating to the rights, title, and interests at issue here, and they name under R.I. Gen. Laws § 34-16-9 any unknown persons with such an interest.

#### **JURISDICTION AND VENUE**

20. Jurisdiction lies in this court pursuant to the common law equity powers of the Superior Court to confirm, ascertain and declare property rights. Jurisdiction to quiet title or some right or interest in real estate is also pursuant to the provisions of R.I. Gen. Laws §§ 8-2-13 and 8-2-14; Chapters 7 and 16 of Title 34; and the Rhode Island Uniform Declaratory Judgments Act, §§ 9-30-1 *et seq.* This Court also has jurisdiction of this action under the Administrative Procedures Act, § 42-35-7 to declare and determine the legal effect of a resolution passed by the Council.

21. Concurrently with this Complaint, WHFD and WHC have presented their claims, damages and demands to the Council by way of a notice letter, consistent with R.I. Gen. Laws § 45-15-5.

22. Venue is proper pursuant to R.I. Gen. Laws § 9-4-2.

## THE FACTS

### Historic Use of Napatree Point

23. The allegations in this subsection regarding the historic use of Napatree Point are advanced upon information and belief.

24. In 1898, the United States (the “Government”) purchased two large non-adjacent parcels on Napatree Point to build Fort Mansfield. At the time, there were only four other property owners on Napatree Point. In 1903, the Government secured from each of these owners a private easement over their property for a right of way that provided access to and from Fort Mansfield. The 1903 Easement is attached as **Exhibit A**.

25. This private easement created in 1903 was exclusively for the Government and the four owners to get to and from their respective properties. The Government did not create this easement for the public to access Fort Mansfield or to access any of the other lots on Napatree Point.

26. In 1909, the Government and the then property owners on Napatree Point redefined the private easement with more precise dimensions and measurements that corresponded with the then as-built roadway. The 1909 Easement is attached as **Exhibit B**. Similar to the 1903 private easement, the 1909 private easement remained for the exclusive use of the Government and the property owners for access to and from their respective properties. The deeds and land records establishing the easement granted no rights to the public. This private easement leading to Fort Mansfield eventually became known colloquially as “Fort Road.”

27. The Government’s use of the Fort Road private easement ended when the Government stopped using Fort Mansfield in 1926.

28. The 1938 Hurricane dramatically and tragically changed Napatree Point. It destroyed the existing houses on the point, killed some of the residents living there, and significantly altered the geography of the point itself. As a direct result of the storm, the most northerly end of the point (now Sandy Point Island), was severed and shifted northward.

29. The 1938 hurricane also destroyed the southern facing dune that previously protected much of Napatree Point.

30. The loss of the dune accelerated the ocean overwash and washover fan migration over the next 40 years (a natural process for barrier spits) and gradually shifted Napatree Point to the north.

31. The owners of property on Napatree Point never relocated or replaced the Fort Road private easement. The owners largely abandoned Napatree Point after the 1938 hurricane. The 1938 hurricane ended development of property on Napatree Point. The property owners never replaced the residential structures wiped out in the 1938 hurricane. The chains of title for most lots from 1938 forward are largely tax foreclosure sales and probate conveyances.

32. As a result of these events, the former private easement referred to as Fort Road has neither existed nor been used for many decades, and part of the former Fort Road private easement is now under water.

33. In recent decades, almost all parcels on Napatree Point have either remained within the families that already owned them or been acquired by WHFD or WHC for conservation purposes.

34. The lots that neither remained within the families nor were acquired by WHFD or WHC are: (1) Assessor's Plat 178, Lot 7, acquired by the Town of Westerly from George L. Crow, Jr., Natalie S. Crow, Patricia Anne Crow and Robert Thomson Crow in 1986; and

(2) Assessor's Plat 178, Lot 11, donated by Kenneth W. Douglas, Jr., Jay Dwight Douglas and James N. Douglas, in their respective capacities as co-executors under the will of Kenneth W. Douglas to the State of Rhode Island acting by and through its Department of Environmental Management in 1983.

35. In sum, the land evidence records establish that the owners of land on Napatree Point did not replace the Fort Road private easement or establish a new private easement.

36. The Fort Road private easement also terminated for another reason. The original easement, recorded in 1903 and again in 1909, is not referenced with the statutorily required specificity in the deeds in the chains of title of properties on Napatree Point since 1926. Rhode Island's Marketable Record Title Act extinguishes easements or rights-of-way not referenced in a deed within the last 40 years. *See* R.I. Gen. Laws § 34-13.1-4.

The WHFD Property on and Adjacent to Napatree Point

37. WHFD owns property on Napatree Point and property abutting Napatree Point in Westerly, Rhode Island. More specifically, WHFD owns the following parcels (hereinafter sometimes collectively referred to as, the "WHFD Parcels"): (i) Assessor's Plat 182, Lot 1; (ii) Assessor's Plat 177, Lot 7 (as tenants in common with WHC); (iii) Assessor's Plat 177, Lot 4 (as tenants in common with the Estate of Oscar B. Chapman); (iv) Assessor's Plat 177, Lot 2; (v) Assessor's Plat 177, Lot 1; (vi) Assessor's Plat 178, Lot 9; (vii) Assessor's Plat 178, Lot 2; (viii) Assessor's Plat 178, Lot 3 (as tenants in common with the Estate of Robert Glendinning); (ix) Assessor's Plat 178, Lot 4; (x) Assessor's Plat 178, Lot 5; (xi) Assessor's Plat 178, Lot 6; (xii) Assessor's Plat 185, Lot 31, being the Limited Common Element allocated to Unit 1 of the WHFD Beach Condominium owned by WHFD; (xiii) Assessor's Plat 185, Lot 31-1; (xiv) Assessor's Plat 185, Lot 33; and (xv) Assessor's Plat 185, Lot 34.



38. WHFD acquired the WHFD Parcels, as evidenced by deeds recorded with the Land Evidence Records of the Town of Westerly, as follows:

- (i) Assessor's Plat 182, Lot 1: acquired by deed dated August 28, 1945 and recorded in Book 63 at Page 249;
- (ii) Assessor's Plat 177, Lot 7 (as tenants in common with Watch Hill Conservancy): acquired by deed dated February 23, 2000 and recorded in Book 816 at Page 24;
- (iii) Assessor's Plat 177, Lot 4 (as tenants in common with Estate of Oscar B. Chapman): acquired by deed dated September 23, 1999 and recorded in Book 796 at Page 195;
- (iv) Assessor's Plat 177, Lot 2: acquired by deed dated April 30, 1946 and recorded in Book 64 at Page 273;
- (v) Assessor's Plat 177, Lot 1: acquired by deed dated December 18, 1989 and recorded in Book 352 at Page 203;
- (vi) Assessor's Plat 178, Lot 9: acquired by deed dated July 18, 1961 and recorded in Book 81 at Page 322;
- (vii) Assessor's Plat 178, Lot 2: acquired by deed dated November 25, 1974 and recorded in Book 136 at Page 252 (easterly portion) and by deed dated September 30, 1942 and recorded in Book 61 at Page 156 (westerly portion);
- (viii) Assessor's Plat 178, Lot 3 (as tenants in common with Glendinning Robert Heirs): dated July 17, 1961 and recorded in Book 81 at Page 322;
- (ix) Assessor's Plat 178, Lot 4: acquired by deed dated June 10, 1948 and recorded in Book 66 at Page 445;
- (x) Assessor's Plat 178, Lot 5: acquired by deed dated January 3, 1986 and recorded in Book 284 at Page 580;
- (xi) Assessor's Plat 178, Lot 6: acquired by deed dated June 18, 1973 and recorded in Book 125 at Page 112 (westerly portion) and by deed dated September 10, 1945 and recorded in Book 63 at Page 319 (easterly portion);
- (xii) Assessor's Plat 185, Lot 31: being the Limited Common Element allocated to Unit 1 of the WHFD Beach Condominium owned by WHFD, acquired by deed dated August 29, 1945 and recorded in Book 63 at Page 247;

- (xiii) Assessor's Plat 185, Lot 31-1: acquired by deed dated August 29, 1945 and recorded in Book 63 at Page 247;
- (xiv) Assessor's Plat 185, Lot 33: acquired by deed dated January 12, 1910 and recorded in Book 39 at Page 591; and
- (xv) Assessor's Plat 185, Lot 34: believed to be acquired by: (a) deed dated January 26, 1910 and recorded in Book 39 at Page 606, (b) deed dated December 30, 1909 and recorded in Book 39 at Page 584, (c) deed dated January 6, 1910 and recorded in Book 39 at Page 594, (d) deed dated January 13, 1910 and recorded in Book 39 at Page 596, (e) deed dated February 2, 1910 and recorded in Book 39 at Page 628.

39. On October 31, 2013, WHFD granted to WHC a Conservation Easement recorded with the Land Evidence Records of the Town of Westerly in Book 2014 at Page 340 encumbering the following parcels of land (collectively, the "Protected Property"): (i) Assessor's Plat 182, Lot 1; (ii) Assessor's Plat 177, Lot 2; (iii) Assessor's Plat 178, Lot 9; (iv) Assessor's Plat 178, Lot 2; (v) Assessor's Plat 178, Lot 3; (vi) Assessor's Plat 178, Lot 4; (vii) Assessor's Plat 178, Lot 5; (viii) Assessor's Plat 178, Lot 6; and (ix) Assessor's Plat 185, Lot 31, being the Limited Common Element allocated to Unit 1 of the WHFD Beach Condominium owned by WHFD. WHFD conveyed the Conservation Easement as a charitable donation to continue to conserve the Protected Property in its natural state in light of WHC's 501(c)(3) status and mission to conserve the Protected Property in a manner consistent with the "conservation values" described in the Conservation Easement. WHFD designated the Protected Property as "The Chaplin B. Barnes Napatree Point Conservation Area." WHC and WHFD maintain the Protected Property and enforce the terms of the Conservation Easement. The Conservation Easement is attached as **Exhibit C** and includes a map identifying the Protected Properties as of October 31, 2013. **Exhibit D** is an updated map depicting property ownership on Napatree Point and reflects later acquisitions by WHC of additional properties on Napatree Point for the purpose of conservation.

40. WHC owns property on Napatree Point, hereinafter sometimes collectively referred to as the “WHC Parcels,” identified as Assessor’s Plat 177, Lot 5; Assessor’s Plat 177, Lot 6; Assessor’s Plat 177, Lot 7 (as tenants-in-common with WHFD); Assessor’s Plat 178, Lot 10; and Assessor’s Plat 178, Lot 12.

41. WHC acquired the WHC Parcels, as evidenced by deeds recorded with the Land Evidence Records of the Town of Westerly, as follows:

- (i) Assessor’s Plat 177, Lot 5: acquired by deed dated May 19, 2004 and recorded in Book 1289 at Page 161;
- (ii) Assessor’s Plat 177, Lot 6: acquired by deed dated October 25, 2019 and recorded in Book 2019 at Page 18496;
- (iii) Assessor’s Plat 177, Lot 7: acquired by deed dated January 31, 2012 and recorded in Book 1913 at Page 415;
- (iv) Assessor’s Plat 178, Lot 10: acquired by deed dated August 22, 2017 and recorded in Book 2017 at Page 20446; and
- (v) Assessor’s Plat 178, Lot 12: acquired by: (a) deed dated May 4, 2004 and recorded in Book 1288 at Page 298, (b) deed dated May 6, 2004 and recorded in Book 1288 at Page 300, (c) deed dated May 10, 2004 and recorded in Book 1288 at Page 306, and (d) deed dated May 6, 2004 and recorded in Book 1288 at Page 308.

42. WHC granted a conservation easement on Assessor’s Plat 177, Lot 6 to the State of Rhode Island acting by and through its Department of Environmental Management. The Protected Property as used in this Complaint includes the land on Napatree Point owned by either WHFD or WHC and covered by a conservation easement. The WHC Parcels and the WHFD Parcels are hereinafter referred to in this Complaint as the “Parcels.” The Protected Property includes approximately 68 of the 74 acres that comprise Napatree Point.

43. The Protected Property is a significant natural area, a barrier spit, identified (as documented by the Easement Documentation Report) by the United States Fish and Wildlife Service as qualifying as a “significant coastal habitat,” by the Rhode Island Natural Heritage

Foundation and the Audubon Society of Rhode Island as "a unique natural area" and as one of the most important migratory bird feeding and resting stopover points on the East Coast and by the Rhode Island Natural History Survey as "... a standout in its ecological value ...."

44. The Protected Property consists of varied natural barrier beach community types and is the habitat for a wide variety of plant and animal species, including, as noted by the Rhode Island Natural History Survey, some 154 species of birds.

45. The Protected Property constitutes a significant natural area which qualifies as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" and therefore conservation and protection of the Protected Property meets the requirements of Section 170(h)(4)(A)(ii) of the Internal Revenue Code of 1986.

46. The preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy and yields public benefits, including the management of the federally *threatened* piping plover, *Charadrius melodus*, and other species of concern.

47. The Conservation Easement permits travel by foot over the Protected Property over the marked paths, and prohibits vehicular travel except for limited vehicular passage for maintenance and emergencies. More specifically, the Conservation Easement expressly prohibits the "operation of mountain or other bicycles, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, or any other types of mechanized vehicles" over or within the Protected Property. The Town's declaration of a 20-foot wide right of way that extends through the Protected Property violates the express terms of the Conservation Easement. The Conservation Easement authorizes both WHFD and WHC to enforce the terms of the Conservation Easement against third parties, like the Town, to prevent activities that are inconsistent with the purpose of the Conservation Easement.

48. WHFD has permitted the public to access the Protected Property for over 50 years, beginning long before WHFD granted the Conservation Easement. WHFD permits the public to access the Protected Property by foot over a path across the parking lot it owns located on Lot 33 and Lot 34 on Plat 185. WHFD also permits the public to traverse on foot over a path on WHFD's condominium property [Lot 31-1 and Lot 31 on Plat 185] to access the Protected Property. Public visitation and enjoyment of the Napatree Conservation Area is a founding principal of the Conservation Easement, "WHEREAS, preservation of the Protected Property is for the scenic enjoyment of the general public and will yield a significant public benefit, specifically, for recreation not inconsistent with such preservation ...." WHFD and WHC remain committed to welcoming visitors to the Conservation Area. WHFD and WHC do not seek through this lawsuit to end or curtail the public's access to the Protected Property.

The Title Claims Asserted by the Town

49. For some years, the Town has discussed publicly allegations that a public road referred to as "Fort Road" leads to and runs through Napatree Point.

50. In 2007, the Town hired title attorney Charles Soloveitzik to review the land evidence records and other relevant materials to determine whether a public road traversed Napatree Point. After a diligent examination of the land records, Attorney Soloveitzik concluded that Fort Road is not a public road: "we found no evidence in the land records to support the conclusion that Fort Road is a town road." The 2007 Soloveitzik Opinion is attached as **Exhibit E**.

51. Notwithstanding, and immediately after receiving the Soloveitzik Opinion, the Council passed a resolution in 2008 (the "2008 Resolution") that purports to designate Fort Road as a public road or 20-foot wide right of way. The 2008 Resolution is attached as **Exhibit F**.

The 2008 Resolution is ineffective for many reasons. First, town councils do not have the authority to transform private land to public land by declaration or resolution. Second, the Town never exercised its condemnation authority. Third, the owners of land in question never dedicated, and the Town never accepted, Fort Road as a public road. Fourth, the 2008 Resolution contradicts the clear, reasoned opinion by the Town's title attorney.

52. Until recently, the Town never acted on the 2008 Resolution and took no actions that directly interfered with WHFD's or WHC's property rights or violated the terms of the Conservation Easement.

53. In March of 2023, the Town asked CRMC to require the Watch Hill Yacht Club to revise and resubmit a plan for a dredging project to include reference to the "Town of Westerly right-of-way known as Fort Road." The Town's request delayed the project and forced WHFD to spend significant sums to purchase sand for beach repair that the Yacht Club would otherwise have provided free, and exacerbated the flooding problem that occurs near the Yacht Club, thus hindering public access to the Protected Properties.

54. In the past few months, the Council has declared publicly at its meetings its intent to use the 2008 Resolution as pretext to interfere with WHFD's and WHC's property rights and to establish a 20-foot wide right of way through the Parcels and the Protected Property in violation of the express terms of the Conservation Easement.

55. WHFD has sent three detailed letters to the Town explaining why the land evidence records and other relevant facts demonstrate that no public road or public right of way exists to and across Napatree Point. *See Exhibit G-1, Exhibit G-2, and Exhibit G-3.*

56. In response, and despite the Town's possession of its own legal opinion and title report from Attorney Soloveitzik refuting the existence of any public road leading from Bay

Street to and across Napatree Point, the Town has publicly declared its intent to place signs stating that a public right of way exists across the Parcels and to somehow mark that alleged 20-foot wide right of way on the Parcels. It has directed the Town Manager to take these actions even though: (a) the Town remains unable to determine the path of the alleged right of way; and (b) the Town has refused publicly and openly to gather critical information regarding the legitimacy of the alleged right of way. To this end, the Council has:

- i. directed the Town Solicitor not to perform or oversee the legal work necessary to investigate the existence of the alleged 20-foot wide public right of way;
- ii. directed the Town Solicitor not to opine on the legal impact of the 2008 Resolution;
- iii. directed the Town Manager not to continue a review of the historical records to confirm or refute the allegation that a public right of way exists from Bay Street to and across Napatree Point; and
- iv. directed the Town Manager to engage a land surveyor to plot a 20-foot wide right of way across the Parcels and the Protected Property based solely on a reference in the 2008 Resolution to a tax assessor's map, and not on the surveyor's own research, including title research, and application of the principles that govern surveys. Surveyors and other land professionals in Rhode Island do not reasonably rely on tax assessor maps to confirm or locate easements or rights of way.

Instead and in the absence of due diligence, the Council has declared openly that it will rely on the 2008 Resolution, with no supporting legal opinions and in fact a contrary legal opinion, to

advance its claims of a public right of way over and through the Parcels and the Protected Property.

57. The Council's actions have slandered and interfered with WHFD's and WHC's title and peaceful enjoyment of its property.

**COUNT I**  
**(Quiet Title)**

58. WHFD owns and has valid title to a fee simple interest in the WHFD Parcels.

59. WHC owns and has valid title to a fee simple interest in the WHC Parcels.

60. The Town falsely claims that a public right of way crosses the Parcels beginning at Bay Street, crossing WHFD's parking lot properties, and continuing across Napatree Point and the Protected Property along some undetermined path.

61. The Town's alleged 20-foot wide right of way violates the terms of the Conservation Easement.

62. The Conservation Easement authorizes WHFD and WHC to enforce its terms and to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of the Conservation Easement.

63. WHFD and WHC wish to affirm their property rights, and quiet title to the WHFD Parcels and the WHC Parcels, respectively.

**COUNT II**  
**(Enforcement of the Conservation Easement)**

64. The Town's alleged 20-foot wide right of way violates the terms of the Conservation Easement and will irreparably damage the Protected Property.

65. The Conservation Easement authorizes WHFD and WHC to enforce its terms and to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of the Conservation Easement.



**COUNT III**  
**(Declaratory Judgment)**

66. WHFD owns and has valid title to a fee simple interest in the WHFD Parcels and WHC owns and has valid title to a fee simple interest in the WHC Parcels.

67. The Town falsely claims that a public right of way crosses the Parcels beginning at Bay Street, crossing WHFD's parking lot properties, and continuing across Napatree Point and the Protected Property along some undetermined path based on the 2008 Resolution.

68. The Court should declare that the 2008 Resolution does not confirm or create a public right of way across the Parcels.

69. The Court should also declare that no public right of way exists across the Parcels.

**COUNT IV**  
**(Slander of Title)**

70. WHFD owns and has valid title to a fee simple interest in the WHFD Parcels and WHC owns and has valid title to a fee simple interest in the WHC Parcels.

71. The Town, without basis, inaccurately claims that a public right of way leads to and crosses the Parcels beginning at Bay Street, crossing WHFD's parking lot properties, and continuing across Napatree Point and the Protected Property along some undetermined path.

72. The Town has no reasonable or probable cause to believe that a public right of way crosses the Parcels beginning at Bay Street, crossing WHFD's parking lot properties, and continuing across Napatree Point and the Protected Property.

73. By its actions, the Town has slandered WHFD's title to the WHFD Parcels and has slandered WHC's title to the WHC Parcels and thereby damaged WHFD and WHC.

WHEREFORE, WHFD and WHC request the Court to enter the following orders:

(a) An order quieting title to the Parcels and declaring that:

- (i) WHFD holds fee simple title to the WHFD Parcels and WHC holds fee simple title to the WHC Parcels free and clear from the Town's alleged 20-foot wide public right of way;
- (ii) The Town possesses no interest at law or in equity in the Parcels;
- (iii) No public road or 20-foot wide right of way referred to as Fort Road crosses the Parcels beginning at Bay Street, crossing WHFD's parking lot properties, and continuing across Napatree Point and the Protected Property;
- (iv) The 2008 Resolution does not confirm or create a public road or public right of way across the Parcels;
- (v) The Town's declared 20-foot wide public right of way violates the terms of the Conservation Easement and is invalid. The Conservation Easement created pursuant to and with the benefits of Title 34, Chapter 39 of the Rhode Island General Laws confers upon the Protected Property a "special legal status" as described in said statute, and prohibits and precludes the creation of a public right of way across the Protected Property; and
- (vi) The Town is forever barred from calling into question (a) the validity of WHFD's title to the WHFD Parcels and (b) the validity of WHC's title to the WHC Parcels and from asserting a public right of way or easement across the Parcels.

(b) Judgment in favor of WHFD and WHC against the Town for slander of title awarding damages;

(c) Equitable and injunctive relief enjoining or restraining the Town from taking any action during the pendency of this proceeding to mark or build the alleged 20-foot wide right of way across the Parcels or directing the public to cross the Parcels; and

(d) Such other and further relief as the Court deems just and proper.

WATCH HILL FIRE DISTRICT and  
THE WATCH HILL CONSERVANCY

By their Attorneys,

/s/ Gerald J. Petros

Gerald J. Petros (#2931)  
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DATED: May 4, 2023

# **EXHIBIT A**

Patrick Lynch, with the county and one tenth of 70 feet by the highway to a  
ac transfer tract, and in width one hundred, fifty three and forty seven  
hundredths (153.47) feet, by and of the heirs of Henry N. Crandall, deceased and  
is the same parcel conveyed to Courtland S. Chapman of said Westley and  
Sarah F. Maine, by deed dated March 10th, 1899, and recorded in said  
deed records, said Westley, in Book No. 32 at page 260. I have and  
to hold the same, with all the rights, privileges and appurtenances there-  
unto appertaining, unto and to the use of her the said Catherine Lynch  
her heirs and assigns forever. And I the above named Patrick Lynch for  
myself and for my heirs, executors and administrators, do covenant  
with the said Catherine Lynch her heirs and assigns, that I will cov-  
nant and defend the above described premises unto the said Catherine  
Lynch her heirs and assigns forever, against the lawful claims and de-  
mands of all persons claiming by, through or under me.  
In testimony whereof, I have hereunto set my hand and seal, this 24th  
day of October in the year of our Lord one thousand nine hundred and three  
signed and sealed

in presence of  
Bernard Lynch. Patrick Lynch. [26]  
State of Rhode Island.  
County of Washington.

On Westley on the 24th day of October A.D. 1903,  
before me personally appeared Patrick Lynch, to me known, and known  
by me to be the party executing the foregoing instrument, and he  
acknowledged said instrument, by him executed, to be his free act  
and deed.

Augustine J. L. Ridwidge,  
Notary Public.

Received for Record October 26th A.D. 1903, at 9:40 clock A.M. and recorded.  
Attest: William Hoxsey,  
Town Clerk.

Know all men by these presents, that S. S. Hobart Babcock, of  
Westley, in the County of Washington, and State of Rhode Island, for and  
in consideration of the sum of one dollar, the receipt whereof is hereby  
acknowledged, by these presents, do give, grant, bargain, sell, convey,  
and confirm unto the United States of America, its successors and  
assigns, forever, a right of way in and over a strip of land included in  
the premises of the grantor for the use of the grantee, its officers, agents,  
and employees, and all persons having business with them, at all  
times freely to pass and re-pass over the same, on foot, or with animals,  
vehicles, loads, or otherwise, to and fro, with the right to improve and  
keep the same in repair -- the said strip of land and way being all  
that piece or parcel of land situate, lying and being on Nahatan Point  
in the county of Washington and State of Rhode Island, and bounded  
and described as follows, to wit: Beginning at a stake in the line  
between land owned by Alice Brien and land owned by S. Hobart

Babeck on Nahatan Point, R.I., about ten feet above mean high tide line of Little  
Passaquonnet Bay thence North 81 degrees East about 25 feet, thence North 84 de-  
grees and 43 minutes East about 385 feet, to line of land owned by John Babcock  
thence southerly along the line of said Babcock's land 20 feet, thence North  
84 degrees 43 minutes West about three hundred and eighty five feet, thence  
North 81 degrees West about 25 feet, to line of land owned by Alice Brien, thence  
southerly along the line of said Brien's land 20 feet to the place of beginning;  
to have and to hold unto the said grantee, its successors and assigns,  
for the ordinary use of said strip of land in heretofore as a road for them-  
selves, their families, agents and servants, without let or hindrance.  
And I, Harriet S. Babeck, wife of the said H. Robert Babeck, in considera-  
tion of the sum paid as aforesaid, do hereby release and forever quit  
claim unto the said grantee, its successors and assigns, all my right  
of dower in and to the aforesaid premises. In Testimony Whereof, we  
have hereunto set our hands and seals this 26th day of October, A.D.  
1903.

Signed, sealed and delivered

in presence of		
Eugene B. Pendleton	Horace H. Babeck	L.S.
Eugene B. Pendleton	Harriet S. Babeck	L.S.
State of Rhode Island County of Washington ss.		

On this twenty sixth day of October, 1903.  
before me, Eugene B. Pendleton, a Notary Public in and for  
said County, personally appeared H. Robert Babeck, and  
Harriet S. Babeck, his wife, known to me and to me known to be the  
persons described in and who executed the foregoing instrument,  
and each of them severally acknowledged said instrument to be their  
free act and deed. In Witness Whereof, I set my hand and official  
seal in the day and year first above written.

Eugene B. Pendleton  
Notary Public.

Received for Record October 29<sup>th</sup> A.D. 1903. at 9<sup>th</sup> o'clock A.M. and recorded.

Attest: William Kosey  
Town Clerk.

Know all men by these presents, that I, Alice Brien, and  
Thomas Brien, her husband, both of Nesterly, in the County of Washing-  
ton, and State of Rhode Island, for and in consideration of the sum  
of one dollar, the receipt whereof is hereby acknowledged, by these pres-  
ents do give, grant, bargain, sell, convey, and confirm, unto the United  
States of America, its successors and assigns, forever, a right of way in  
and over a strip of land, included in the premises of the grantors for  
the use of the grantee, its officers, agents, and employes, and all per-  
sons having business with them, at all times freely to pass and re-

to and for, with the right to improve and keep the same in repair the  
said strip of land and may being that piece of parcel of land situated  
and being on Nahaset Point in the County of Washington and State of Rhode  
Island, and bounded and described as follows, to wit: Beginning at a  
stake in line of government reservation about ten feet above sea level  
at a line of Little Narragansett Bay, thence north 81 degrees east a distance  
of about 360 feet to line of land now owned by Robert Babcock, thence  
easterly along the line of said Babcock's land a distance of 20 feet, thence  
south 81 degrees west a distance of about 360 feet to line of Government  
Reservation, thence northerly along line of Government Reservation 20 feet  
to place of beginning. I have and to hold unto the said grantee, its suc-  
cessors and assigns forever, Reserving unto the grantor, their heirs and  
assigns, the right for the ordinary use of said strip of land in perpetuity  
as a road for themselves, their families, agents and servants without let  
or hindrance. In Testimony Whereof, we have hereunto set our hands  
and seals this 26th day of October, A.D. 1903.

Witness my hand and seal  
in presence of  
Eugene B. Pendleton Alice Brien  
Eugene B. Pendleton Thomas Brien.  
State of Rhode Island  
County of Washington, ss.

L.S.
L.S.

(L.S.)

On this 26th day of October, 1903,  
before me, Eugene B. Pendleton, a Notary Public in and  
for said County, personally appeared Alice Brien and  
Thomas Brien, her husband, known to me and to me known to be the  
persons described in and who executed the foregoing instrument,  
and each of them severally acknowledged said instrument to be  
their free act and deed. In Witness Whereof, I set my hand and official  
seal in the day and year first above written.

Eugene B. Pendleton,  
Notary Public.

Received for Record October 29<sup>th</sup> A.D. 1903 at 9<sup>30</sup> o'clock A.M. and recorded.

Attest: William Kossay  
Town Clerk

Know all men by these presents, that I, Frank Parkins, of the County of Washington and State of Rhode Island, for and in con-  
sideration of the sum of one dollar, the receipt whereof is hereby ac-  
knowledged, by these presents do give, grant, bargain, sell, convey, and  
confirm unto the United States of America, its successors and as-  
signs, forever, a right of way in and over a strip of land, included in  
the premises of the grantor for the use of the grantee, its officers, agents,  
and employes, and all persons having business with them, at all  
times freely to pass and repass over the same, on foot, or with ani-  
mals, vehicles, loads, or otherwise, to and fro, with the right to im-  
prove and keep the same in repair. The said strip of land and

beginning all that hereinafter described, lying and being on Nabatree  
 Point in the County of Washington and State of Rhode Island, bounded and  
 described as follows, to wit: Beginning at a stake in line between Govern-  
 ment Reservation and said tract about fifty feet from mean high tide  
 line of Pawcatuck Bay or River thence South 80 degrees 48 minutes East a-  
 bout 435 feet, thence South 68 degrees 28 minutes East about 477 feet, thence  
 South 57 degrees 35 minutes East about 300 feet, thence South 39 degrees  
 and 18 minutes East 168.6 feet, thence South 18 degrees 34 minutes East 542.1  
 feet, thence North 72 degrees 12 minutes East about 286.1 feet, thence South  
 64 degrees 52 minutes East 124.1 feet, thence South 25 degrees 8 minutes West  
 20 feet which corner is along line of Bay Street, Hatch Hill, thence North 64  
 degrees and 52 minutes West 124.1 feet, thence South 72 degrees 12 minutes  
 West 286.1 feet, thence North 68 degrees 28 minutes West 542.1 feet, thence  
 North 39 degrees 18 minutes West 168.6 feet, thence North 57 degrees 35 minutes  
 West 300 feet, thence North 68 degrees 28 minutes West 477 feet, thence North 80 degrees  
 48 minutes West 435 feet to a point on the line of Government Reservation  
 20 feet distant from the northerly line of the strip of land herein described,  
 thence along the line of said Government Reservation to the place of be-  
 ginning. To have and to hold unto the said grantee, its successors  
 and assigns, forever, Reserving unto the grantor, his heirs and as-  
 signs, the right for the ordinary use of said strip of land in perpetuity  
 to be used for themselves, their families, agents and servants, without  
 let or hindrance. And I, Jessie C. Parkin, wife of the said Frank Parkin,  
 in consideration of the sum paid as aforesaid, do hereby release and  
 forever quitclaim unto the said grantee, its successors and assigns,  
 all my right of dower in and to the aforesaid premises.

In Testimony Whereof, we have hereunto set our hands and seal this  
 twenty seventh day of October, A.D. 1903.

Signed, sealed, and delivered  
 in presence of

Eugene B. Pendleton	Frank Parkin	L.S.
Eugene B. Pendleton	Jessie C. Parkin	L.S.

State of Rhode Island,  
 County of Washington ss.

On this 27th day of October, 1903,  
 before me, Eugene B. Pendleton, a Notary Public, in and for  
 said County, personally appeared Frank Parkin and Jessie  
 C. Parkin, his wife, known to me and to me known to be the persons  
 described in and who executed the foregoing instrument, and  
 each of them severally acknowledged said instrument to be their  
 free act and deed. In Witness Whereof, I set my hand and official seal  
 on the day and year first above written.

Eugene B. Pendleton,  
 Notary Public.

Received for Record October 29<sup>th</sup> A.D. 1903, at 9<sup>th</sup> o'clock A.M. and recorded.  
 Attest: William Kossay



Know all men by these presents, that I, John M. Swenney, of the County of Washington, and State of Rhode Island, for and in consideration of the sum of one dollar, the receipt whereof is hereby acknowledged, by these presents do give, grant, bargain, sell, convey and confirm unto the United States of America, its successors and assigns, forever, a right of way in and over a strip of land, included in the premises of the grantee for the use of the grantee, its officers, agents, and employes, and all persons having business with them, at all times hereafter, to pass and re-pass over the same, on foot, or with animals, vehicles, loads, or otherwise, to and fro, with the right to improve and keep the same in repair. The said strip of land, and way being all that piece or parcel of land, situate, lying and being on Napatree Point, in the County of Washington and State of Rhode Island, bounded and described as follows, to wit: Beginning at a stake about ten feet above mean high tide of Little Narragansett Bay in the line between land owned by St. Robert Babcock and land owned by John M. Swenney, thence south 80 degrees and 48 minutes East, about 500 feet to line of land of Government Reservation, thence southerly along line of Government Reservation 20 feet, thence North 80 degrees 48 minutes West about 500 feet to line of land owned by St. Robert Babcock, thence northerly along line of said Babcock's land 20 feet to place of beginning. To have and to hold unto the said grantee, its successors and assigns, forever: Reserving unto the grantee, his heirs and assigns, the right for the ordinary use of said strip of land in perpetuity as a road for themselves, their families, agents and servants, without let or hindrance. And I, Ellen C. B. Swenney, wife of the said John M. Swenney, in consideration of the sum paid as above said, do hereby release and forever quitclaim unto the said grantee, its successors and assigns, all my right of dower in and to the aforesaid premises. In Testimony Whereof, we have hereunto set our hands and seals this 26th day of October, A.D. 1903.

In presence of  
Eugene B. Cendleton                      John M. Swenney.                      LS.  
Eugene B. Cendleton.                      Ellen C. B. Swenney.                      LS.  
State of Rhode Island.  
County of Washington, ss.

LS.

On this 26th day of October, 1903,  
before me, Eugene B. Cendleton, a Notary Public in and for said County, personally appeared John M. Swenney, and his wife, Ellen C. B. Swenney, known to me and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. In Witness Whereof, I set my hand and official seal in the day and year first above written.

Eugene B. Cendleton  
Notary Public.

Record & Record October 29<sup>th</sup> A.D. 1903. at 9<sup>th</sup> o'clock A.M. and recorded.

# **EXHIBIT B**

QZCJ

gage the above demised premises to the said grantee & his heirs, and assigns, against the lawful claims or demands of any person or persons whatsoever, forever to warrant, secure and defend by these presents. And I, Sadie Percy wife of the said Stephen Percy, in consideration of the sum paid as aforesaid, do hereby release and forever quitclaim unto the said grantee & his heirs and assigns, all my right of dower in and to the aforegranted premises. In Testimony Whereof, we have hereunto set our hands and seals this 28th day of July in the year of our Lord one thousand nine hundred and nine

Signed, sealed and delivered in the presence of

A. E. Bull	Stephen Percy	L.S.
a solicitor of Supreme Court	Sadie Percy	L.S.
of B.C and a Notary Public		

Dominion of Canada  
Province of British Columbia County of Vancouver

In City of Vancouver on the 28th day of July- A.D. 1909

J.S. before me personally appeared Stephen Percy & Sadie Percy to me known and known by me to be the parties executing the foregoing instrument, and they acknowledged said instrument, by them executed, to be their free act and deed.

A E Bull a Notary Public in and for the  
Province of British Columbia

Received for Record August 7th, A.D. 1909, at 10.30 o'clock, A.M., and recorded.

Attest : *Everett E. Ripple*  
Town Clerk.

J.A.G.O. (20644)

KNOW ALL MEN BY THESE PRESENTS: THAT WHEREAS, By deed of Frank Larkin and wife, dated October 27, 1903, recorded in the Town Clerk's Office of Westerly, Rhode Island, in the Land Records of said Westerly, in Book 35, page 298, a right-of-way over the premises of the grantors, at Napatree Point, in the County of Washington and State of Rhode Island, within the limits described in said deed, was conveyed to the United States for the construction, maintenance and use as a roadway; AND WHEREAS, Said deed does not accurately describe the location of the roadway as actually laid down and constructed through the premises of said grantors; and it is desired by the parties to said deed to amend the same so that the description of the right-of-way shall conform to the location of the roadway as constructed; NOW, THEREFORE, We,

Frank Larkin and Jessie C. Larkin,  
his wife, in consideration of the sum of One Dollar, the receipt whereof is hereby acknowledged, HEREBY GRANT to the

United States,

in lieu of the right-of-way described in said deed, a right-of-way through the premises of the grantors herein, for the use of the United States, its officers, agents, and employees, and all persons having business with them, at all times freely to pass and re-pass over the same, on foot, or with animals, vehicles, loads, or otherwise, to and fro; together with the right to maintain and keep the same in repair, in and over

a strip of land, lying and being on Napatree Point, in the County of Washington, and State of Rhode Island, having a uniform width of twenty (20) feet and crossing land of the grantors herein, and extending from the easterly line of the detached tract of Fort Mansfield reservation to Bay Street, Watch Hill-- the northerly line of said strip of land being described as follows: Beginning at a merestone set in the boundary line between lands of the United States of America, and Frank Larkin, said merestone



QZCJ

her husband; Alice Brien and Thomas Brien,  
 a single woman; Sadie Irving  
 her husband; Mary Scanlon and Michael H. Scanlon  
 his wife and Charles J. Butler and Susan N. Butler  
 his wife; parties to said deeds and their privies in title respecting the premises descried in said deeds, in consideration of the sum of One Dollar, the receipt whereof is hereby acknowledged, HEREBY GRANT to the

United States,

in lieu of the roadway described in said deeds, a right-of-way through the respective premises of the grantors herein, for the use of the United States, its officers, agents, and employees, and all persons having business with them, at all times freely to pass and repass over the same, on foot, or with animals, vehicles, loads, or otherwise, to and fro; together with the right to maintain and keep the same in repair, in and over a strip of land, lying and being on Napatree Point, in the County of Washington, and State of Rhode Island, having a uniform width of twenty (20) feet and crossing lands of the grantors herein, and extending from the easterly line of the main reservation of Fort Mansfield, Rhode Island, to the westerly line of the detached reservation-- the northerly line of said strip of land being described as follows: Beginning at a merestone set in the boundary line between lands of the United States of America and Sadie Irving, said merestone being 30 feet, more or less southerly from the mean high-water line of Little Narragansett Bay and N. 20° 31' W., 129.94 feet from another merestone set in said boundary line; thence N. 67° 34' E., 271.4 feet; thence N. 78° 08' E., 179.45 feet; thence N. 82° 22' E., 196.25 feet; thence N. 89° 38' 30" E., 431.85 feet; thence N. 85° 51' 30" E., 280.22 feet, to a merestone set in the boundary line between lands of the United States of America and John W. Sweeney, said merestone being 11 feet, more or less, southerly from the mean high-water line of Little Narragansett Bay, and N. 14° 07' W., 82.00 feet from another merestone set in said boundary line. All bearings are true.

TO HAVE AND TO HOLD unto the said United States of America, grantee herein, its successors and assigns, forever: RESERVING unto the said grantors, their heirs and assigns, the right for the ordinary use of said strip of land in perpetuity as a road for themselves, their families, agents and servants, without let or hindrance.

IN TESTIMONY WHEREOF, we have hereunto set our hands and seals this 9th day of July, A.D. 1909

Signed, sealed and delivered in presence of:

Daniel J Bradley as to	Sadie Irving	(Seal)
		(Seal)
John W. Sweeney as to	( Alice Erien	(Seal)
	( Thomas Brien	(Seal)
John W. Sweeney as to	( Mary C. Scanlon	(Seal)
	( M. H. Scanlon.	(Seal)
John W. Sweeney as to	( Chas. J. Butler	(Seal)
	( Susan N. Butler.	(Seal)
Clarence E. Roche as to	( John W. Sweeney.	(Seal)
	( Ellen C.B. Sweeney.	(Seal)

State of Rhode Island, )  
County of Washington. )

ss.

On this 13th day of July 1909,  
L.S. before me, John W. Sweeney, a Notary Public in and for said County, personally appeared Alice Brien and Thomas Brien, her husband known to me, and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

John W. Sweeney, Notary Public.

State of New York, )  
County of New York. )

ss.

On this 19th day of July 1909,  
L.S. before me, Daniel J. Bradley, a Notary Public in and for said County, personally appeared Sadie Irving, known to me, and to me known to be the person described in and who executed the foregoing instrument, and acknowledged said instrument to be her free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

Daniel J. Bradley, Notary Public.

State of Rhode Island, )  
County of Washington. )

ss.

On this 10th day of July 1909,  
L.S. before me, John W. Sweeney, a Notary Public in and for said County, personally appeared Mary Scanlon and Michael H. Scanlon each known to me, and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

John W. Sweeney, Notary Public.

State of Rhode Island, )  
County of Washington. )

ss.

On this 10th day of July 1909,  
L.S. before me, John W. Sweeney, a Notary Public in and for said County, personally appeared Charles J. Butler and Susan N. Butler each, known to me, and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

John W. Sweeney, Notary Public.

State of Rhode Island, )  
County of Washington. )

ss.

On this 9th day of July 1909,  
L.S. before me, Clarence E. Roche, a Notary Public in and for said County, personally appeared John W. Sweeney and Ellen C.B. Sweeney, his wife, known to me, and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

Clarence E. Roche, Notary Public.

Received for Record August 10th, A.D. 1909, at 10.30 o'clock, A.M., and recorded.

Attest: *Overton H. Ripple* Town Clerk.

# **EXHIBIT C**



RECEIVED FOR RECORD  
WESTERLY R.I.

Jan 07, 2014 at 02:11P

## CONSERVATION EASEMENT

BOOK 2014 PAGE 340  
DOC # 00000102

This **DEED OF CONSERVATION EASEMENT** is made this 31<sup>st</sup> day of October, 2013.

### WITNESSETH:

WHEREAS, the WATCH HILL FIRE DISTRICT, a Rhode Island non-profit corporation with offices located at 222 Watch Hill Road, Watch Hill, Westerly, Rhode Island, hereinafter called the "Grantor," is the owner in fee simple of certain real property, hereinafter called the "Protected Property," which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development or exploitation since 1938, which property is known as Napatree Point and also as the Napatree Point Conservation Area and is located in the Watch Hill Fire District, Town of Westerly, County of Washington and State of Rhode Island and is more particularly described in Exhibit A attached hereto and incorporated by this reference; and

WHEREAS, THE WATCH HILL CONSERVANCY is a nonprofit corporation incorporated under the laws of the State of Rhode Island as a tax exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"), qualified under section 170(h) of the Code and Section of Title, Chapter of the Rhode Island General Laws, 1956, as amended (the "RIGL"), to receive qualified conservation contributions, and having its headquarters at 222 Watch Hill Road, Watch Hill, Rhode Island 02891, hereinafter referred to as the "Grantee," whose purpose is to preserve natural areas for scientific, charitable, educational and aesthetic purposes; and

WHEREAS, the Protected Property has significant natural, habitat, scenic and open space values (the "conservation values"); and

WHEREAS, the Protected Property is a significant natural area, a barrier beach, identified (as documented by the Easement Documentation Report) by the United States Fish and Wildlife Service as qualifying as a "significant coastal habitat", by the Rhode Island Natural Heritage Foundation and the Audubon Society of Rhode Island as "a unique natural area" and as one of the most important migratory bird feeding and resting stopover points on the East Coast and by the Rhode Island Natural History Survey as "...a standout in its ecological value..."; and

WHEREAS, the Protected Property consists of varied natural barrier beach community types and is the habitat for a wide variety of plant and animal species, including, as noted by the Rhode Island



Natural History Survey, some 154 species of birds, among them, the American oystercatcher (on Rhode Island's *Concern* list), the great egret (on Rhode Island's *Concern* list), the horned lark (on Rhode Island's *Concern* list), the least tern (on Rhode Island's *Threatened* list), the marsh wren (on Rhode Island's *Concern* list), the northern harrier (on Rhode Island's *Endangered* list), the osprey (on Rhode Island's *Concern* list), the peregrine falcon (on the Federal *Endangered* list), the piping plover (on the Federal *Threatened* list), the roseate tern (on the Federal *Endangered* list), the seaside sparrow (on Rhode Island's *Concern* list), the sora rail (on Rhode Island's *Concern* list), the willet (on Rhode Island's *Concern* list), and the winter wren (on Rhode Island's *Concern* list); and

WHEREAS, accordingly, the Protected Property constitutes a significant natural area which qualifies as a "...relatively natural habitat of wildlife, or plants, or similar ecosystem," and protection of the Property will meet the requirements of Section 170(h)(4)(A)(ii) of the Code; and

WHEREAS, preservation of the Protected Property is for the scenic enjoyment of the general public, and will yield a significant public benefit, specifically, for recreation not inconsistent with such preservation and for ecological research and education; and

WHEREAS, the State of Rhode Island has authorized the creation of Conservation Easements pursuant to the provisions of Title 34, Chapter 39 of the RIGL, and Grantor and Grantee wish to avail themselves of the provisions of that law; and

WHEREAS, accordingly, preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy and will yield a specific public benefit, specifically for the management of the federally *threatened* piping plover, *Charadrius melodus*, and other species of concern; and

WHEREAS, the specific conservation values of the Protected Property are documented in an Easement Documentation Report, prepared by Grantee and signed and acknowledged by the Grantor, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation; and

WHEREAS, the Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity; and

WHEREAS, the Protected Property is to be designated "The Chaplin B. Barnes Napatree Point Conservation Area":

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift, does hereby give, grant, bargain, sell and convey unto the Grantee a Conservation Easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Conservation Easement to assure that the Protected Property will be retained forever in its current natural and scenic condition; to protect any rare plants, animals, or plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property. Grantor intends that this Conservation Easement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Conservation Easement.

2. Prohibited Uses. Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited except as provided in paragraph 3 below:

2.1 There shall be no constructing or placing of any building, tennis or other recreational court, landing strip, fence, sign, pavement (pervious or impervious), antenna, utility pole, tower, conduit, line, docks, piers or any other temporary or permanent structures or facilities on the Protected Property.

2.2 There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the land in any manner.

2.3 There shall be no removal, destruction or cutting of trees, shrubs or plants, planting of non-native trees, shrubs or plants, use of fertilizers, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat in any manner.

2.4 There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides.

2.5 There shall be no storage or dumping of ashes, trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils

2.6 There shall be no pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall there be activities conducted on the Protected Property or on adjacent property if owned by Grantor, which would be detrimental to water purity, or which could alter natural water level and/or flow in or over the Protected Property.

2.7 There shall be no operation of mountain or other bicycles, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, or any other types of mechanized vehicles, no launching from any shore of commercial or recreational motorized or kite-propelled vessels, including but not limited to waterskiing, jet skiing and kite-boarding, no hang gliders, no horseback riding, no hunting or shooting, nor shall the Protected Property be used for any commercial recreational activity inconsistent with the ecological preservation contemplated herein.

2.8 There shall be no activities that would endanger the Piping Plover breeding habitat as outlined in Section III of the Guidelines For Managing Recreational Activities In Piping Plover Breeding Habitat On The U.S. Atlantic Coast To Avoid Take Under Section 9 Of The Endangered Species Act (Northeast Region, U.S. Fish and Wildlife Services April 15, 1994) (copy included in the Easement Documentation Report).

3. Grantor's Reserved Rights. The Grantor hereby reserves the following rights:

3.1 The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Easement as long as such activities are consistent with the purpose of this Conservation Easement and the protection of the conservation values of the Protected Property. Specifically reserved rights include, but are not limited to, the access to the Protected Property by foot or by vehicles for the purposes of medical or safety emergencies, law enforcement or in exercise of other rights reserved herein, including but not limited to the

management of dunes, pathways, etc., the erection of signs relating to safety, conservation and visitor information, the installation of fencing, boardwalks and bird nesting platforms; and the installation of railings, netting or other safety measures as needed at the remains of Fort Mansfield. Prior to making any change in use of the Protected Property, the Grantor shall notify the Grantee in writing allowing Grantee to determine whether such change would violate the terms of this Conservation Easement.

3.2 The right to sell, give, mortgage, lease, or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Conservation Easement and written notice is provided to Grantee in accordance with paragraph 12 below.

3.3 The right to manage and maintain the dunes and the remains of Fort Mansfield as they currently exist on the Protected Property, as identified in the Easement Documentation Report. Said reserved right includes actions taken to make the remains safe, even if such action results in the expansion of structure, and the dismantling and/or burying of the remains with dredge spoil or other suitable fill.

3.4 The right to cut, treat with environmentally approved herbicides and remove diseased trees, shrubs, or plants, invasive species and to cut firebreaks, subject to the prior written approval of Grantee pursuant to paragraphs 3.6 and 4.5 below, except that such approval shall not be required in the case of emergency firebreaks.

3.5 Grantor and Grantee acknowledge that the exercise of any reserved right enumerated herein by the Grantor shall not relieve Grantor from complying with or obtaining any permit from any applicable governmental authority prior to the exercise thereof.

3.6 Grantor and Grantee acknowledge that a Memorandum of Understanding exists between the Grantor and the U.S. Fish & Wildlife Service and that the Grantor intends to abide by the said memorandum (copy included in the Easement Documentation Report).

3.7 The right to take whatever action that is reasonably necessary to maintain vehicular and foot access to the Protected Property from the east, as shown on Exhibit A, to repair and return to prior status any breach of the Protected Property by flooding or erosion due to storm or other cause and to manage the beach and dunes of the Protected Property.

4. Grantee's Rights. To accomplish the purpose of this Conservation Easement, the following rights are conveyed to Grantee by this Conservation Easement:

4.1 Preservation. The right to preserve and protect the conservation values of the Protected Property.

4.2 Right of Entry. The right to enter the Protected Property at all reasonable times and with prior notice and, if necessary, across other lands retained by the Grantor, for the purposes of: (a) inspecting the Protected Property to determine if the Grantor is complying with the covenants and purposes of this Conservation Easement; (b) enforcing the terms of this Conservation Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; (d) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor; and (e) monitoring and management as described below.

4.3 Monitoring and Management. The right, but not the obligation, to monitor the condition of the rare plant and animal populations, plant communities, and natural habitats on the Protected Property, to manage them, if necessary, to ensure their continued presence and viability on the Protected Property and to cooperate and share management with other conservation entities such as the U.S. Fish & Wildlife Service, the Rhode Island Department of Environmental Management, the Rhode Island Coastal Resources Management Council, the Audubon Society of Rhode Island or The Nature Conservancy. Such activities shall be in accordance with management practices of Grantee. Any such management activities shall be set forth in a written management plan, to be reviewed by the Grantor.

4.4 Enforcement. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Protected Property to the condition that existed prior to the activity complained of that may be damaged by any inconsistent activity or use, pursuant to paragraph 10.

4.5 Discretionary Consent. Grantee's consent for activities otherwise prohibited under paragraph 2 above, or for any activities requiring Grantee's consent under paragraph 3.1 above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in paragraph 2 are deemed desirable by Grantor and Grantee, Grantee may, in its sole discretion, give permission for such

activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring Grantee's consent under paragraph 3.1, shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair the conservation values of the Protected Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement or to allow any residential, commercial or industrial structures or any commercial or industrial activities not provided for above.

5. Access. The Protected Property has been accessible and used by the general public, as described in the Easement Documentation Report, and shall continue to be accessible and used by the general public as long as such public accessibility and use is consistent with the ecological preservation contemplated herein. Said accessibility and use by the general public is also subject to any and all laws, statutes, rules and regulations promulgated by the federal government, the State of Rhode Island and the Town of Westerly.

6. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Grantee's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

Grantor agrees to release, hold harmless, defend and indemnify Grantee from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantee may suffer or incur as a result of or arising out of the activities of Grantor on the Protected Property.

Grantee agrees to release, hold harmless, defend and indemnify Grantor from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantor may suffer or incur as a result of or arising out of the activities of Grantee on the Protected Property.

Grantee shall establish and maintain, for the duration of this Conservation Easement, a separate account ("Conservation Easement Monitoring and Enforcement Fund") of liquid assets, the sole purpose of which is to defend against any potential violations of the terms of this Conservation Easement. In addition, the Grantee agrees to defend the Protected Property, along with the Grantor, against third parties whose actions violate or might violate the terms of this Conservation Easement, as it has done in the past. The amount of funds to be retained in these accounts shall be reasonable and consistent with amount held by other land trusts in similar situations.

7. Taxes. The Grantor agrees to pay any real estate taxes or other assessments levied on the Protected Property. If the Grantor becomes delinquent in payment of said taxes or assessments, such that a lien created against the land is to be executed upon, the Grantee, at its option, shall, after written notice to the Grantor, have the right to purchase and acquire the Grantor's interest in said Protected Property by paying funds to discharge said lien or delinquent taxes or assessments, or to take such other actions as may be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement.

8. Title. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.

9. Hazardous Waste. The Grantor covenants and represents that to the best of Grantor's knowledge no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property except for the possibility of buried munitions located in and around the remains of Fort Mansfield.

10. Grantee's Remedies. In the event that the Grantee becomes aware of a violation of the terms of this Conservation Easement, the Grantee shall give notice to the Grantor, at Grantor's last known post office address, of such violation via certified mail, return receipt

requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition at the time of this grant, although the parties hereto are not prohibited from introducing other evidence. Grantor agrees that the Easement Documentation Report shall be deemed to provide objective information concerning the Protected Property's condition at the time of this grant. Failure by the Grantor to cause discontinuance, abatement or such other corrective action as may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle 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 Protected Property to its previous condition; to enjoin such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such noncompliance. Such damages, when recovered, may be applied by the Grantee, in its sole discretion, to corrective action on the Protected Property. If such court determines that the Grantor has failed to comply with this Conservation Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys fees, in addition to any other payments ordered by such court.

10.1 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period for cure to expire.

10.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and Grantor hereby waives any defense of laches with respect to any delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement.

10.3 Violations Due to Causes Beyond Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by unauthorized



wrongful acts of third persons or entities, at Grantee's option, Grantor agrees to assign its right of action to Grantee, to join in any suit, and/or to appoint Grantee its attorney-in-fact for the purposes of pursuing enforcement action.

10.4 Standing. By virtue of Grantee's acquisition of rights under this Conservation Easement, it shall be entitled, at its option, to standing before appropriate courts of law to pursue remedies or other matters which are necessary or incidental to the protection of the property which is subject to this Conservation Easement.

11. Parties Subject to Easement. The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantor and Grantee but also their lessees, agents, personal representatives, successors and assigns, and all other successors to Grantee and Grantor in interest and shall continue as a servitude running in perpetuity with the Protected Property.

12. Subsequent Transfers. The Grantor agrees that the terms, conditions, restrictions and purposes of this grant or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or possessory interest in the Protected Property; and Grantor further agrees to notify Grantee of any pending transfer at least thirty (30) days in advance. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way, nor shall such failure impair the validity of any transfer.

13. Right of First Refusal. The Grantor hereby gives to the Grantee a Right of First Refusal to purchase the Protected Property. The conditions of this Right of First Refusal shall be such that whenever the Grantor receives a bona fide written offer to purchase all or any part of the Protected Property, Grantor shall deliver to the Grantee, by certified mail, return receipt requested, a duplicate original of the written offer, together with such other instruments as may be required to show the bona fides of the offer. The Grantee may elect to purchase the Protected Property at the offered price and upon such other terms and conditions not less favorable to the Grantor than those contained in the offer by giving to the Grantor by certified mail, return receipt requested, written notice of such election within ninety (90) days after delivery of the offer to the Grantee. The Grantee's failure to elect to exercise a particular right to purchase the Protected

Property when offered shall not affect the continued existence or enforceability of this Right of First Refusal as it may apply to other portions of the Protected Property subsequently offered or to successors in interest to the Grantor and such successors in interest shall be bound thereby.

14. No Extinguishment Through Merger. Grantor and Grantee herein agree that should The Watch Hill Conservancy come to own all or a portion of the fee interest in the Protected Property, (i) The Watch Hill Conservancy as successor in title to Grantor shall observe and be bound by the obligations of Grantor and the restrictions imposed upon the Protected Property by this Conservation Easement, as provided in paragraph 2; (ii) this Conservation Easement shall not be extinguished, in whole or in part, through the doctrine of merger in view of the public interest in its enforcement; and (iii) The Watch Hill Conservancy as promptly as practicable shall assign the Grantee's interests in this Conservation Easement of record to a qualified environmental organization as that term is defined in Section 170(h)(3) of the Code, which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code in conformity with the requirements of this paragraph 14. Any instrument of assignment of this Conservation Easement or the rights conveyed herein shall refer to the provisions of this paragraph 14 and shall contain language necessary to continue it in force.

15. Amendment. In the event that the Protected Property is affected by unusual and unforeseen circumstances and conditions, Grantor and Grantee by mutual consent may amend this easement; provided that the amendment is not inconsistent with the conservation purpose of this easement; will not result in a net degradation of the conservation values of the Protected Property; will not affect the enforceability of the easement does not allow any new structures on the Protected Property beyond what is permitted by this Conservation Easement on its effective date; and is accomplished in compliance with any applicable state statute and with section 170(h) of the Code. Any such amendment shall be recorded in the official land records of the Town of Westerly, Rhode Island.

16. Assignment. The parties hereto recognize and agree that the benefits of this easement are in gross and assignable, and the Grantee hereby covenants and agrees that in the event it transfers or assigns the easement it holds under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the

Code, which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, and Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

17. Extinguishment. The Grantor hereby agrees that at the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee, with a fair market value of said Conservation Easement as of the date of the conveyance that is at least equal to the proportionate value that this Conservation Easement at the time of the conveyance bears to the fair market value of the Protected Property as a whole at that time.

That proportionate value of the Grantee's property rights shall remain constant. When a change in conditions takes place, which makes impossible or impractical any continued protection of the Protected Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall not be entitled to any portion of the proceeds.

18. Eminent Domain. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds, with the remaining proceeds to be given to the Grantor.

19. The conveyance of this Conservation Easement by the Grantor to the Grantee shall not relieve Grantor of the obligation and responsibilities to obtain any and all applicable federal, state, and local governmental permits and approvals, if necessary, to exercise Grantor's retained rights and uses of the Protected Property.

20. Miscellaneous Provisions.

20.1 Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

20.2 Successors and Assigns. The term "Grantor" shall include the Grantor and the Grantor's heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use.

20.3 Re-recording. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement; for such purpose, the Grantor appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

20.4 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

20.5 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

20.6 Notices. Any notices required in this Conservation Easement shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing: Grantor: 222 Watch Hill Road, Westerly, RI 02891. Grantee: 222 Watch Hill Road, Westerly, RI 02891.

20.7 Compliance Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document that may be requested by Grantor, including an estoppel certificate or compliance certificate, to certify to the best of Grantee's knowledge Grantor's compliance with any obligation of Grantor contained in this Conservation Easement or otherwise to evidence the status of this Conservation Easement. Grantor shall allow

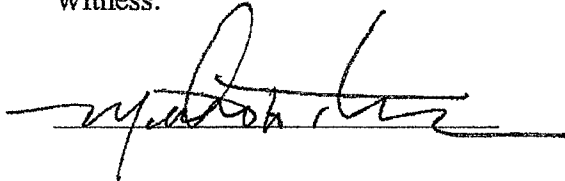
access to Grantee adequate and within a sufficient time for Grantee to make a determination sufficient to enable the execution of such certificate.

20.8 Effective Date. Grantor and Grantee intend that the Conservation Easement arising hereunder to take effect on the day and year this Deed of Conservation Easement is recorded in the Land Evidence Records of the Town of Westerly, Rhode Island, after all required signatures have been affixed hereto. This Conservation Easement shall be timely recorded. Grantee may re-record this instrument or record any other instrument at any time as may be required to preserve its rights in this Conservation Easement.

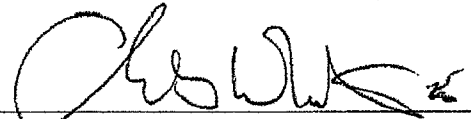
TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantee forever.

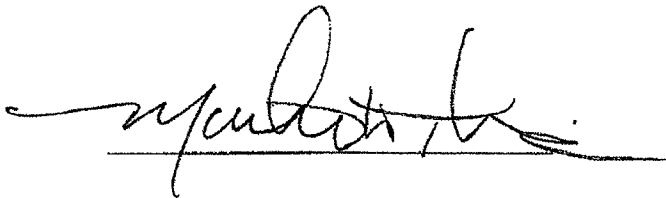
IN WITNESS WHEREOF, the Grantor has executed and sealed this document the day and year first above written.

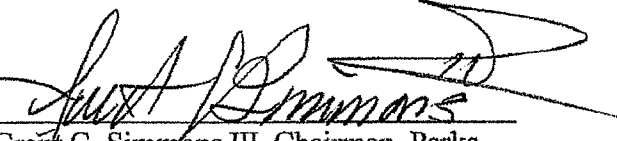
Witness:




**WATCH HILL FIRE DISTRICT, Grantor**

By:   
Charles S. Whitman III, Moderator,  
duly authorized




By:   
Grant G. Simmons III, Chairman, Parks  
Commission, duly authorized

Witness:

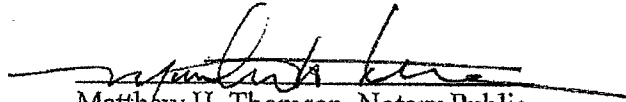


**THE WATCH HILL CONSERVANCY,  
Grantee**

By:   
Chaplin B. Barnes, Vice President  
duly authorized

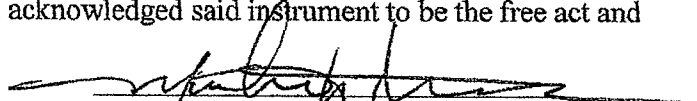
STATE OF RHODE ISLAND )  
 ) SS: Westerly  
COUNTY OF WASHINGTON )

On this 3<sup>rd</sup> day of October, 2013, before me personally appeared CHARLES S. WHITMAN III and GRANT G. SIMMONS III, to me personally known, who, being by me duly sworn did say that they are the Moderator and Chairman of the Parks Commission of the Watch Hill Fire District, respectively; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

  
Matthew H. Thomsen, Notary Public  
My Commission Expires: Jan. 27, 2014

STATE OF RHODE ISLAND )  
 ) SS: Westerly  
COUNTY OF WASHINGTON )

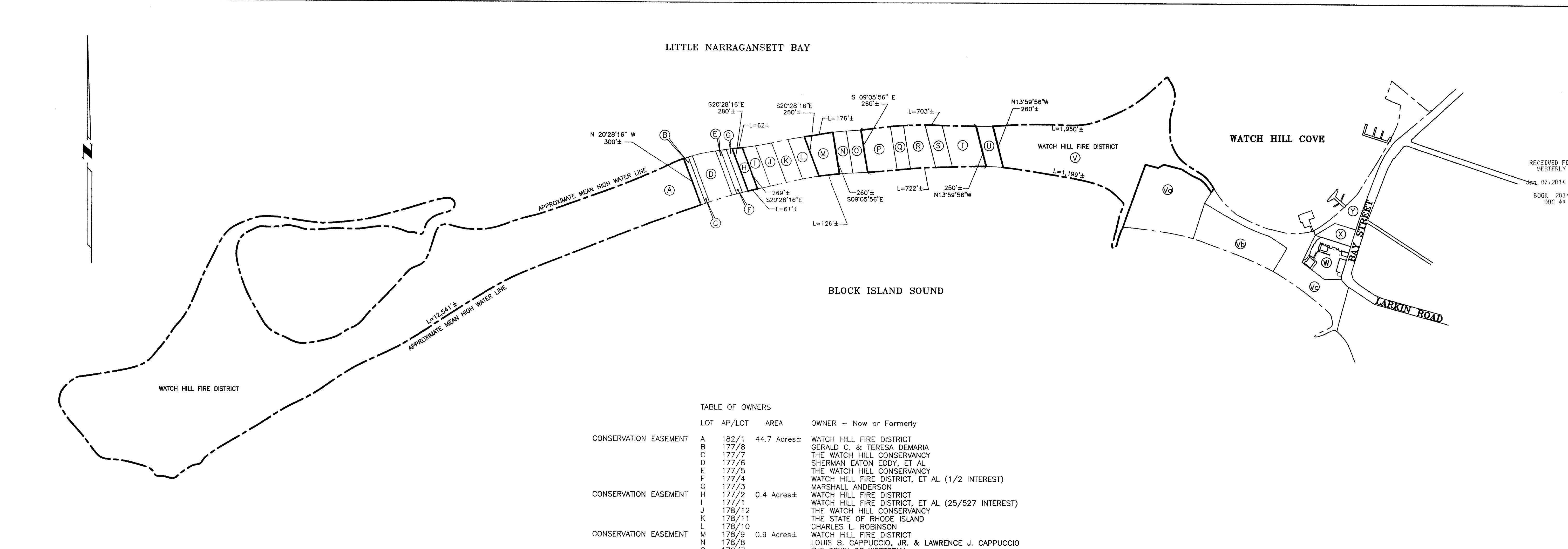
On this 2<sup>nd</sup> day of October, 2013, before me personally appeared CHAPLIN B. BARNES, to me personally known, who, being by me duly sworn did say that he is the Vice President of The Watch Hill Conservancy; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

  
Matthew H. Thomsen, Notary Public  
My Commission Expires: Jan. 27, 2014

**EXHIBIT A**

Those certain pieces or parcels of land located westerly of Bay Street in the Town of Westerly, County of Washington and State of Rhode Island and being shown as Lots A, H, M, P, Q, R, S, T and V on a plan entitled "Conservation Easement Plan, Prepared For, watch Hill Fire District, The Chaplin B. Barnes Napatree Point Conservation Area, Bay Street, Westerly, Rhode Island, Scale 1"=300', January 2, 2014" prepared by Cherenzia & Associates LTD and containing in total 60.01 acres of land more or less, which plan is recorded immediately after this document.

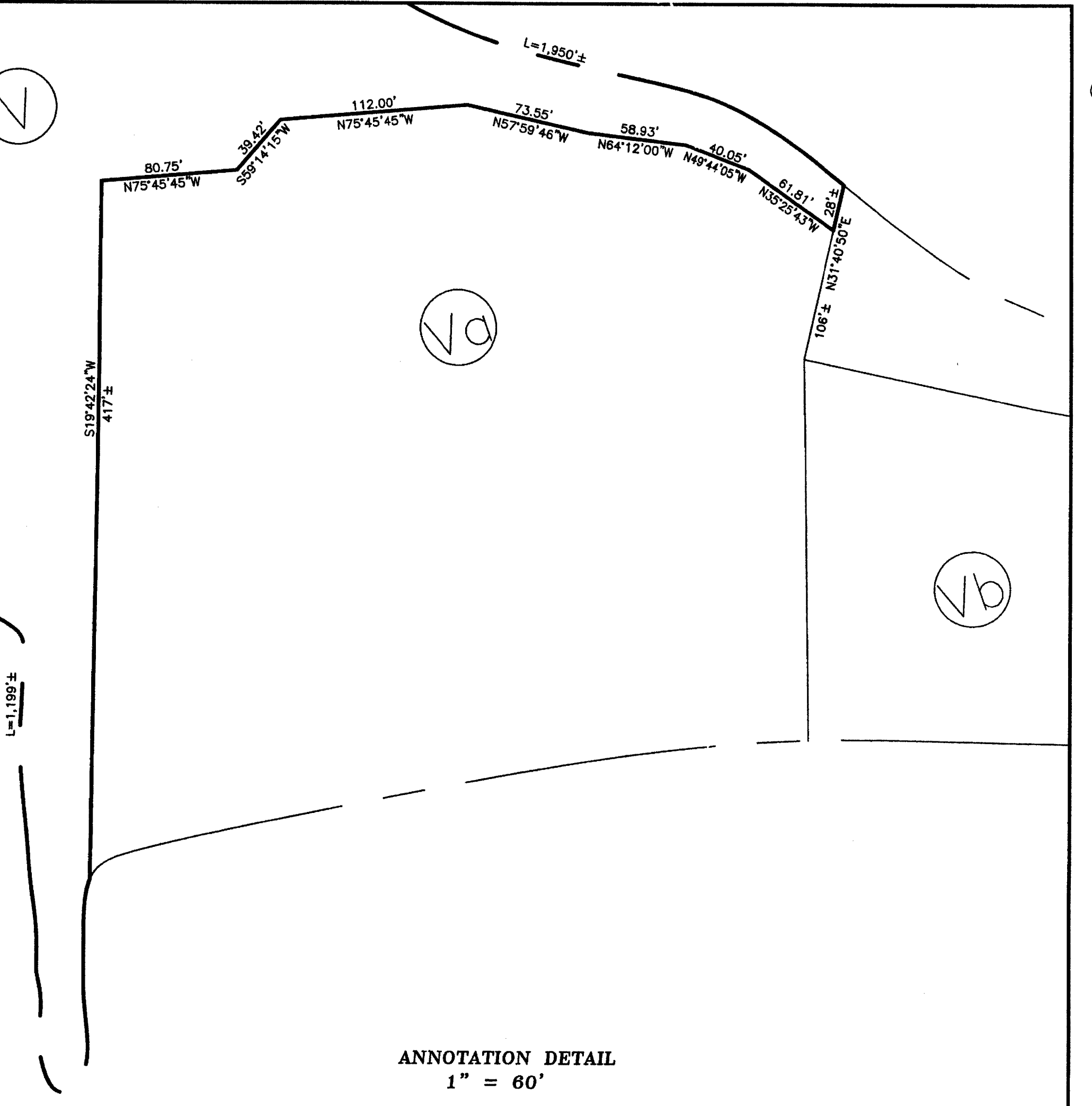
DONNA L. GIORDANO MMC TOWN CLERK  
WESTERLY, RI RET: M. Thomson Esq



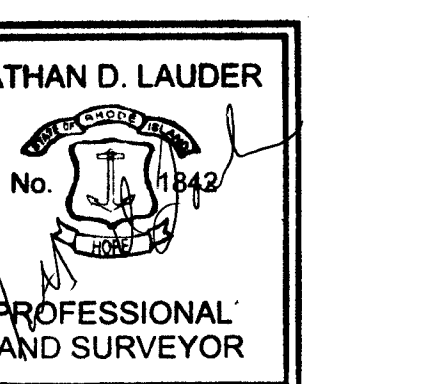
RECEIVED FOR RECORD  
 WESTERLY, R.I.  
 JAN 07, 2014 at 02:13P  
 BOOK 2014 PAGE 2  
 DOC #: 20140002

**TABLE OF OWNERS**

LOT AP/LOT	AREA	OWNER - Now or Formerly	
CONSERVATION EASEMENT A	182/1	44.7 Acres±	WATCH HILL FIRE DISTRICT
CONSERVATION EASEMENT B	177/8		GERALD C. & TERESA DEMARIA
CONSERVATION EASEMENT C	177/7		THE WATCH HILL CONSERVANCY
CONSERVATION EASEMENT D	177/6		SHERMAN EATON EDDY, ET AL
CONSERVATION EASEMENT E	177/5		THE WATCH HILL CONSERVANCY
CONSERVATION EASEMENT F	177/4		WATCH HILL FIRE DISTRICT, ET AL (1/2 INTEREST)
CONSERVATION EASEMENT G	177/3		MARSHALL ANDERSON
CONSERVATION EASEMENT H	177/2	0.4 Acres±	WATCH HILL FIRE DISTRICT
CONSERVATION EASEMENT I	177/1		WATCH HILL FIRE DISTRICT, ET AL (25/527 INTEREST)
CONSERVATION EASEMENT J	178/12		THE WATCH HILL CONSERVANCY
CONSERVATION EASEMENT K	178/11		THE STATE OF RHODE ISLAND
CONSERVATION EASEMENT L	178/10		CHARLES L. ROBINSON
CONSERVATION EASEMENT M	178/9	0.9 Acres±	WATCH HILL FIRE DISTRICT
CONSERVATION EASEMENT N	178/8		LOUIS B. CAPPUCCIO, JR. & LAWRENCE J. CAPPUCCIO
CONSERVATION EASEMENT O	178/7		THE TOWN OF WESTERLY
CONSERVATION EASEMENT P	178/6		WATCH HILL FIRE DISTRICT
CONSERVATION EASEMENT Q	178/5	4.2 Acres±	WATCH HILL FIRE DISTRICT
CONSERVATION EASEMENT R	178/4		WATCH HILL FIRE DISTRICT
CONSERVATION EASEMENT S	178/3		WATCH HILL FIRE DISTRICT
CONSERVATION EASEMENT T	178/2		WATCH HILL FIRE DISTRICT
CONSERVATION EASEMENT U	178/1		HARRIET M. KNIFFIN, TRUSTEE
(P/O LOT 31) CONSERVATION EASEMENT V	185/31	9.9 Acres±	WATCH HILL FIRE DISTRICT
(P/O LOT 31) Va	185/31		WATCH HILL FIRE DISTRICT BEACH CONDOMINIUM
(P/O LOT 31) Vb	185/31		WATCH HILL FIRE DISTRICT BEACH CONDOMINIUM
(P/O LOT 31) Vc	185/31		WATCH HILL FIRE DISTRICT BEACH CONDOMINIUM
(P/O LOT 31) W	185/32		LARKIN SQUARE CONDOMINIUMS
(P/O LOT 31) X	185/33		WATCH HILL FIRE DISTRICT
(P/O LOT 31) Y	185/34		WATCH HILL FIRE DISTRICT



20140002  
 pg 1 of 1



**STREET INDEX**  
 BAY STREET

PLAN REVISIONS			
DATE	DESCRIPTION	DWN BY	CHK BY

**CHERENZIA & ASSOCIATES, LTD.**  
 Civil Engineers  
 Land Surveyors  
 Land Use Planners  
 Environmental Engineers  
 99 Mechanic St.  
 Pawtucket, RI 02861  
 Tel: 401.596.6500  
 Fax: 401.596.6090  
 P.O. Box 513  
 Westerly, RI 02891  
 Tel: 401.596.7747  
 www.cherenzia.com

**CONSERVATION EASEMENT PLAN**  
 PREPARED FOR  
**WATCH HILL FIRE DISTRICT**  
 THE CHAPLIN B. BARNES NAPATREE  
 POINT CONSERVATION AREA  
 BAY STREET  
 WESTERLY, RHODE ISLAND

SCALE: 1" = 300'  
 JANUARY 2, 2014

DRAWN BY: MEG/TWS  
 CHECK BY: NDL

SHEET: 1 OF 1      JOB NO.: 208044/213077



# **EXHIBIT D**



# **EXHIBIT E**

MEMO

To: Honorable Town Council, Westerly, RI  
Fr: Charles Soloveitzik  
Re: Fort Road, Watch Hill  
December 17, 2007

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This office was engaged to provide an opinion as to the status of the roadway known as "Fort Road" in the Village of Watch Hill, to research the title history and provide an opinion concerning the legal ownership and general location of that public way commonly referred to as "Fort Road", as well as any town right to locate a dock in or about the area of Fort Road.

As reported in writing to the Town Solicitor on October 30<sup>th</sup>, 2007 and as expressed in comments made to the Council workshop on December 3<sup>rd</sup>, 2007, we found no evidence in the land records to support the conclusion that Fort Road is a town road based upon a preliminary search and analysis of those indices and records perceived to be best suited to formulate such a conclusion. However, as also reported and expressed, we must assert that evidence of the status of the road as a public road may be found outside of the land records and, of course, we can offer no opinion on that conclusion.

Although the process has already taken many hours, we concede that the entire record has not been completely researched. But, because of our belief that further extensive record research shall not produce a different conclusion, we sought and obtained permission to terminate the title searching process on the project and now present our report based upon the research conducted to date.

PRELIMINARY REPORT  
(Refined and Recapitulated)

The results of our search suggest to us that there was no recognized public road running from Bay Street through the Napatree/Sandy Point peninsula when the U.S. Government purchased most of the land at Napatree and Sandy Points for the installation of Fort Mansfield in 1898. In fact, after acquiring the land for the Fort, the Government proceeded to obtain a series of express easements for ingress, egress and regress over the Napatree portion of the peninsula from its adjoining and neighboring owners. In October 1903, four easement deeds recorded in Book 35, at pages 296, 297, 298 and 300, H. Hobart Babcock, Alice Brien, Frank Larkin and John W. Sweeney, respectively, granted a series of 20 foot easements over their respective Napatree properties, effectively connecting all of the Government's land to Bay Street (and the Town's established highway network). The descriptions for these easements were corrected by 1909

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instruments, recorded in Book 39 at page 433 and page 434. The record suggests that Larkin owned all of the land between the Government's easternmost parcels and Bay Street, and that [from east to west] Sweeney, Babcock and Brien, respectively, owned the land between the Government's easternmost parcels and its westernmost parcels. Those westernmost parcels comprised the west end of Napatree and all of Sandy Point, which were physically connected prior to the 1938 hurricane.

The Government divided its holdings on the peninsula into 7 tracts as depicted on the attached map (Map 1) and then conveyed all of its land on the peninsula to the Napatree Corporation in two deeds, the first described Tracts 2 and 7, was dated September 28, 1926 and recorded in Book 51, page 84, and the second described Tracts 1, 3, 4, 5 and 6) was dated January 28, 1928, recorded Book 52, page 84. Those tracts were conveyed together with "*an easement for a 20 foot right of way over and across privately-owned tracts of land...for the purpose of ingress, egress and regress to and from said tracts of land...*" [paraphrased for clarity] and effectively establishing that 20 foot right of way from Bay Street to Sandy Point.

Thereafter, in 1928, the Napatree Corporation reconfigured Tracts 1 and 2 (the easternmost portion of the fort) and divided the same into a five-lot subdivision as demonstrated by its plan recorded in Plat Book 6, pages 13 and 14 (enclosed as Map 2). The plan depicted a proposed 50 foot road and the 5 lots were then conveyed with reference to that plan together with express rights to *pass and repass over the existing "open 20 foot right of way" and the proposed 50 foot road, if and when dedicated and developed* [paraphrased for clarity].

For the purpose of this discussion, we have focused on those parcels presently designated as Westerly Assessor's Map 185, lots 31 and 33 and Map 178, lots 1, 2, 3 and 4. This limitation was determined practical because one must travel on the identified lots to get from the recognized highway system (Bay Street) out to the extremity of Napatree Point.

As stated above, each of the parcels conveyed with reference to the 1928 plan enjoyed rights over the existing road including the right to get to the lots on the plan over the express right of way to and from Bay Street. But the record does not suggest, and we are unable to assume from those deeds, that the developer intended to dedicate the street as shown on the plan to the public, and the absence of subdivision laws in 1928 left the municipality without direction or instruction to accept roads when platted.

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As part of the process, we performed a complete search for one and limited reviews for the titles to the other lots created by the 1928 plan and have detected no recorded evidence of formal dedication or municipal acceptance of that section of road. Although there may be support to the proposition that the laying out of a street on plat may be tantamount to a dedication to public use [citations omitted], it may easily be argued that, if one must access the platted lots by means of a private right of way in the first place (as here), a presumption of public dedication may be overcome.

In addition, we considered the content of title deeds for the land lying between Bay Street and the lots on the 1928 subdivision and found that they merely contain reference to the rights of others to pass through them and provide no expression that those easement rights were for a public thoroughfare.

Accordingly, the land records support the conclusion that the underlying real estate upon which the road is located is not owned by a single person or entity, but, rather, that the ground under the road is vested in those owners of land which is located on either side of the roadway.

Asked specifically, if the Town's ownership of a parcel located on the Napatree peninsula (Plat 178, lot 7, now owned by the Westerly Municipal Land Trust), would elevate the status of a right of way from private to public, our response would be that the fact of ownership of a single unimproved parcel at a remote location along the road's course would not, by itself, establish a sufficient nexus for a public or town road. Certainly, if some facility, open to and benefiting the public at large, was established on a parcel, an argument for the existence of a public road would be much stronger, but certainly that determination cannot be made from land evidence records.

#### LOCATION OF WAY

The location of the first leg of the 1903 twenty foot-wide rights of way from Bay Street is roughly identified on the attached Map 1, but merely referred to in the deeds to the lots depicted on Map 2. It is more precisely located on the U.S Government's 1924 Map (Map 3). Certainly, the 50-foot wide road proposed by Napatree Corporation in 1928 is depicted on Map 2, but without perspective relative the location of the 20-foot right of way. Sections of the "old road" and the "new road" are depicted on maps recorded in the land records and attached as Maps 4 and 5.

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A presumably accurate representation of the road's location before the 1938 hurricane is depicted on the old Assessor's Map 14 (also enclosed as Map 6). Current assessor's maps seem to track the same or a substantially similar course before trailing off to the southwest and then terminating before reaching its prior westerly extremity.

Deeds to the Watch Hill Fire District for its real estate located on the west side of Bay Street through which the road passes do not call for the road as a boundary, but rather one deed expresses that "*the described property is subject to any and all rights of way now existing in favor of owners of the land on Napatree Point*" (39 WLER 591) and another deed expressed that the conveyance was "*subject to all rights of way, if any, over the premises*" (63 WLER 247). Similarly, the property descriptions reviewed for those other parcels west of Bay Street do not characterize the road as a boundary, but merely express that a road or way runs through the described parcel without material geometric reference to the road's location.

An inspection of the ground may identify the remains of an old improved road and, certainly, if sufficient monumentation were to be located, the descriptions contained in the 1903 easements (as corrected) and the roadway as depicted on several maps may be quantified by a survey, but that is beyond the scope of our analysis. It must be noted that, even if the road may be precisely located, that fact does not aid us in concluding whether it is a private or public way.

#### DOCK or WHARF

Maps reviewed identify a wharf extending into the ocean from the land now identified as AP 182, lot 1, now owned by the Watch Hill Fire District, and previously owned by the U.S. Government, but we have uncovered no land evidence of docks or launches into the bay located west of the Yacht Club.

As expressed above, we recognize that the Town of Westerly has held title to land on Napatree Point, identified as Plat 178, lot 7, which was recently conveyed to the Westerly Municipal Land Trust. The Town's ownership or control of property with its special characteristics of frontage on the bay and the ocean may give rise to some common law rights to wharf out and develop a dock or a launch, however, there is no express grant of those rights in the land records; such rights, if any, exist under the State's constitution and there is little doubt that approval for such action and related activity would be placed within the jurisdiction of the Rhode Island

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Coastal Resources Management Council. We offer no opinion with regard to the likelihood of any CRMC permitting.

#### CONCLUSION AND COMMENTARY

Based upon the limited search conducted, we have concluded that there is no meaningful evidence in the land records to support the proposition that Fort Road is a town road, and, based upon our experience with such matters, we see no practical benefit in extending the search to exhaustion in order to change that conclusion. Certainly, there may be something yet uncovered which may help clarify a point or buttress a legal argument, but we are satisfied that the process would only be a protracted exercise rendering little or no material change in result.

Regardless whether Fort Road is a town road or not, it is asserted that its location may be geometrically determined, in part by the land evidence records, while surveying would undoubtedly be required to confirm if that which is described or depicted on the land records was actually constructed (and surviving) on the ground.

Based upon the preliminary search conducted, we can assert that there is no special right to dock or wharf in favor of the town identified in the land records. Any docking rights the Westerly Municipal Land Trust may possess is merely appurtenant to its ownership of real estate with waterfront characteristics.

Despite the fact that the land records do not provide evidence that Fort Road is a town road, other factors—outside the land records—should be considered. Those factors include an examination of the actual use of the road over an extended period of time to determine if the general public has enjoyed the use of the roadway, whether the public has ever been excluded and whether the municipality has ever repaired, maintained or improved the road at public expense. Town Council and Public Works records may be of assistance in answering some of these questions. Anecdotal evidence of continued, uninterrupted, unchallenged use by private citizens for a significant period of time may aid in determining if the roadway is open and apparent and in use by the public.

The distinction between private roads used by the public and statutory town [or common law public] roads may be blurred by numerous factors, but, as previously reported, once an existing road is determined to be open for the necessary period of time and provides for the public



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benefit, the Town Council possesses the right to declare the same as a public road under proper circumstances (see R.I.G.L. §24-2-1).

Respectfully submitted,

Charles Soloveitzik

Legend of Attachments:

- Map 1 - Fort Mansfield composite, 1924
- Map 2 - Napatree Corporation (5 lot subdivision), 1928
- Map 3 - Fort Mansfield detail (East), 1923
- Map 3A - Fort Mansfield detail (West), 1923
- Map 4 - William S. Morehead's land, 1927
- Map 5 - Watch Hill Beach, 1936
- Map 6 - Old Tax Map No. 14
- Map 7 - Composite current tax maps in vicinity.

# **EXHIBIT F**

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTERLY  
DECLARING FORT ROAD ON NAPATREE POINT TO BE A  
PUBLIC RIGHT OF ACCESS IN PERPETUITY

WHEREAS, the Town commissioned a title opinion in December of 2007 to determine what rights the Town and the Public have to access Napatree Point via Fort Road, and

WHEREAS, that title opinion concluded that the owners of parcels along Napatree point are successors in interest to the access way commonly known as Fort Road and further that the land which constitutes Fort Road is in fact owned by those several owners of land on Napatree Point and along Fort Road, and

WHEREAS, the Town is an owner of a parcel of land on Napatree Point and along Fort Road known as Assessor's plat 178 lot 7 and that parcel being owned by the Town, the use of Fort Road as an access way to and across Napatree Point extends to the Public at large, and

WHEREAS, officials of the Watch Hill Fire District, which owns the majority of the land on Napatree Point and that land where Fort Road intersects with Bay Street have consistently said that the Public has an unrestricted right to access Napatree Point via Fort Road, and

WHEREAS, much of Napatree Point consists of 'Public Trust Land' or that area along the shore which is specifically protected for use by the Public in The Rhode Island State Constitution – Article 1, section 17, and

Whereas, historical photographs, town meeting and utility records and other reliable archival information indicates the historic use of Fort Road as a Public access way to Napatree Point, now therefore be it hereby

RESOLVED: That The Town Council of the Town of Westerly does hereby declare that Fort Road on Napatree Point as shown on the Town Assessor's plats # 177, 178, 184 and 185 as a twenty foot wide right of way has been, is and shall be a right of way for access by the Public to pass and re-pass to and from and across Napatree Point in perpetuity.

ADOPTED: October 6, 2008

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTERLY  
DECLARING FORT ROAD ON NAPATREE POINT TO BE A  
PUBLIC RIGHT OF ACCESS IN PERPETUITY

WHEREAS, the Town commissioned a title opinion in December of 2007 to determine what rights the Town and the Public have to access Napatree Point via Fort Road, and

WHEREAS, that title opinion concluded that the owners of parcels along Napatree point are successors in interest to the access way commonly known as Fort Road and further that the land which constitutes Fort Road is in fact owned by those several owners of land on Napatree Point and along Fort Road, and

WHEREAS, the Town is an owner of a parcel of land on Napatree Point and along Fort Road known as Assessor's plat 178 lot 7 and that parcel being owned by the Town, the use of Fort Road as an access way to and across Napatree Point extends to the Public at large, and

WHEREAS, officials of the Watch Hill Fire District, which owns the majority of the land on Napatree Point and that land where Fort Road intersects with Bay Street have consistently said that the Public has an unrestricted right to access Napatree Point via Fort Road, and

WHEREAS, much of Napatree Point consists of 'Public Trust Land' or that area along the shore which is specifically protected for use by the Public in The Rhode Island State Constitution – Article 1, section 17, and

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ADOPTED:

# **EXHIBIT G-1**



100 Westminster Street, Suite 1500  
Providence, RI 02903-2319

p: 401-274-2000 f: 401-277-9600  
hinckleyallen.com

**Gerald J. Petros**  
gpetros@hinckleyallen.com

November 17, 2022

**Via Electronic Mail**

William Conley, Esq.  
Town Solicitor  
Town of Westerly  
45 Broad Street  
Westerly, RI 02891

**Re: Fort Road, Westerly, RI**

Dear Attorney Conley:

As you know we represent both The Watch Hill Conservancy (“WHC”) and the Watch Hill Fire District (“WHFD”). We have appeared before the Town Council on their behalf several times in hearings on the Comprehensive Plan and the Westerly Harbor Management Plan to set forth the facts demonstrating that Fort Road was a private easement until a hurricane destroyed it decades ago. Recently in public comments before the Town Council, several people asked questions about Fort Road and suggested it is somehow a public right of way. Those claims are unfounded. We are providing you with this letter to present answers to some of the questions the Council has and may address regarding Fort Road.

**Question #1:**

**Did the owners of land on Napatree Point create Fort Road as a public road, a public right of way, or a private easement?**

The land records and the Town’s history demonstrate that the easement known as Fort Road that ran along the bayside of Napatree Point was always a private easement.

In 1898, the United States (the “Government”) purchased two large non-adjacent parcels on Napatree Point to build Fort Mansfield. At the time, there were only four other property owners

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on Napatree Point. In 1903, the Government secured from each of these owners an easement over their property for a roadway that provided access to and from the Fort Mansfield. The 1903 Easement is attached as **Exhibit A**. The Government established a private easement for the Government to get to and from Fort Mansfield. The Government did not create this easement for the public to access Fort Mansfield or to access any of the other lots on Napatree Point.

In 1909, the Government redefined the 20' wide private easement with more precise dimensions and measurements that corresponded with the then as-built roadway. The 1909 Easement is attached as **Exhibit B**. The Government's private easement to access Fort Mansfield also permitted the other property owners on Napatree Point to use it. The deeds and land records establishing the easement granted no rights to the public. This private easement eventually came to be known colloquially as "Fort Road."<sup>1</sup> The Government never intended to create a public right of way, and none of the elements necessary to establish a public road or a public right of way are present here.

The Town's own title attorney confirmed this conclusion. In 2007, the Town Council retained Attorney Charles Soloveitzik to determine whether Fort Road was a Town road. After a diligent examination of the records, Attorney Soloveitzik unequivocally concluded that Fort Road is not a public road: "we found no evidence in the land records to support the conclusion that Fort Road is a town road." The 2007 Soloveitzik Opinion is attached as **Exhibit C**.

**Question #2:**  
**Does this private easement still exist?**

This private easement terminated a few decades later. The 1938 Hurricane dramatically and tragically changed Napatree Point. It destroyed all the existing houses on the point, killed many of the residents living there, and significantly altered the geography of the point itself. As a direct result of the storm, the most northerly end of the point (now Sandy Point Island), was severed and shifted northward. The 1938 hurricane also destroyed the southern facing dune that previously protected much of Napatree Point. With the loss of the dune, the ocean overwash and washover fan migration accelerated over the next 40 years (a natural process for barrier spits) and gradually shifted Napatree Point to the north. See Bryan A. Oakley, Department of Environmental Earth Science, Eastern Connecticut State University, *Storm Driven Migration of the Napatree Barrier, Rhode Island, USA*, Geosciences 2021. This shift to the north submerged the entire former Fort Road easement footprint by 1975, with the exception of the portion of the easement closest to Bay Street. The Fort Road easement is now under water, it has neither existed nor been used for many decades.

**Question #3:**  
**Did another easement or road replace Fort Road?**

The owners of land on Napatree Point never relocated or replaced the Fort Road easement. First, the owners largely abandoned Napatree Point after the 1938 hurricane. After 1938, there has

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<sup>1</sup> The references to "Fort Road" in this letter refer to the private easement established on Napatree Point.

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been no further development of property on Napatree Point. The use of the easement ended when fort operations stopped in 1926. The adjacent property owners never replaced the residential structures wiped out in the 1938 hurricane. The chains of title for most lots from 1938 forward are largely tax foreclosure sales and probate conveyances. In recent decades, parcels on Napatree Point have almost all either remained within the families which already owned them or been acquired by the Watch Hill Fire District or the Watch Hill Conservancy for conservation purposes. The lots that did not remain within the families are: (1) AP 178 Lot 7, acquired by Town of Westerly at tax foreclosure sale in 1939, then sold to George L. Crow and Paul J. Moore in 1940, and conveyed back to the Town of Westerly by George L. Crow's heirs in 1986; (2) the heirs of the former owner of AP 178 Lot 11 donated it to the State in 1983. In short, the land evidence records establish that the owners of land on Napatree Point did not replace the Fort Road easement or establish a new private easement. The land evidence records and aerial photos both confirm that conclusion.

As a legal matter, the owners could not relocate the Fort Road private easement unless all of the owners agreed to do so and then took the legal steps necessary to establish a new private easement. The Government established the Fort Road easement according to precise dimensions and measurements, making it a fixed easement. Fixed easements cannot be relocated without the express consent of all of the owners of land that the easement crosses. *See Herren v. Pettengill*, 538 S.E.2d 735, 736 (Ga. 2000). This legal rule applies even when a fixed easement is destroyed by natural disaster and/or changing tides. *See Marble Techs., Inc. v. Mallon*, 773 S.E.2d 155, 159 (Va. 2015). The original fixed easement terminated in 1938.

The Fort Road private easement also terminated for another reason. The original easement, recorded in 1903 and again in 1909, is not referenced in any deeds in the chains of title of properties on Napatree Point since 1926. Rhode Island's Marketable Record Title Act extinguishes easements or rights-of-way not referenced in a deed within the last forty years. *See R.I.G.L. 1956 § 34-13.1-5 (a)*. Only easements that are still observably present on the subject property survive the forty-year automatic expiration. *See § 34-13.1-7*.

Therefore, the original easement terminated because: (1) the 1938 hurricane and 40 years of ocean overwash and washover fan migration physically destroyed and submerged it over four decades; (2) the owners never established a new easement in a new location; and (3) it expired under the Marketable Record Title Act.

#### **Question #4:**

#### **Does the 2008 Town Resolution establish Fort Road as a public right of way?**

No, it does not. The 2008 Town Council Resolution designating Fort Road as a public right-of-way is ineffective for many reasons.



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**First**, town councils do not have the authority to transform private land to public land by declaration or resolution.

**Second**, the Takings Clause in the Fifth Amendment prevents any town, including Westerly, from taking private property without adhering to the condemnation requirements and paying for the land. *See Palazzolo v. Rhode Island*, 533 U.S. 606 (2001) (“[P]rivate property [shall not] be taken for public use without just compensation.”). The Town did not initiate condemnation or taking proceedings, and the town never paid for any land it sought to take.

**Third**, the Town Council never exercised its condemnation powers and determined that it was necessary or advantageous to acquire the strip of land known as Fort Road as part of a roadway development scheme.<sup>2</sup> *See O’Neill v. City of East Providence*, 480 A.2d 1375 (1984); R.I.G.L. 1956 § 24-1-1. Therefore, the 2008 Resolution was not a valid exercise of the Town’s limited condemnation powers and the Town Council did not effectively “take” Fort Road through this Resolution.

**Fourth**, the judiciary, **not** town councils, is vested with the authority to declare the property rights of third parties.<sup>3</sup> *See* R.I. Const. art. X, § 2 (vesting all questions of law and equity in the Rhode Island Courts); R.I.G.L. 1956 § 8-2-14 (granting original jurisdiction over property rights to the Superior Court); *Fed. Nat. Mortg. Ass’n v. Malinou*, 101 A.3d 860, 866 (R.I. 2014) (holding that the superior courts have original jurisdiction over property rights); *Quattrucci v. Lombardi*, 232 A.3d 1062, 1066 (R.I. 2020) (“Thus, all judicial power is reserved to the courts and has been since the adoption of the state constitution in 1842.”).

**Fifth**, the Napatree Point property owners never dedicated, and the Town never accepted, Fort Road as a public road. *See Robidoux v. Pelletier*, 120 R.I. 425, 433, 391 A.2d 1150, 1154 (1978) (holding that in order for there to be an effective dedication, there must be (1) a manifest intent by the landowner to dedicate the land in question (incipient dedication); and (2) an acceptance by the public either by public use or by official action to accept the land on behalf of the

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<sup>2</sup> It also failed to follow any of the statutory requirements for condemnation set forth in R.I.G.L. 1956 §§ 4-1-2, -4, -5, -6, -7.

<sup>3</sup> The Coastal Resources Management Council (“CRMC”) is vested with the limited right to designate public rights-of-way to tidal water areas in the State. *See* R.I.G.L. 1956 § 46-23-6(E) (“The council is responsible for the designation of all public rights-of-way to the tidal water areas of the state, and shall carry on a continuing discovery of appropriate public rights-of-way to the tidal water areas of the state.”).

However, even CRMC does not have *carte blanche* to claim or declare water-adjacent land as a public right-of-way. Prior to any designation, CRMC must first conduct public hearings and rely on public records and historical evidence in making such a determination. *See e.g., Sanroma v. Coastal Res. Mgmt.*, C.A. No. 87-4038, 1992 WL 813494, at \*2 (R.I. Super. Jan. 22, 1992). At that point, CRMC may *only* designate a road as a public right-of-way if the hard evidence in the land evidence records and/or historical evidence of use demonstrates that the right-of-way at issue is currently existing as a public road. *See id.* CRMC is relegated to identifying existing public rights-of-way, not creating them. And CRMC must follow due process and permit all interested parties to be heard at an evidentiary hearing. Not even CRMC, nor the Courts for that matter, can unilaterally decide to designate a private road as a public right-of-way. Further, CRMC’s determination is subject to review and appeal in the courts.

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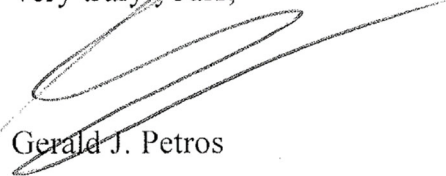
municipality). There is no evidence of any dedication of Fort Road to the Town and the title opinion issued by the Town's own Attorney, Charlie Soloveitzik, also confirms this.<sup>4</sup>

### Conclusion

Fort Road is not, and never was, a public road or public right of way. The Watch Hill Fire District granted The Watch Hill Conservancy a publicly filed conservation easement over multiple parcels the Fire District owns on Napatree Point, through which the Point is conserved and maintained. The Watch Hill Fire District and The Watch Hill Conservancy welcome visitors to Napatree Point. However, Fort Road is not, and never was, a public road or public right of way, and the old private Fort Road easement terminated decades ago.

We hope this information is helpful. Thank you for considering these comments.

Very truly yours,



Gerald J. Petros

GJP:cw

Enclosures

cc: Joan Beth Brown  
Deborah Lamm

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<sup>4</sup> There also was never acceptance by the Town because: (1) there has been no dedication; and (2) the fact that a town council declares a road to be public is not evidence of acceptance under Rhode Island law. *See Remington v. Millerd*, 1 R.I. 93, 93 (1847) (“Under the statute of Rhode Island concerning highways, *the fact that a town council has declared a way to be an open highway*, and has ordered it to be repaired at the expense of the town, *is not evidence of an acceptance by the public, because the town council are not to be deemed the general agents of the public . . .* In no case is such a declaration by a town council of any binding force, unless the way has been actually *used as a highway for twenty years.*”) (emphasis added).

# **EXHIBIT A**

---

Patrick Lynch, with the county and one tenth of 70 feet by the highway to a  
ac transfer tract, and in width one hundred, fifty three and forty seven  
hundredth (153.47) feet, by and of the heirs of Henry N. Crandall, deceased and  
is the same parcel conveyed to Courtland S. Chapman of said Westley and  
Sarah F. Maine, by deed dated March 10th, 1899, and recorded in said  
deed records, said Westley, in Book No. 32 at page 260. I have and  
to hold the same, with all the rights, privileges and appurtenances there-  
unto appertaining, unto and to the use of her the said Catherine Lynch  
her heirs and assigns forever. And I the above named Patrick Lynch for  
myself and for my heirs, executors and administrators, do covenant  
with the said Catherine Lynch her heirs and assigns, that I will cov-  
nant and defend the above described premises unto the said Catherine  
Lynch her heirs and assigns forever, against the lawful claims and de-  
mands of all persons claiming by, through or under me.  
In testimony whereof, I have hereunto set my hand and seal, this 24th  
day of October in the year of our Lord one thousand nine hundred and three  
signed and sealed

in presence of  
Bernard Lynch. Patrick Lynch. [26]  
State of Rhode Island.  
County of Washington.

On Westley on the 24th day of October A.D. 1903,  
before me personally appeared Patrick Lynch, to me known, and known  
by me to be the party executing the foregoing instrument, and he  
acknowledged said instrument, by him executed, to be his free act  
and deed.

Augustine J. L. Ridwidge,  
Notary Public.

Received for Record October 26th A.D. 1903, at 9 1/2 o'clock A.M. and recorded.

Attest: William Hoxsey,  
Town Clerk.

Know all men by these presents, that S. S. Hobart Babcock, of  
Westley, in the County of Washington, and State of Rhode Island, for and  
in consideration of the sum of one dollar, the receipt whereof is hereby  
acknowledged, by these presents, do give, grant, bargain, sell, convey,  
and confirm unto the United States of America, its successors and  
assigns, forever, a right of way in and over a strip of land included in  
the premises of the grantor for the use of the grantee, its officers, agents,  
and employees, and all persons having business with them, at all  
times freely to pass and re-pass over the same, on foot, or with animals,  
vehicles, loads, or otherwise, to and fro, with the right to improve and  
keep the same in repair -- the said strip of land and way being all  
that piece or parcel of land situate, lying and being on Nahatan Point  
in the county of Washington and State of Rhode Island, and bounded  
and described as follows, to wit: Beginning at a stake in the line  
between land owned by Alice Brien and land owned by S. Hobart

Babeck on Nahatan Point, R.I., about ten feet above mean high tide line of Little  
Passaquonnet Bay thence North 81 degrees East about 25 feet, thence North 84 de-  
grees and 43 minutes East about 385 feet, to line of land owned by John Babcock  
thence southerly along the line of said Babcock's land 20 feet, thence North  
84 degrees 43 minutes West about three hundred and eighty five feet, thence  
North 81 degrees West about 25 feet, to line of land owned by Alice Brien, thence  
southerly along the line of said Brien's land 20 feet to the place of beginning;  
to have and to hold unto the said grantee, its successors and assigns,  
for the ordinary use of said strip of land in heretofore as a road for them-  
selves, their families, agents and servants, without let or hindrance.  
And I, Harriet S. Babeck, wife of the said H. Hobart Babeck, in considera-  
tion of the sum paid as aforesaid, do hereby release and forever quit  
claim unto the said grantee, its successors and assigns, all my right  
of dower in and to the aforesaid premises. In Testimony Whereof, we  
have hereunto set our hands and seals this 26th day of October, A.D.  
1903.

Signed, sealed and delivered

in presence of		
Eugene B. Pendleton	Horace H. Babeck	L.S.
Eugene B. Pendleton	Harriet S. Babeck	L.S.
State of Rhode Island County of Washington ss.		

On this twenty sixth day of October, 1903.  
before me, Eugene B. Pendleton, a Notary Public in and for  
said County, personally appeared H. Hobart Babeck, and  
Harriet S. Babeck, his wife, known to me and to me known to be the  
persons described in and who executed the foregoing instrument,  
and each of them severally acknowledged said instrument to be their  
free act and deed. In Witness Whereof, I set my hand and official  
seal in the day and year first above written.

Eugene B. Pendleton  
Notary Public.

Received for Record October 29<sup>th</sup> A.D. 1903. at 9<sup>th</sup> o'clock A.M. and recorded.

Attest: William Kosey  
Town Clerk.

Know all men by these presents, that I, Alice Brien, and  
Thomas Brien, her husband, both of Nesterly, in the County of Washing-  
ton, and State of Rhode Island, for and in consideration of the sum  
of one dollar, the receipt whereof is hereby acknowledged, by these pres-  
ents do give, grant, bargain, sell, convey, and confirm, unto the United  
States of America, its successors and assigns, forever, a right of way in  
and over a strip of land, included in the premises of the grantors for  
the use of the grantee, its officers, agents, and employes, and all per-  
sons having business with them, at all times freely to pass and re-

to and for, with the right to improve and keep the same in repair the  
said strip of land and may being that piece of parcel of land situated, lying  
and being on Nahaset Point in the County of Washington and State of Rhode  
Island, and bounded and described as follows, to wit: Beginning at a  
stake in line of government reservation about ten feet above sea level  
at the line of Little Narragansett Bay, thence north 81 degrees east a distance  
of about 360 feet to line of land now owned by Sebastian Babcock, thence  
easterly along the line of said Babcock's land a distance of 20 feet, thence  
south 81 degrees west a distance of about 360 feet to line of Government  
Reservation, thence northerly along line of Government Reservation 20 feet  
to place of beginning. I have and to hold unto the said grantee, its suc-  
cessors and assigns forever, Reserving unto the grantor, their heirs and  
assigns, the right for the ordinary use of said strip of land in perpetuity  
as a road for themselves, their families, agents and servants without let  
or hindrance. In Testimony Whereof, we have hereunto set our hands  
and seals this 26th day of October, A.D. 1903.

Witness my hand and seal  
in presence of  
Eugene B. Pendleton Alice Brien  
Eugene B. Pendleton Thomas Brien.  
State of Rhode Island  
County of Washington, ss.

L.S.
L.S.

(L.S.)

On this 26th day of October, 1903,  
before me, Eugene B. Pendleton, a Notary Public in and  
for said County, personally appeared Alice Brien and  
Thomas Brien, her husband, known to me and to me known to be the  
persons described in and who executed the foregoing instrument,  
and each of them severally acknowledged said instrument to be  
their free act and deed. In Witness Whereof, I set my hand and official  
seal in the day and year first above written.

Eugene B. Pendleton,  
Notary Public.

Received for Record October 29<sup>th</sup> A.D. 1903 at 9<sup>30</sup> o'clock A.M. and recorded.

Attest: William Kossay  
Town Clerk

Know all men by these presents, that I, Frank Parkins, of the County of Washington and State of Rhode Island, for and in con-  
sideration of the sum of one dollar, the receipt whereof is hereby ac-  
knowledged, by these presents do give, grant, bargain, sell, convey, and  
confirm unto the United States of America, its successors and as-  
signs, forever, a right of way in and over a strip of land, included in  
the premises of the grantor for the use of the grantee, its officers, agents,  
and employes, and all persons having business with them, at all  
times freely to pass and repass over the same, on foot, or with ani-  
mals, vehicles, loads, or otherwise, to and fro, with the right to im-  
prove and keep the same in repair. The said strip of land and

beginning all that hereinafter described, lying and being on Nabatree  
 Point in the County of Washington and State of Rhode Island, bounded and  
 described as follows, to wit: Beginning at a stake in line between Govern-  
 ment Reservation and said tract about fifty feet from mean high tide  
 line of Pawcatuck Bay or River thence South 80 degrees 48 minutes East a-  
 bout 435 feet, thence South 68 degrees 28 minutes East about 477 feet, thence  
 South 57 degrees 35 minutes East about 300 feet, thence South 39 degrees  
 and 18 minutes East 168.6 feet, thence South 18 degrees 34 minutes East 542.1  
 feet, thence North 72 degrees 12 minutes East about 286.1 feet, thence South  
 64 degrees 52 minutes East 124.1 feet, thence South 25 degrees 8 minutes West  
 20 feet which corner is along line of Bay Street, Hatch Hill, thence North 64  
 degrees and 52 minutes West 124.1 feet, thence South 72 degrees 12 minutes  
 West 286.1 feet, thence North 68 degrees 28 minutes West 542.1 feet, thence  
 North 39 degrees 18 minutes West 168.6 feet, thence North 57 degrees 35 minutes  
 West 300 feet, thence North 68 degrees 28 minutes West 477 feet, thence North 80 degrees  
 48 minutes West 435 feet to a point on the line of Government Reservation  
 20 feet distant from the northerly line of the strip of land herein described,  
 thence along the line of said Government Reservation to the place of be-  
 ginning. To have and to hold unto the said grantee, its successors  
 and assigns, forever, Reserving unto the grantor, his heirs and as-  
 signs, the right for the ordinary use of said strip of land in perpetuity  
 to be used for themselves, their families, agents and servants, without  
 let or hindrance. And I, Jessie C. Parkin, wife of the said Frank Parkin,  
 in consideration of the sum paid as aforesaid, do hereby release and  
 forever quitclaim unto the said grantee, its successors and assigns,  
 all my right of dower in and to the aforesaid premises.

In Testimony Whereof, we have hereunto set our hands and seal this  
 twenty seventh day of October, A.D. 1903.

Signed, sealed, and delivered  
 in presence of

Eugene B. Pendleton	Frank Parkin	L.S.
Eugene B. Pendleton	Jessie C. Parkin	L.S.

State of Rhode Island,  
 County of Washington ss.

On this 27th day of October, 1903,  
 before me, Eugene B. Pendleton, a Notary Public, in and for  
 said County, personally appeared Frank Parkin and Jessie  
 C. Parkin, his wife, known to me and to me known to be the persons  
 described in and who executed the foregoing instrument, and  
 each of them severally acknowledged said instrument to be their  
 free act and deed. In Witness Whereof, I set my hand and official seal  
 on the day and year first above written.

Eugene B. Pendleton,  
 Notary Public.  
 Received for Record October 29<sup>th</sup> A.D. 1903, at 9<sup>th</sup> o'clock A.M. and recorded.  
 Attest: William Kossay

Know all men by these presents, that I, John M. Swenney, of the County of Washington, and State of Rhode Island, for and in consideration of the sum of one dollar, the receipt whereof is hereby acknowledged, by these presents do give, grant, bargain, sell, convey and confirm unto the United States of America, its successors and assigns, forever, a right of way in and over a strip of land, included in the premises of the grantee for the use of the grantee, its officers, agents, and employes, and all persons having business with them, at all times hereafter, to pass and re-pass over the same, on foot, or with animals, vehicles, loads, or otherwise, to and fro, with the right to improve and keep the same in repair. The said strip of land, and way being all that piece or parcel of land, situate, lying and being on Napatree Point, in the County of Washington and State of Rhode Island, bounded and described as follows, to wit: Beginning at a stake about ten feet above mean high tide of Little Narragansett Bay in the line between land owned by St. Robert Babcock and land owned by John M. Swenney, thence south 80 degrees and 48 minutes East, about 500 feet to line of land of Government Reservation, thence southerly along line of Government Reservation 20 feet, thence North 80 degrees 48 minutes West about 500 feet to line of land owned by St. Robert Babcock, thence northerly along line of said Babcock's land 20 feet to place of beginning. To have and to hold unto the said grantee, its successors and assigns, forever: Reserving unto the grantee, his heirs and assigns, the right for the ordinary use of said strip of land in perpetuity as a road for themselves, their families, agents and servants, without let or hindrance. And I, Ellen C. B. Swenney, wife of the said John M. Swenney, in consideration of the sum paid as above said, do hereby release and forever quitclaim unto the said grantee, its successors and assigns, all my right of dower in and to the aforesaid premises. In Testimony Whereof, we have hereunto set our hands and seals this 26th day of October, A.D. 1903.

In presence of  
Eugene B. Pendleton  
Eugene B. Pendleton.  
State of Rhode Island.  
County of Washington, ss.

John M. Swenney.	ES.
Ellen C. B. Swenney.	ES.

On this 26th day of October, 1903.  
before me, Eugene B. Pendleton, a Notary Public in and for said County, personally appeared John M. Swenney, and his wife, Ellen C. B. Swenney, known to me and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. In Witness Whereof, I set my hand and official seal in the day and year first above written.

Eugene B. Pendleton  
Notary Public.

Record & Record October 29<sup>th</sup> A.D. 1903. at 9<sup>th</sup> o'clock A.M. and recorded.



# **EXHIBIT B**

QZCJ

gage the above demised premises to the said grantee & his heirs, and assigns, against the lawful claims or demands of any person or persons whatsoever, forever to warrant, secure and defend by these presents. And I, Sadie Percy wife of the said Stephen Percy, in consideration of the sum paid as aforesaid, do hereby release and forever quitclaim unto the said grantee & his heirs and assigns, all my right of dower in and to the aforegranted premises. In Testimony Whereof, we have hereunto set our hands and seals this 28th day of July in the year of our Lord one thousand nine hundred and nine

Signed, sealed and delivered in the presence of

A. E. Bull	Stephen Percy	L.S.
a solicitor of Supreme Court	Sadie Percy	L.S.
of B.C and a Notary Public		

Dominion of Canada  
Province of British Columbia County of Vancouver

In City of Vancouver on the 28th day of July- A.D. 1909

J.S. before me personally appeared Stephen Percy & Sadie Percy to me known and known by me to be the parties executing the foregoing instrument, and they acknowledged said instrument, by them executed, to be their free act and deed.

A E Bull a Notary Public in and for the  
Province of British Columbia

Received for Record August 7th, A.D. 1909, at 10.30 o'clock, A.M., and recorded.

Attest : *Everett E. Ripple*  
Town Clerk.

J.A.G.O. (20644)

KNOW ALL MEN BY THESE PRESENTS: THAT WHEREAS, By deed of Frank Larkin and wife, dated October 27, 1903, recorded in the Town Clerk's Office of Westerly, Rhode Island, in the Land Records of said Westerly, in Book 35, page 298, a right-of-way over the premises of the grantors, at Napatree Point, in the County of Washington and State of Rhode Island, within the limits described in said deed, was conveyed to the United States for the construction, maintenance and use as a roadway; AND WHEREAS, Said deed does not accurately describe the location of the roadway as actually laid down and constructed through the premises of said grantors; and it is desired by the parties to said deed to amend the same so that the description of the right-of-way shall conform to the location of the roadway as constructed; NOW, THEREFORE, We,

Frank Larkin and Jessie C. Larkin,  
his wife, in consideration of the sum of One Dollar, the receipt whereof is hereby acknowledged, HEREBY GRANT to the

United States,

in lieu of the right-of-way described in said deed, a right-of-way through the premises of the grantors herein, for the use of the United States, its officers, agents, and employees, and all persons having business with them, at all times freely to pass and re-pass over the same, on foot, or with animals, vehicles, loads, or otherwise, to and fro; together with the right to maintain and keep the same in repair, in and over

a strip of land, lying and being on Napatree Point, in the County of Washington, and State of Rhode Island, having a uniform width of twenty (20) feet and crossing land of the grantors herein, and extending from the easterly line of the detached tract of Fort Mansfield reservation to Bay Street, Watch Hill-- the northerly line of said strip of land being described as follows: Beginning at a merestone set in the boundary line between lands of the United States of America, and Frank Larkin, said merestone

being S. 14° 07' E., 45.74 feet from another merestone in said boundary line and 76 feet, more or less, from the mean high-water line of Little Narragansett Bay; said merestone also being N. 14° 07' W., 20.24 feet and 92.48 feet respectively from two merestones in said boundary line; thence N. 84° 39' E., 131.34 feet; thence N. 89° 50' 30" E., 226.95 feet; thence S. 79° 47' E., 494.11 feet; thence S. 72° 03' E., 129.18 feet; thence S. 65° 49' E., 128.42 feet; thence S. 60° 46' 30" E., 248.88 feet; thence S. 75° 55' E., 112.37 feet; thence S. 83° 10' E., 364.31 feet; thence N. 77° 57' E., 131.92 feet; thence N. 51° 21' E., 133.64 feet; thence S. 75° 45' E., 133.64 feet; thence S. 75° 45' E., 143.12 feet to a point in that portion of the westerly line of Bay Street fronting the property of D. W. Larkin; said point being 20.18 feet northerly from the northeast corner of said D. W. Larkin's land. The bearings are true.

TO HAVE AND TO HOLD unto the said United States of America, grantees herein, its successors and assigns, forever: RESERVING unto the grantors, their heirs and assigns, the right for the ordinary use of said strip of land in perpetuity as a road for themselves, their family, agents and servants, without let or hindrance.

IN TESTIMONY WHEREOF, we have hereunto set our hands and seals this 7th day of August A.D. 1909.

Signed, sealed and delivered in presence of :

John W. Sweeney

Frank Larkin

(Seal)

Jessie C. Larkin

(Seal)

State of Rhode Island; )  
                                  ) ss.  
County of Washington. )

On this 7th day of August 1909,

L.S.

before me, John W. Sweeney, a Notary Public in and for said County, personally appeared Frank Larkin and Jessie C. Larkin, his wife, known to me, and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

John W. Sweeney,

Notary Public.

Received for Record August 10th, A.D. 1909, at 10.30 o'clock, A.M., and recorded.

Attest : *Ewert E. Whipple*

Town Clerk:

J.A.G.O. (20644)

KNOW ALL MEN BY THESE PRESENTS: THAT WHEREAS,

By deed of Alice Brien and husband, dated October 26, 1903; deed of Horace H. Babcock and wife, dated October 26, 1903; and deed of John W. Sweeney and wife, dated October 26 1903; recorded in the Town Clerk's Office of Westerly, Rhode Island, in the Land Records of said Westerly, in Book 35, pages 297, 296, and 300, respectively, a right-of-way over the premises of the grantors, at Napatoc Point, in the County of Washington and State of Rhode Island, within the respective limits described in said deeds, was conveyed to the United States for the construction, maintenance and use as a roadway;- AND WHEREAS, Said deeds do not accurately describe the location of the roadway as actually laid down and constructed through the premises of said grantors; and it is desired by the parties to said deeds, and their privies, to amend the same so that the description therein, respectively, shall conform to the location of the roadway as constructed;

NOW, THEREFORE, We,

QZCJ

her husband; Alice Brien and Thomas Brien,  
 a single woman; Sadie Irving  
 her husband; Mary Scanlon and Michael H. Scanlon  
 his wife and Charles J. Butler and Susan N. Butler  
 his wife; parties to said deeds and their privies in title respecting the premises descried in said deeds, in consideration of the sum of One Dollar, the receipt whereof is hereby acknowledged, HEREBY GRANT to the

United States,

in lieu of the roadway described in said deeds, a right-of-way through the respective premises of the grantors herein, for the use of the United States, its officers, agents, and employees, and all persons having business with them, at all times freely to pass and repass over the same, on foot, or with animals, vehicles, loads, or otherwise, to and fro; together with the right to maintain and keep the same in repair, in and over a strip of land, lying and being on Napatree Point, in the County of Washington, and State of Rhode Island, having a uniform width of twenty (20) feet and crossing lands of the grantors herein, and extending from the easterly line of the main reservation of Fort Mansfield, Rhode Island, to the westerly line of the detached reservation-- the northerly line of said strip of land being described as follows: Beginning at a merestone set in the boundary line between lands of the United States of America and Sadie Irving, said merestone being 30 feet, more or less southerly from the mean high-water line of Little Narragansett Bay and N. 20° 31' W., 129.94 feet from another merestone set in said boundary line; thence N. 67° 34' E., 271.4 feet; thence N. 78° 08' E., 179.45 feet; thence N. 82° 22' E., 196.25 feet; thence N. 89° 38' 30" E., 431.85 feet; thence N. 85° 51' 30" E., 280.22 feet, to a merestone set in the boundary line between lands of the United States of America and John W. Sweeney, said merestone being 11 feet, more or less, southerly from the mean high-water line of Little Narragansett Bay, and N. 14° 07' W., 82.00 feet from another merestone set in said boundary line. All bearings are true.

TO HAVE AND TO HOLD unto the said United States of America, grantee herein, its successors and assigns, forever: RESERVING unto the said grantors, their heirs and assigns, the right for the ordinary use of said strip of land in perpetuity as a road for themselves, their families, agents and servants, without let or hindrance.

IN TESTIMONY WHEREOF, we have hereunto set our hands and seals this 9th day of July, A.D. 1909

Signed, sealed and delivered in presence of:

Daniel J Bradley as to	Sadie Irving	(Seal)
		(Seal)
John W. Sweeney as to	( Alice Erien	(Seal)
	( Thomas Brien	(Seal)
John W. Sweeney as to	( Mary C. Scanlon	(Seal)
	( M. H. Scanlon.	(Seal)
John W. Sweeney as to	( Chas. J. Butler	(Seal)
	( Susan N. Butler.	(Seal)
Clarence E. Roche as to	( John W. Sweeney.	(Seal)
	( Ellen C.B. Sweeney.	(Seal)

State of Rhode Island, )  
County of Washington. )

ss.

On this 13th day of July 1909,

L.S.

before me, John W. Sweeney, a Notary Public in and for said County, personally appeared Alice Brien and Thomas Brien, her husband

known to me, and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

John W. Sweeney, Notary Public.

State of New York, )  
County of New York. )

ss.

On this 19th day of July 1909,

L.S.

before me, Daniel J. Bradley, a Notary Public in and for said County, personally appeared Sadie Irving, known to me, and to me

known to be the person described in and who executed the foregoing instrument, and acknowledged said instrument to be her free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

Daniel J. Bradley

Notary Public.

State of Rhode Island, )  
County of Washington. )

ss.

On this 10th day of July 1909,

L.S.

before me, John W. Sweeney, a Notary Public in and for said County, personally appeared Mary Scanlon and Michael H. Scanlon each

known to me, and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

John W. Sweeney Notary Public.

State of Rhode Island, )  
County of Washington. )

ss.

On this 10th day of July 1909,

L.S.

before me, John W. Sweeney, a Notary Public in and for said County, personally appeared Charles J. Butler and Susan N. Butler

each, known to me, and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

John W. Sweeney, Notary Public.

State of Rhode Island, )  
County of Washington. )

ss.

On this 9th day of July 1909,

L.S.

before me, Clarence E. Roche, a Notary Public in and for said County, personally appeared John W. Sweeney and Ellen C.B. Sweeney,

his wife, known to me, and to me known to be the persons described in and who executed the foregoing instrument, and each of them severally acknowledged said instrument to be their free act and deed. IN WITNESS WHEREOF, I set my hand and official seal in the day and year first above written.

Clarence E. Roche Notary Public.

Received for Record August 10th, A.D. 1909, at 10.30 o'clock, A.M., and recorded.

Attest: *Overton H. Ripple* Town Clerk.

# **EXHIBIT C**

MEMO

To: Honorable Town Council, Westerly, RI  
Fr: Charles Soloveitzik  
Re: Fort Road, Watch Hill  
December 17, 2007

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This office was engaged to provide an opinion as to the status of the roadway known as "Fort Road" in the Village of Watch Hill, to research the title history and provide an opinion concerning the legal ownership and general location of that public way commonly referred to as "Fort Road", as well as any town right to locate a dock in or about the area of Fort Road.

As reported in writing to the Town Solicitor on October 30<sup>th</sup>, 2007 and as expressed in comments made to the Council workshop on December 3<sup>rd</sup>, 2007, we found no evidence in the land records to support the conclusion that Fort Road is a town road based upon a preliminary search and analysis of those indices and records perceived to be best suited to formulate such a conclusion. However, as also reported and expressed, we must assert that evidence of the status of the road as a public road may be found outside of the land records and, of course, we can offer no opinion on that conclusion.

Although the process has already taken many hours, we concede that the entire record has not been completely researched. But, because of our belief that further extensive record research shall not produce a different conclusion, we sought and obtained permission to terminate the title searching process on the project and now present our report based upon the research conducted to date.

PRELIMINARY REPORT  
(Refined and Recapitulated)

The results of our search suggest to us that there was no recognized public road running from Bay Street through the Napatree/Sandy Point peninsula when the U.S. Government purchased most of the land at Napatree and Sandy Points for the installation of Fort Mansfield in 1898. In fact, after acquiring the land for the Fort, the Government proceeded to obtain a series of express easements for ingress, egress and regress over the Napatree portion of the peninsula from its adjoining and neighboring owners. In October 1903, four easement deeds recorded in Book 35, at pages 296, 297, 298 and 300, H. Hobart Babcock, Alice Brien, Frank Larkin and John W. Sweeney, respectively, granted a series of 20 foot easements over their respective Napatree properties, effectively connecting all of the Government's land to Bay Street (and the Town's established highway network). The descriptions for these easements were corrected by 1909

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Re: Fort Road, Watch Hill  
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instruments, recorded in Book 39 at page 433 and page 434. The record suggests that Larkin owned all of the land between the Government's easternmost parcels and Bay Street, and that [from east to west] Sweeney, Babcock and Brien, respectively, owned the land between the Government's easternmost parcels and its westernmost parcels. Those westernmost parcels comprised the west end of Napatree and all of Sandy Point, which were physically connected prior to the 1938 hurricane.

The Government divided its holdings on the peninsula into 7 tracts as depicted on the attached map (Map 1) and then conveyed all of its land on the peninsula to the Napatree Corporation in two deeds, the first described Tracts 2 and 7, was dated September 28, 1926 and recorded in Book 51, page 84, and the second described Tracts 1, 3, 4, 5 and 6) was dated January 28, 1928, recorded Book 52, page 84. Those tracts were conveyed together with "*an easement for a 20 foot right of way over and across privately-owned tracts of land...for the purpose of ingress, egress and regress to and from said tracts of land...*" [paraphrased for clarity] and effectively establishing that 20 foot right of way from Bay Street to Sandy Point.

Thereafter, in 1928, the Napatree Corporation reconfigured Tracts 1 and 2 (the easternmost portion of the fort) and divided the same into a five-lot subdivision as demonstrated by its plan recorded in Plat Book 6, pages 13 and 14 (enclosed as Map 2). The plan depicted a proposed 50 foot road and the 5 lots were then conveyed with reference to that plan together with express rights to *pass and repass over the existing "open 20 foot right of way" and the proposed 50 foot road, if and when dedicated and developed* [paraphrased for clarity].

For the purpose of this discussion, we have focused on those parcels presently designated as Westerly Assessor's Map 185, lots 31 and 33 and Map 178, lots 1, 2, 3 and 4. This limitation was determined practical because one must travel on the identified lots to get from the recognized highway system (Bay Street) out to the extremity of Napatree Point.

As stated above, each of the parcels conveyed with reference to the 1928 plan enjoyed rights over the existing road including the right to get to the lots on the plan over the express right of way to and from Bay Street. But the record does not suggest, and we are unable to assume from those deeds, that the developer intended to dedicate the street as shown on the plan to the public, and the absence of subdivision laws in 1928 left the municipality without direction or instruction to accept roads when platted.



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As part of the process, we performed a complete search for one and limited reviews for the titles to the other lots created by the 1928 plan and have detected no recorded evidence of formal dedication or municipal acceptance of that section of road. Although there may be support to the proposition that the laying out of a street on plat may be tantamount to a dedication to public use [citations omitted], it may easily be argued that, if one must access the platted lots by means of a private right of way in the first place (as here), a presumption of public dedication may be overcome.

In addition, we considered the content of title deeds for the land lying between Bay Street and the lots on the 1928 subdivision and found that they merely contain reference to the rights of others to pass through them and provide no expression that those easement rights were for a public thoroughfare.

Accordingly, the land records support the conclusion that the underlying real estate upon which the road is located is not owned by a single person or entity, but, rather, that the ground under the road is vested in those owners of land which is located on either side of the roadway.

Asked specifically, if the Town's ownership of a parcel located on the Napatree peninsula (Plat 178, lot 7, now owned by the Westerly Municipal Land Trust), would elevate the status of a right of way from private to public, our response would be that the fact of ownership of a single unimproved parcel at a remote location along the road's course would not, by itself, establish a sufficient nexus for a public or town road. Certainly, if some facility, open to and benefiting the public at large, was established on a parcel, an argument for the existence of a public road would be much stronger, but certainly that determination cannot be made from land evidence records.

#### LOCATION OF WAY

The location of the first leg of the 1903 twenty foot-wide rights of way from Bay Street is roughly identified on the attached Map 1, but merely referred to in the deeds to the lots depicted on Map 2. It is more precisely located on the U.S Government's 1924 Map (Map 3). Certainly, the 50-foot wide road proposed by Napatree Corporation in 1928 is depicted on Map 2, but without perspective relative the location of the 20-foot right of way. Sections of the "old road" and the "new road" are depicted on maps recorded in the land records and attached as Maps 4 and 5.

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A presumably accurate representation of the road's location before the 1938 hurricane is depicted on the old Assessor's Map 14 (also enclosed as Map 6). Current assessor's maps seem to track the same or a substantially similar course before trailing off to the southwest and then terminating before reaching its prior westerly extremity.

Deeds to the Watch Hill Fire District for its real estate located on the west side of Bay Street through which the road passes do not call for the road as a boundary, but rather one deed expresses that "*the described property is subject to any and all rights of way now existing in favor of owners of the land on Napatree Point*" (39 WLER 591) and another deed expressed that the conveyance was "*subject to all rights of way, if any, over the premises*" (63 WLER 247). Similarly, the property descriptions reviewed for those other parcels west of Bay Street do not characterize the road as a boundary, but merely express that a road or way runs through the described parcel without material geometric reference to the road's location.

An inspection of the ground may identify the remains of an old improved road and, certainly, if sufficient monumentation were to be located, the descriptions contained in the 1903 easements (as corrected) and the roadway as depicted on several maps may be quantified by a survey, but that is beyond the scope of our analysis. It must be noted that, even if the road may be precisely located, that fact does not aid us in concluding whether it is a private or public way.

#### DOCK or WHARF

Maps reviewed identify a wharf extending into the ocean from the land now identified as AP 182, lot 1, now owned by the Watch Hill Fire District, and previously owned by the U.S. Government, but we have uncovered no land evidence of docks or launches into the bay located west of the Yacht Club.

As expressed above, we recognize that the Town of Westerly has held title to land on Napatree Point, identified as Plat 178, lot 7, which was recently conveyed to the Westerly Municipal Land Trust. The Town's ownership or control of property with its special characteristics of frontage on the bay and the ocean may give rise to some common law rights to wharf out and develop a dock or a launch, however, there is no express grant of those rights in the land records; such rights, if any, exist under the State's constitution and there is little doubt that approval for such action and related activity would be placed within the jurisdiction of the Rhode Island

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Coastal Resources Management Council. We offer no opinion with regard to the likelihood of any CRMC permitting.

#### CONCLUSION AND COMMENTARY

Based upon the limited search conducted, we have concluded that there is no meaningful evidence in the land records to support the proposition that Fort Road is a town road, and, based upon our experience with such matters, we see no practical benefit in extending the search to exhaustion in order to change that conclusion. Certainly, there may be something yet uncovered which may help clarify a point or buttress a legal argument, but we are satisfied that the process would only be a protracted exercise rendering little or no material change in result.

Regardless whether Fort Road is a town road or not, it is asserted that its location may be geometrically determined, in part by the land evidence records, while surveying would undoubtedly be required to confirm if that which is described or depicted on the land records was actually constructed (and surviving) on the ground.

Based upon the preliminary search conducted, we can assert that there is no special right to dock or wharf in favor of the town identified in the land records. Any docking rights the Westerly Municipal Land Trust may possess is merely appurtenant to its ownership of real estate with waterfront characteristics.

Despite the fact that the land records do not provide evidence that Fort Road is a town road, other factors—outside the land records—should be considered. Those factors include an examination of the actual use of the road over an extended period of time to determine if the general public has enjoyed the use of the roadway, whether the public has ever been excluded and whether the municipality has ever repaired, maintained or improved the road at public expense. Town Council and Public Works records may be of assistance in answering some of these questions. Anecdotal evidence of continued, uninterrupted, unchallenged use by private citizens for a significant period of time may aid in determining if the roadway is open and apparent and in use by the public.

The distinction between private roads used by the public and statutory town [or common law public] roads may be blurred by numerous factors, but, as previously reported, once an existing road is determined to be open for the necessary period of time and provides for the public

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benefit, the Town Council possesses the right to declare the same as a public road under proper circumstances (see R.I.G.L. §24-2-1).

Respectfully submitted,

Charles Soloveitzik

Legend of Attachments:

- Map 1 - Fort Mansfield composite, 1924
- Map 2 - Napatree Corporation (5 lot subdivision), 1928
- Map 3 - Fort Mansfield detail (East), 1923
- Map 3A - Fort Mansfield detail (West), 1923
- Map 4 - William S. Morehead's land, 1927
- Map 5 - Watch Hill Beach, 1936
- Map 6 - Old Tax Map No. 14
- Map 7 - Composite current tax maps in vicinity.

# **EXHIBIT G-2**



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March 30, 2023

Westerly Town Council  
Town Hall  
45 Broad Street  
Westerly, RI 02891

**Re: WHFD Public Comment regarding Fort Road**

Dear Honorable Members of the Westerly Town Council:

We represent the Watch Hill Fire District and submit this written comment on several issues concerning the former Fort Road, which has been the subject of several recent Westerly Town Council meetings.

On November 17, 2022, on behalf of The Watch Hill Conservancy (“WHC”) and the Watch Hill Fire District (“WHFD”), this firm sent a letter to the Town explaining why:

- The land records and the Town’s history demonstrate that the easement often referred to as Fort Road that ran from Bay Street to and along Napatree Point was always a private easement held by certain owners of property on what was then considered Napatree Point.
- This private easement terminated after the 1938 hurricane devastated Napatree Point and after years of ocean wash over shifted the land on the point. The owners of the easement never relocated, reestablished or replaced this private easement.
- As the Town’s title attorney concluded in 2007, the easement holders never created, built or dedicated a public road on Napatree Point.
- The 2008 Town Council Resolution designating Fort Road as a public right-of-way is ineffective for many reasons.

The Town Council’s statements and actions over the past few months indicate that it, nevertheless, has either already asserted, or intends to assert, that a 20-foot public right of way runs from and across several properties in downtown Watch Hill and through Napatree Point, including property or easements owned by the WHFD and the WHC, as well as others. At the

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last Council meeting, and in direct violation of the open meeting law, a majority of the Council seemed to “declare” that there is a public right of way across the property of the WHFD, the WHC and others leading to and across these areas, although the path of this alleged 20 foot right of way remains unclear. That declaration directly harms the property interests of the WHFD, the WHC and others and is overreaching and irresponsible for several reasons.

First, this Council has shielded itself from exploring the factual or legal basis for this alleged public ROW. The Council affirmatively rejected an offer by its Solicitor to conduct or manage the legal research and title work necessary to advise the Town on whether there is a public ROW. The Council then attempted to halt the Town Manager’s ongoing research on documents and maps that might provide information on this issue.

Second, the Town’s own title attorney confirmed that no public road runs from Bay Street to and across Napatree Point. In 2007, the Council retained Attorney Charles Soloveitzik to determine whether a public road ran to and across Napatree Point. After a diligent examination of the records, Attorney Soloveitzik unequivocally concluded that Fort Road is not a public road: “we found no evidence in the land records to support the conclusion that Fort Road is a town road.”

Third, the Council’s reliance on the 2008 Resolution is misplaced at best. For the reasons explained in our November 17, 2022 letter, town councils do not have the authority to transform private land to public land by declaration or resolution. Further, the Solicitor’s statement at one of the Council meetings that the 2008 Resolution is valid indicates only that the Council validly enacted the resolution. The Council seems to have concluded that the Solicitor endorsed the conclusion that the Resolution’s declaration that Fort Road is a 20-foot public right of way to and across Napatree Point either creates rights or validly reflects the results of a title search. We do not believe he endorsed either conclusion; he could not have done so in the absence of the legal research the Council refused to authorize. The only title search conducted by the Town regarding Fort Road, the 2007 Soloveitzik report, reaches the opposite conclusion.

Rhode Island law protects the rights of property owners. There are many reasons why the Council’s present course violates the property rights of the WHFD, the WHC, and likely others. We urge the Council to halt its announced intention to declare a public right of way to and across these Watch Hill downtown areas, including Napatree Point; there is no reasonable basis in law or fact for that conclusion.

Very truly yours,



Gerald J. Petros

GJP:cw

# **EXHIBIT G-3**





March 30, 2023

Dear Members of the Westerly Town Council

I write on behalf of the Watch Hill Fire District with regard to "Fort Road" and access to the Napatree Point Conservation Area. There has been much discussion on this matter during many recent Town Council meetings, including at the last meeting on March 20<sup>th</sup>. During that meeting, it appears as if "action" was taken on the topic. Because the topic was not on the agenda, we had no notice to be allowed an opportunity to comment.

Contrary to what has been said at these meetings by various Council members and speakers, neither the Watch Hill Fire District, nor The Watch Hill Conservancy are fighting access. To the contrary, we have gone out of our way to protect access, provided it is consistent with our conservation efforts, through our Conservation Easement, which is a public document and with which you have all been provided copies. We know of no one who has ever been denied access to the conservation area under these very reasonable conditions. Over 40,000 visitors enjoyed the Conservation Area last year alone. Additionally, the Watch Hill Fire District has and continues to provide and preserve parking and restrooms available to the public to enjoy all the amenities Watch Hill has to offer. It is not clear to us what else the Town Council is trying to accomplish.

We do, however, take strong issue with actions being taken without a full understanding of the underlying facts and the negative impact these actions have not only on our rights but the rights of other property owners, and the potential damage to the magnificent, fragile ecosystem that is the Napatree Point Conservation Area. There are several other unintended consequences to these actions, including, but not limited to significant safety issues, unbudgeted expenses on behalf of the town, and unnecessary divisiveness in the community.

On November 17, 2022, on behalf of The Watch Hill Conservancy and the Watch Hill Fire District, Attorney Gerald Petros wrote a very detailed letter to Town Solicitor, William Conley. This letter, copies of which you have all received, was sent to Solicitor Conley to help clarify the facts and our position. You have also received copies of the Town's original, and to our knowledge, only title search of Fort Road by Attorney Charles Soloveitzik from 2007. This opinion, by the Town's own attorney, at the request of the Town Council, provided a legal opinion that Fort Road was never a town road. Historically it was a private right of way. We are unaware of any title work that has been done to contradict that finding. We submitted the map that you requested of the historic private right of way's illustrating parts of it are under water. You also instructed Town Manager Lacey to do further research, and yet appeared to have come to "consensus" without the benefit of any such research.

During the Town Council meeting of March 6, a number of you very specifically asked questions as to the standing of the Town's 2008 Resolution. We believe there to have been some misunderstanding on behalf of Town Solicitor Conley and the Councilors themselves as to those questions and answers. We urge you to ask the Town Solicitor to clarify his legal opinion in public so that all can hear on the record whether the 2008 Resolution somehow created a public right-of-way that the town's title attorney could not find in 2007.

Watch Hill, including the Conservation Area, remains a magnificent part of the Town of Westerly, enjoyed by tens of thousands of residents and visitors annually, as they have been for over a hundred years. Watch Hill is a vital part of what makes the Town of Westerly special on many levels. We implore you to take the time to get the information and facts you need in order to clear up the unnecessary confusion so that we may all turn our attention to many other pressing matters, including the very real risks of flooding and sea level rise. Please help us continue to preserve and conserve this magnificent section of our town and not cause more divisiveness, unnecessary legal and other expenses and damage to this precious natural resource.

Thank you for your time and consideration.

Sincerely,



Joan Beth Brown  
Moderator, WHFD

cc. William Conley, Town Solicitor  
Shawn Lacey, Town Manager