

STATE OF VERMONT  
BEFORE THE  
PUBLIC UTILITY COMMISSION

|                                                   |   |                      |
|---------------------------------------------------|---|----------------------|
| Petition of Chelsea Solar LLC, pursuant to 30     | ) | Case No. 17-5024-PET |
| V.S.A. § 248, for a certificate of public good    | ) |                      |
| authorizing the installation and operation of the | ) |                      |
| “Willow Road Project,” a 2.0 MW solar electric    | ) |                      |
| generation facility located off Willow Road in    | ) |                      |
| Bennington, Vermont                               | ) |                      |

**CHELSEA SOLAR LLC’S POST-PFD REPLY BRIEF ON  
THE DEFINITION OF A PLANT AND RELATED MATTERS**

Chelsea Solar LLC (“Chelsea”) respectfully submit this response to the brief filed by the Department of Public Service (the “Department”) and one from intervenors Apple Hill Homeowners Association and Maru Leon (collectively, “AHHA”) on March 1, 2019.<sup>1</sup>

The brief from the Department concludes, as does the Chelsea opening brief, that the Apple Hill Project and the Willow Road Project are separate plants, the differences between PC156 and the Willow Road Project are consistent with the Vermont Supreme Court’s decision in *In Re Programmatic Changes*, 2014 VT 29, and that no amendment to the standard-offer contract is necessary. In sharp contrast, rather than framing its response in the proper legal construct of the applicable definition of “Plant” as set forth in 30 V.S.A § 8002(14) (2014), as interpreted by the Vermont Supreme Court’s 2014 ruling, the AHHA submission instead repeats meritless personal attacks on the character and actions of the Petitioner.<sup>2</sup>

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<sup>1</sup> Chelsea incorporates by reference the definitions and analysis set forth in Chelsea’s February 19, 2019 Opening Brief on the post-hearing issues raised by the Commission.

<sup>2</sup> Chelsea has previously shown that the claims of Bill Knight, President of the AHHA, are simply false. See, Case No. 17-4695, *Petition of Chelsea Solar, LLC for relief from standard-offer contract milestone*, Supplemental Comments of Chelsea Solar LLC dated February 14, 2018.

The excessive, relentless, falsely-based and unjustified legal challenges have delayed the CPG more than 4 years, costing Chelsea hundreds of thousands of dollars in unnecessary costs. The intervenors' misplaced focus on Russett Drive or any other public road that may be used to access the Project is simply irrelevant. The Commission has already correctly held that public roads are not "access roads" within the meaning of the statute. *See, Applications of Westman GLC Solar, LLC and Cambridge GLC Solar, LLC*, Case Nos. CPG NMP-6045 and NMP-6046, Order of 11/10/15, 2015 WL 7348715 at 9 ("The use of a public road by two projects is not a shared use of infrastructure"). The fact that both the Willow Road Project (as the neighbors' requested) and the Apple Hill project would use Willow Road, a public road, is immaterial, as Chelsea has shown in its Opening post-PFD brief. Each project has its own separate access off of Willow Road.<sup>3</sup>

Further, as Chelsea has pointed out in its Opening post-PFD Brief, Chelsea's standard-offer contract contains no point of interconnection, nor does it describe or specify public road access or the location of the access drive to be built between a public road and the array. Paragraph 9 of the standard-offer contract addresses "Project Location, Design, Construction and Interconnection." It states in pertinent part: "Producer shall construct the Project at the location and in a manner substantially consistent with the description set forth in Attachment A." There is

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<sup>3</sup> The intervenors' meritless claims include their frequently-repeated, baseless assertion regarding use of public roads in the AHHA neighborhood. As even the AHHA governing documents expressly state, those roads are public roads. *See, Exhibit A*, at p. 6. The Town maintains those roads at public expense. The intervenors' continual assertion that they have some legal right regarding the use of a public road is frivolous. Similarly, the intervenors continued assertions regarding what the adjoining apple orchard parcel can or cannot be used for, and their purported rights, are similarly frivolous and the intervenors should not be permitted to continue to abuse the process by repeating irrelevant, baseless and false claims. *Exhibit A* (the AHHA rule book and by-laws) contains a map of the AHHA subdivision. It shows three things that relate to the false claims perpetuated by the intervenors and their cohorts. *First*, the adjoining parcel—the orchard parcel—is not part of the AHHA subdivision. The apple orchard lot was created in a separate subdivision twenty years later. *See, Exhibit B*. *Second*, the solar site is not part of the AHHA subdivision. *Third*, the subdivision map shows an extension of Russett Drive connecting Russett Drive to the Willow Road parcel.

no reference to project CPG plans or public roads from which access would be gained. Attachment A simply provides: “Project will be a 2 MW AC solar photovoltaic generation facility to be located at 1033 Willow Road on the northerly portion of a 27 acre parcel in Bennington, Vermont. The interconnecting utility is Green Mountain Power Corporation.” The CPG Permitting process is separate and apart from the standard offer contract, and the scope of the standard offer contract is not at issue in this section 248 proceeding.

Chelsea has gone to great lengths to make sure that this Project has no undue visual or other adverse impact on the neighboring properties, or from public vantage points. The Project is also well-sited, which was re-iterated to Ms. Harris in an email from the Vice Chair of the Bennington Select Board, Don Campbell (who is also the regional representative of the Vermont Land Trust) on June 16, 2017, Exhibit CS-BW-17:

In this case, the lot is small, there is no river or lake to protect, the forest is in terrible condition (basal area is so low it barely qualifies as forest in many places and it is rife with invasives), it does not connect to other conserved lands, it is not part of an animal corridor, it does not provide significant public access, it is not high quality farm land nor is it suitable for low-income housing, and is not tribal or cultural heritage land.

Similarly, the intervenors’ claims in their discussion of the system impact study are meritless, for the reasons stated in Chelsea’s opening brief. Moreover, as the intervenors’ point out, the recloser (or reclosers) are GMP-owned equipment and are not part of either project’s interconnection infrastructure. Equally meritless is the intervenors’ objection to GMP’s conducting a combined study in queue order for both projects. If the intervenors have an issue with how GMP conducts system impact studies then they can bring their complaint to the Commission or the Federal Energy Regulatory Commission in a separate proceeding.

More than sixteen months ago, in its October 12, 2017 Order, the Commission invited Chelsea to withdraw its Supreme Court appeal, and in return the Commission would “*promptly*

review a new Chelsea petition reflecting a new Willow Road [access] proposal.” Docket No. 8302, October 12, 2017 Order at 5 (emphasis added). Chelsea relied upon that promise when it withdrew its appeal to the Vermont Supreme Court, and decided to continue to make substantial expenditures in this permitting process and the Willow Road project. Chelsea respectfully requests that the Commission schedule the statutorily-mandated oral argument as quickly as possible, and issue the CPG promptly, and in no event later than March 31, 2019, so as to enable Chelsea to begin site preparation before the deadline of April 30, 2019, the passing of which would cause Chelsea to incur even more additional and unnecessary costs for another study.

Respectfully submitted,

/s/Thomas Melone

Thomas Melone

Bar No. 5456

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New York, NY 10019

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Email: Thomas.Melone@AllcoUS.com

*Attorneys for Chelsea Solar LLC*

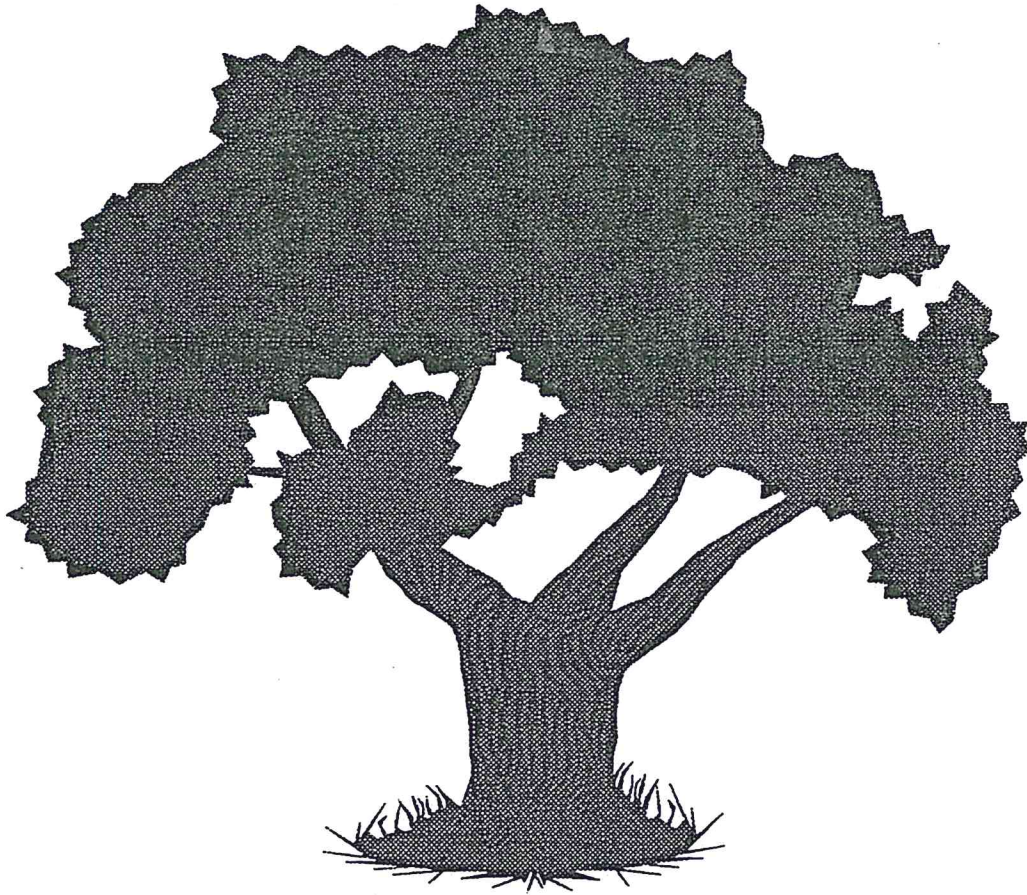
Dated: March 8, 2019

Attachments

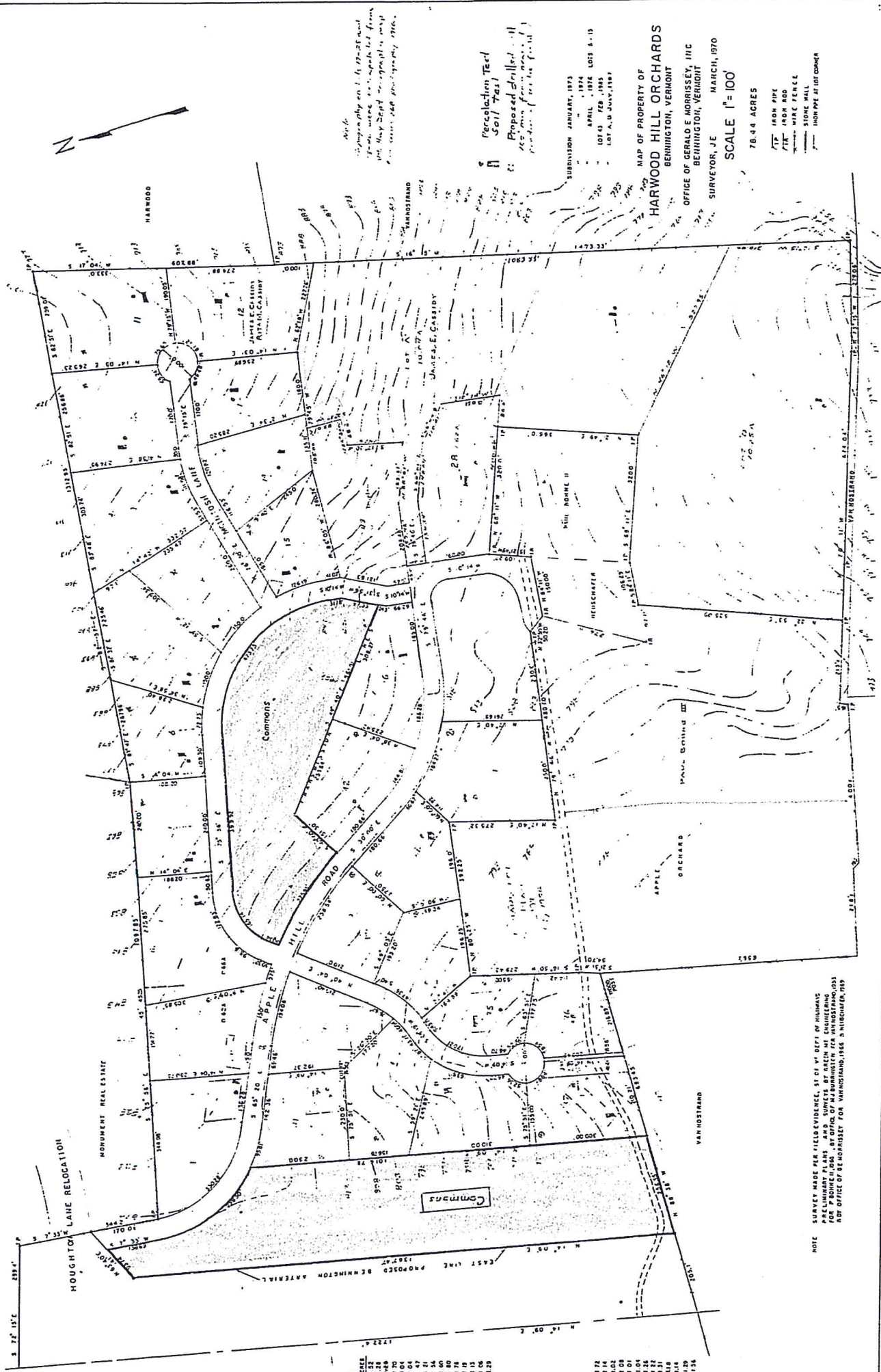
1. Exhibit A—AHHA documents
2. Exhibit B—orchard lot subdivision

## **EXHIBIT A**

Absolutely no ATVs  
or dirt bikes allowed



APPLE HILL HOMEOWNERS  
ASSOCIATION  
RESIDENT DIRECTORY



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NOTE  
SURVEY MADE PER FIELD EVIDENCE, ST. OF VT. DEPT. OF HIGHWAYS  
AND RECORDS, AND BY REFERENCE TO RECORDS OF THE  
OFFICE OF THE ENGINEER, STATE OF VERMONT, AND  
OFFICE OF THE ENGINEER, STATE OF NEW YORK, AND  
OFFICE OF THE ENGINEER, STATE OF MASSACHUSETTS, 1965.

Percolation Test  
Soil Test  
Proposed Drilled Well  
100' min. from nearest  
structure (see field notes)

SUBDIVISION JANUARY, 1973  
APRIL, 1974  
10143 FEB. 1985  
LOT A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z

MAP OF PROPERTY OF  
HARWOOD HILL ORCHARDS  
BENNINGTON, VERMONT  
OFFICE OF GERALD E. MORRISSEY, INC.  
BENNINGTON, VERMONT  
SURVEYOR, J.E. MORRISSEY, JR.  
MARCH, 1970  
SCALE 1" = 100'

78.44 ACRES

IRON PIPE  
IRON ROD  
WIRE FENCE  
STONE WALL  
IRON PIPE AT LOT CORNER

**APPLE HILL HOMEOWNERS ASSOCIATION, INC.**  
**BY-LAWS (Revised March, 2007)**

**I. PURPOSES AND OBJECTS**

In amplification of the purposes for which the corporation has been formed as set forth in the articles of incorporation, the purposes and objects are as follows:

- a) To develop a community designed for safe, healthful, and harmonious living.
- b) To promote the collective and individual property and civic interests and rights of all persons owning property in Bennington as said property is shown on that certain map entitled Map of \_\_\_\_\_, being a subdivision of Apple Hill in Bennington, filed for record on April 1, 1982 in Volume 0-238 of Maps and on page 33 in the office of the Recorder of the County of Bennington, State of Vermont.
- c) To care for the improvements and maintenance of the common lands, in their natural state, to pay all state and local assessments on the common lands, to assure that the common lands are used for the benefit of all the members of the corporation and in conformity with the quiet enjoyment of the members' individual lots and to prevent the common lands from becoming a nuisance and a detriment to the beauty of the tract and to the value of the improved property therein.
- d) To cooperate with the owners of all vacant and unimproved lots and plots now existing or that hereafter shall exist in the tract in keeping them in good order and condition, in preventing them from becoming a nuisance and a detriment to the beauty of the tract and to the value of the improved property therein, and to take any action with reference to such vacant and unimproved lots and plots as may be necessary or desirable to keep them from becoming such nuisance and detriment.
- e) To aid and cooperate with the members of this corporation and all property owners in the tract in the enforcement of such conditions, covenants, and restrictions of and appurtenant to their property as are now in existence, as well as any other conditions, covenants and restrictions as shall hereafter be approved by a majority vote of the members of the corporation, and to counsel with the Planning Commission and Zoning Board of Bennington having jurisdiction in relation to any zoning that may affect any portion of the subject property. The only restrictions on the individual lots in existence at the time of the formation of this Association are to be allowed. No further restrictions are to be added to those already in existence. A majority vote of the members of the corporation is required to initiate any legal action of enforcement by the corporation.
- f) In general, but in connection with the foregoing, to do any and all things necessary to promote the general welfare of the residents and owners of any portions of Apple Hill and their property interests therein, including the right to convey the common lands to

any governmental authority for use as park land in conformity with the purposes of the corporation and after a 2/3 majority of the members of the corporation approves a conveyance.

g) To acquire, own, lease, or dispose of real and personal property as may be necessary or convenient for the transaction of its business and the fulfillment of its purpose and objects, and to exercise all rights, powers, and privileges of ownership to the same extent as natural persons might or could do. Any indebtedness not covered by the annual assessments shall require a 2/3 vote of the members of the corporation before being undertaken.

h) To arrange social and recreational functions for its members.

i) This corporation shall not engage in political activity or pursue political purposes of any kind or character.

j) To exercise any and all powers that may be delegated to it from time to time by the owners of real property in the tract.

k) In the event of the corporation, or any successor organization, shall cease to exist during the lifetimes of Paul W. Bohne III and Nancy S. Bohne, without adequate disposition having been made for the common lands, then and in that event the lands described in the deed, together with all improvements thereon, shall revert to Paul W. Bohne III and Nancy S. Bohne, or to the survivor of them. In the event that neither Paul W. Bohne III nor Nancy S. Bohne is living at the time that the corporation, or successor thereto, ceases to exist for any reason, then and in that event, the common lands described in the deed, together with all improvements made thereon, shall revert in equal shares to the present children of Paul W. Bohne III and Nancy S. Bohne herein surviving as of the date when such corporation ceases to exist.

l) Upon submission of plans of any new construction to the officers by the builder, the officers shall review said plans and submit any appropriate comments to the builder.

## II. MEMBERS

a) Class of Members. The corporation shall have one class of members. The qualifications and rights shall be as follows:

1. Every beneficial owner, as distinguished from a security owner, of a residential unit in Apple Hill in the County of Bennington, State of Vermont, as herein particularly described, shall be a member.

2. Membership shall include an undertaking by the applicant to comply with and be bound by the articles of incorporation, these by-laws and amendments thereto, and the policies, rules and regulations at any time adopted by the corporation in

accordance with these by-laws. Membership shall be accompanied by payment of the first years, assessment in advance.

3. Membership in this corporation shall terminate on such member's ceasing to be a beneficial owner of a residential building site, lot, or unit in or on the property described herein.

b) Voting Rights. Each member in good standing shall be entitled to vote on each matter submitted to a vote of the members, provided however, that each member shall be the sole beneficial owner of a residential building site or residential unit in Apple Hill. A member shall have one vote regardless of how many lots he owns. Where two or more owners own a lot, or in the event of a resubdivision, only one vote for such lot or unit owned shall be allowed, and such joint owners shall designate and register with the secretary of the corporation the name of that owner entitled to cast such single vote.

1. At membership meetings all votes shall be cast in person, or by proxy registered with the secretary.

2. The officers are authorized to establish regulations providing for voting by mail.

c) Assignment of Rights. A beneficial owner who is a member of the corporation may assign his membership rights to the tenant residing in or on the beneficial owner's building site or unit. Such assignment shall be effected by filing with the secretary of the corporation a written notice of assignment signed by the beneficial member.

### III. MEETINGS OF MEMBERS

a) Annual Meeting. An annual meeting of the members for the purpose of hearing reports from all officers and standing committees and for electing officers shall be held in the County of Bennington, State of Vermont in March of each year, beginning with the year 199. The time and place shall be fixed by the president.

b) Regular Meeting. In addition to the annual meetings, regular meetings of the members shall be had at such time and place as shall be determined by the president.

c) Special Meetings. A special meeting of the members may be called by the president. A special meeting of the members must be called within 10 days by the president, if requested by not less than 7 of the members having voting rights.

d) Notice of Meetings. Written notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail to each member entitled to vote at such meeting, not less than 7 days before the date of such meeting, or at the direction of the secretary.

e) Quorum. The members holding 51% of the votes that may be cast at any meeting shall constitute a quorum for any meeting considering amendments to these By-Laws.

f) Proxies. At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after 3 months from the date of its execution, unless otherwise provided in the proxy.

g) Voting by Mail. Where officers are to be elected by members, or where there is an act requiring the vote of the members, such election or vote on such proposed action may be conducted by mail in such manner as the officers shall determine.

#### IV. OFFICERS

a) The officers of the corporation shall be a president, a secretary and a treasurer.

b) Qualifications and Method of Election: The officers shall be members of the corporation, shall be elected by the members of the corporation and shall serve for a term of one (1) year.

c) President. The president shall preside at all meetings of the corporation and of the officers at which he or she is present, shall exercise general supervision of the affairs and activities of the corporation, and shall serve as a member ex-officio at all standing meetings.

d) Secretary. The secretary shall keep the minutes of all of the meetings of the corporation, which shall be an accurate and official record of all business transacted. The secretary shall be custodian of all corporate records.

e) Treasurer. The treasurer shall receive all corporate funds, keep them in a bank approved by the officers, and pay out funds only on notice signed by him or her and by one other officer.

f) Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by any member of the corporation appointed by the officers for the unexpired portion of the term.

g) The budget for the year shall be set at the Annual Meeting and shall be approved by a simple majority of the members at that meeting.

#### V. FEES, DUES AND ASSESSMENTS

a) Admission Without Fee. Record ownership of a residential building site or (in the event of resubdivision) of any of the sites as shown on any unit or units of the property particularly described, without payment of an admission fee, shall establish the owner as a member of this corporation.

\$40.00

b) Annual Assessment. Annual assessment shall be each members pro-rata share of the property taxes and insurance for the land owned in common by the member plus any other expenses incurred by the association.

c) Payment of Annual Assessment. The annual assessment shall be payable by the annual meeting of the members for the current fiscal year.

d) Assignment of Assessment. In the event of any member whose assessment is paid, terminates his or her membership by the sale of his or her lot or unit in Apple Hill, he or she shall be entitled to assign to the buyer of such building or lot the benefit of the paid up assessment.

e) Failure to pay Assessment. Any member who should fail to pay the assessment within one year following the due date shall forfeit voting rights. Voting rights shall be restored upon complete payment of the assessment owed.

## VI. FISCAL YEAR

The fiscal year of the corporation shall be the calendar year.

## VII. BY-LAW AMENDMENTS

Proposed amendments to these By-Laws must be submitted to the President prior to the Annual Meeting or special meeting called for the purpose of proposed By-Law changes by February 1<sup>st</sup> or at least ten days before any such special meeting so that it may be perused by members prior to the meeting.

## CONVEYANCE OF COMMON LANDS (By-laws, Purposes and Objects, paragraph F)

This paragraph in the By-laws makes provision for the right to convey the common lands to any governmental authority for use as park land.

The Vermont Land Trust is the only organization known to have any possible interest in acquiring the common land. However, their interest is limited to land of 50 acres or larger; hence, currently there is no opportunity to convey this property to a government authority even if it were so desired.

Because the original Act 250 permit for the development required the existence of the common lands, the common lands cannot be conveyed out of the ownership without being in violation of the Act 250 permit.

## **BUILDING RESTRICTIONS FOR AUXILARY BUILDINGS**

Any structure "having a roof" is required to have a building permit. There is a fee for this. Following construction, the Town building inspector must approve it.

## **PAYMENT OF ANNUAL ASSESSMENT**

A modest annual assessment is assessed to each property owner for the insurance and taxes for the two common lands and for the biennial incorporation fee by the Vermont department of State.

This assessment has been held to a minimum, changing only slightly since the time of the incorporation of the association. The initial assessment as stated in "private buildings and zoning restrictions" by the developer established this assessment at \$25 per lot. As the association developed, the assessment was defined as \$15 for the taxes and insurance plus \$10 for a recreation fee. The recreation program included outings, primarily picnics for the families. At a later date, the annual assessment was reduced by vote to \$15. Any cost of organized recreational activities would be divided evenly by the members participating. After some 20 years from its inception, the assessment was increased to \$20 to cover the small increase in insurance and taxes. Because of the large increase in insurance and taxes at the 2006 annual meeting the annual assessment was increased to \$40. The annual assessment becomes due the beginning of each year, as the fiscal year as defined in the by-laws in the calendar year.

## **POWER LINE RIGHT-OF-WAY**

The right-of-way for the electrical transmission and distribution lines which run through the center for the Apple Hill development are mounted on 45 ft. and 35 ft. poles respectively. The right-of-way is 185 ft. wide.

## **RIGHT-OF-WAY FOR TOWN ROADS**

The roads in the development include a right-of-way on each side for the Town's maintenance.

|                      |        |
|----------------------|--------|
| Total right-of-way   | 50 ft. |
| Approx. road width   | 22 ft. |
| Approx. right-of-way |        |
| On each side of road | 14 ft. |

Even though some properties have a lawn that extends to the edge of the street, the Town has the 14 ft. right-of-way.

The Town is responsible for the maintenance of the drainage and culverts.

## ACT 250 RESTRICTIONS

Dwellings shall be constructed with insulation thermal resistance ratings of at least R-11 in walls and R-22 in ceilings.

Subsurface sewage disposal systems shall be installed in the areas designated on Exhibit 1, referred to in Finding 1 above, under the supervision of appropriate Town of Bennington personnel. Subsurface sewage disposal systems may be located in areas not designated on Exhibit 1, referred to in Finding 1 above, if the location is certified by appropriate Town of Bennington personnel as being at least suitable for subsurface sewage disposal as the areas designated in Exhibit 1, referred to in Finding 1 above. This certification shall be provided to the District Commission in writing.

## APPLE HILL PRIVATE BUILDING & ZONING RESTRICTIONS

The lands hereby conveyed shall not be used for any manufacturing or commercial purposes (other than gardens and horticultural enterprises), public playground, public athletic field, theater or school, nor for any other non-residential purpose whether or not enumerated herein except as herein provided.

The lands hereby conveyed may be subdivided into lots of not less than one acre each. A business office or professional office or studio of a person residing in the dwelling in which such office or studio is located and incidental to such residence shall be permitted on condition that adequate off street parking is provided.

Except as herein provided, no building shall be erected, altered, placed or permitted to remain on any such lot other than one detached single family dwelling not to exceed 2 ½ stories in height and a private garage, greenhouse and a tool or storage house to be used in connection with the maintenance and cultivation of the lands and premises herein conveyed.

Except as herein provided, no structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding, shall be used on any lot at any time as a residence either permanently or temporarily. Nothing herein contained, however, shall be construed to prevent the construction of trellises, arbors, or other structures, whether or not attached to the dwelling, designed for the pleasure or recreation of the owners hereon, nor of private tennis courts, swimming pools or of any other private play area.

No building shall be located on any lot nearer to the lot lines than 25 feet, provided, however, that steps, windows, porches, and other similar projections may be within said distances.

The minimum living area of any dwelling construction on any lot shall be 1500 square feet exclusive of the basement.

No animals or poultry other than household pets kept for non-commercial purposes shall be kept on any of the within conveyed lands. However, animals other than household pets may be kept and sheltered for non-commercial purposes on the within conveyed lands so long as they are a part of a total area of adjacent lands of not less than two acres under one ownership, and if such animals or poultry are confined to an area the bounds of which are not less than 75 feet from any lands owned by others.

No vehicles or other mechanical equipment or parts shall be kept or stored upon the lands herein conveyed unless the same is kept within a garage or other outbuildings as set forth above, or unless the same is being currently driven or operated by the owner or occupiers of the lands herein conveyed. No noxious or offensive activity shall be carried on upon the premises, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Purchaser must begin construction no more than one year after purchase of the property; substantial completion of the exterior and landscaping (lawns, shrubs, etc.) must occur within one year of the commencement of construction.

Plans and elevations for any buildings or structures to be erected on the conveyed premises and showing the proposed location of such premises shall be submitted for approval to Paul W. Bohne, III and Nancy S. Bohne, their heirs and assigns, to insure that the buildings are of such construction and are located in such a manner as to maintain a high quality and good appearance for the proposed residential area.

The lands described above are conveyed subject to the following annual assessment.

The lot described above is subject to an annual charge of twenty-five dollars (\$25.00) payable to the Apple Hill Homeowner's Development, Incorporated (hereinafter Association) which entitles these Grantees, their heirs and assigns, to full membership in the said Association with the right to enjoy such of the privileges, facilities, properties and assigns may from time to time provide for the common use and benefit of the members of said Association.

The charge above set forth is subject to such modification as a majority of the directors may require, provided, however, that no increase above ten percent (10%) per year of the above stated sum may be determined without two-thirds (2/3) of the members approving such increase.

Special assessments may be levied on the common membership of this Association only by a vote of two-thirds (2/3) majority of all members of the Association.

There is included herewith to the Grantees, their heirs and assigns a right-of-way 50 feet in width for all purposes of ingress and egress with teams or on foot, or with powered vehicles over and across the private roadways in the Apple Hill Development.

Said private roadways are to be used in common with the Grantor, its successors and assigns and all others having a like right to use said private roadways, for a right-of-way of ingress and egress to a Town highway.

Paul W. Bohne, III, and Nancy S. Bohne, agree for themselves, and their heirs, executors, administrators, and assigns to maintain the said private roadways and in the winter months plow the snow from the said private roadways. The maintenance of said private roadways and the plowing of snow on the same shall cease at such time such private roadways are deed to and dedicated to the Town of Bennington, Vermont, as a public highway.

## APPLE HILL HOMEOWNER'S ASSOCIATION BACKGROUND

The property, which was previously known as the Harwood Hill Orchards, was developed by the Bohne family in the 1970's. Because the land to be developed was classified as a RCON (Rural Conservation) Zone, certain restrictions in lot size applied, namely, a minimum of 80,000 sq. ft. (1.84 acres).

In order to develop the number of lots perceived by the owners, certain conditions required special consideration.

- The new US Route 7, a limited access highway, would be constructed along the western end of the proposed development.
- Electrical distribution lines and high voltage transmission lines ran through the center of the area.
- Access to Houghton Lane was needed and roads serving residents within the development were needed.

A plan was conceived by the owners using the "cluster" concept wherein lots smaller than 1.84 acres, but at least 1 acre, could be used and certain areas would be designated as common land (or "Commons") which would be owned by the residents and would remain undeveloped. This plan was approved by the Town authorities.

The resulting lot sizes range from 1.80 acres to 1.01 acres. The common lands are:

1. Central area: bordered by Astrachan Drive part of Apple Hill Road, and by two bordering lots (4.51 acres).
2. Western area: bordered on the east by three lots on Russett Drive, on the north by Apple Hill Road and by one lot on the west side of Apple Hill Road on the west by a line about 250 feet west of the aforementioned Russett Drive lots, and on the south by the Van Nostrand property (6.91 acres).

Not all of the original proposed lots were found to be suitable for building houses due to negative results in percolation tests. As a result, two larger lots at the eastern end of the development were formed by consolidating some of these lots with a third originally proposed common area. Each of these lots named "A" and "B" contained a location where water and sewer facilities could be provided. Lots "A" and "B" were later sold and developed.

The "cluster" concept has benefited the residents in two ways:

1. It has provided a means of dealing with the power lines coming through the area by isolating them to some extent by a wooded area.
2. It has insulated the residents from the traffic noise on Route 7, particularly those residents on Russett Drive and the resident on the west side of Apple Hill Road near the entrance from Houghton Lane, by providing a densely wooded buffer zone.

Other benefits in the development of the Apple Hill area are:

1. The Town of Bennington agreed to pave and maintain the original roads.
2. Electrical supply lines for the individual houses are underground enhancing the naturalness and beauty of the area.

The benefit of the Town's agreement to take over the original roads cannot be overstated. Other developments within the Bennington town limits built since the Apple Hill development was built have had to maintain their own roads causing great dissatisfaction for the residents. It has also been costly for them.

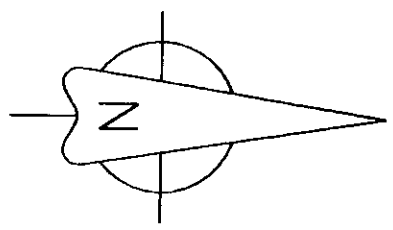
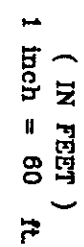
Once the sale of the Apple Hill lots commenced and houses were being constructed, steps were taken by the developer to incorporate the Apple Hill Homeowner's Association with the State of Vermont. This was done in 1974.

The Articles of Incorporation define the purpose and requirements of the Association. Act 250 establishes more detailed requirements that must be met. In addition to Act 250 requirements, the developer provided other detailed requirements. Both the Act 250 and the developer's requirements should be a part of every homeowner's deed. Once the Association was established and incorporated, by-laws governing meetings, officers and other details were worked out with input from both the homeowners and the developer.

In 1987 a parcel of land adjacent to the Bohne family orchard was offered for sale, was purchased and a house constructed on it. This property was then included as a part of AHHA.

Each member should review the attached information in order to understand the homeowner's position in the Association.

## **EXHIBIT B**



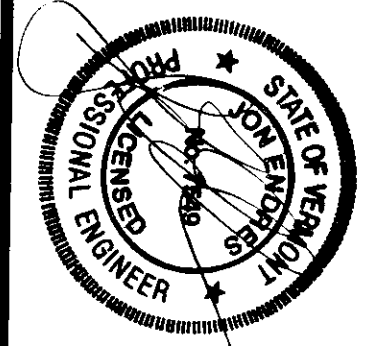
"THE SUBDIVISION REGULATIONS OF THE TOWN ARE A PART OF THIS PLAT, AND APPROVAL OF THIS PLAT IS CONTINGENT ON COMPLETION OF ALL THE REQUIREMENTS OF SAID SUBDIVISION REGULATIONS, EXCEPTING ONLY ANY VARIANCES OR MODIFICATIONS MADE IN WRITING BY THE DESIGN REVIEW BOARD, AND ATTACHED HERETO."

ZONING CLASSIFICATION: RURAL CONSERVATION (RCON)

MINIMUM LOT SIZE: 80,000 SF  
MIN LOT WIDTH 200 FEET  
MIN FRONT YARD 50 FEET  
MIN SIDE YARDS 30 FEET  
MIN REAR YARD 50 FEET  
MAX BUILDING HEIGHT 30 FEET  
MAX BUILDING COVERAGE 10 FEET

Tennell Ross  
EC-806974  
9119601

SUBDIVISION OF PROPERTY  
PAUL AND NANCY BOHNE  
APPLE HILL ROAD  
BENNINGTON, VERMONT  
AUGUST 2001



***West Mountain Engineering***  
POST OFFICE BOX 499  
SHAFTSBURY, VERMONT 05262  
802-442-2892

CIVIL ENGINEERING      SITE DEVELOPMENT

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|-----|---------|----------------------------------|-----|
| A   | 9/18/01 | WELL SHIELD/REPLACEMENT AREA EX. | JFE |
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| NO. | DATE    | DESCRIPTION                      | BY  |