

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 331-4-19 Cncv

PLH, LLC)
 Plaintiff,)
 v.)
))
LIBBY HARRIS f/k/a LIBBY GARRISON,)
APPLE HILL HOMEOWNERS ASSN., INC.,)
ESTATE OF EARL SENECA, and)
PAUL W. BOHNE III & NANCY S. BOHNE)
 Defendants)

LIBBY HARRIS,)
 Counterclaimant &)
 Third-party Plaintiff,)

 v.)
))
PLH, LLC and/or)
PLH VINEYARD SKY LLC)
 Counterclaim Defendant(s))
 and)

ALLCO RENEWABLE ENERGY LIMITED,)
ALLCO FINANCE LIMITED,)
ALLCO FINANCE LIMITED, LLC)
ECOS ENERGY, LLC,)
APPLE HILL SOLAR, LLC,)
CHELSEA SOLAR, LLC, and)
THOMAS P. MELONE, the individual,)
 Third-party Defendants)

COUNTERCLAIMS and THIRD-PARTY CLAIMS
OF LIBBY HARRIS

NOW COMES Defendant/Counterclaimant/Third-party Plaintiff Libby Harris, by and through her attorneys Valsangiacomo, Detora & McQuesten, P.C. and hereby pleads the following Counterclaims against PLH, LLC and/or PLH Vineyard Sky, LLC and Third-party Claims against Allco Renewable Energy Limited; Allco Finance Limited; Allco Finance Limited, LLC; Ecos

Energy, LLC; Apple Hill Solar, LLC; Chelsea Solar, LLC; and Thomas M. Melone, the individual, seeking Declaratory Judgments, Injunctive Relief, Compensatory Damages, Attorneys fees, Expenses and Costs of suit, Punitive Damages, and such other relief as this Court deems just and equitable.

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PARTIES

1. Defendant/Counterclaimant/Third-party Plaintiff Libby Harris (“Ms. Harris”) is an individual resident of Bennington, Vermont. Ms. Harris is the current and sole owner of certain lands and premises, containing 2.47+/- acres with a residential dwelling thereon, commonly known, and referred to herein, as the “Orchard Lot,” which is part of the residential subdivision known as the Apple Hill Residential Subdivision located in Bennington, Vermont.

2. Plaintiff/Counterclaim Defendant Property Land Holding LLC (“PLH LLC”) is or was an Indiana Limited Liability Company with a principal office located at 145, Pine Haven Shores, Suite 1000A, Shelburne, Vermont. PLH, LLC is or was in the business of “property and land holding” for Allco Renewable Energy Limited and “purchases land for Allco’s solar projects throughout the U.S.” (See <http://allcous.com/plh/>). PLH, LLC is or was owned and controlled by Thomas Melone who is or was its sole owner and its sole Member.

3. PLH, LLC is the current and sole record-title owner of certain lands and premises, containing 5.63 +/- acres commonly known, and referred to herein, as “Lot #1” which is part of the Apple Hill Residential Subdivision located in Bennington, Vermont and subject to the Apple Hill Homeowners Association Covenants and Deed Restrictions. See *Complaint at ¶ 9*; See also this Court’s Ruling on *Apple Hill’s Motion for Summary Judgment*, dated July 15, 2020.

4. PLH, LLC is also the record title owner of a 26.8 +/- acre parcel of property (referred to in this litigation as the “Van Nostrand Lands”) which abuts Lot #1 on its western and southern boundaries and which abuts other lots in the Apple Hill residential subdivision on their southern boundaries. The 26.8 Van Nostrand parcel is where the corporate entities related to PLH, LLC have been endeavoring to develop the commercial solar project(s) known as Chelsea Solar, LLC and Apple Hill Solar, LLC. See *Complaint at ¶¶ 1, 33*.

5. On or about January 10, 2020, Thomas Melone, as President of PLH LLC, filed and signed under penalties of perjury, *Articles of Domestication of an Indiana Entity into a Foreign Entity* with the Indiana Secretary of State for the conversion of PLH LLC from an Indiana Limited Liability Company to a Florida Limited Liability Company. A Certificate of Domestication was issued by the Indiana Secretary of State with an effective date of February 4, 2020. Since the effective date, the Indiana Secretary of State has categorized PLH LLC's Business Status as "Inactive" and PLH LLC's Registered Agent Information as: "AGENT REVOKED." **CC Exhibit 19, Indiana Sec. of State, Corporations Division Records at p. 1 & 2.**

6. On or about February 13, 2020, nine (9) days after the effective date converting PLH LLC's status to inactive in Indiana and revoking its Registered Agent, an Annual Report was filed with the Vermont Secretary of State's office on behalf of (the now-defunct) PLH LLC as an Indiana Foreign Limited Liability Company, listing Thomas Melone as the sole Principal and Member. The Authorizers' name is listed as Reed Reynolds, Controller of Ecos Energy Ltd. **CC Exhibit 20, Vermont Sec. of State, Corporations Division Records.**

7. On or about March 3, 2020, Thomas Melone, as President of PLH LLC, filed *Articles of Conversion For "Other Business Entity" into Florida Limited Liability Company* with the Florida Department of State for the conversion of PLH LLC from an Indiana Limited Liability Company to a Florida Limited Liability Company with the new name of "PLH VINEYARD SKY LLC" replacing the old name of "PLH LLC." The principal and mailing address is listed as Thomas Melone's home address (one of them) at 601 S. Ocean Blvd, Delray Beach, FL 33483 and Thomas Melone is listed as Manager, Member, President, and Registered Agent **CC Exhibit 21, Florida Dept. of State, Corporations Division Records.**

8. Approximately one year later, on or about February 15, 2021, an annual report was

filed with the Vermont Secretary of State's office on behalf of PLH LLC as an Indiana Foreign Limited Liability Company and listing Thomas Melone as the sole Principal and Member despite the fact that it is no longer a business entity registered in the State of Indiana. *CC Exhibit 20, Vermont Sec. of State, Corporations Division Records.*

9. As of the date of the filing of these Counterclaims/Cross Claims, the Vermont Secretary of State has no record of any conversion of PLH LLC from an Indiana LLC to a Florida LLC; no record of a name change from PLH LLC to PLH Vineyard Sky LLC; and, no record of any entity by the name of "PLH Vineyard Sky LLC" registered to conduct business in Vermont.

10. Plaintiff PLH LLC has not filed for a Substitution of Party in this matter nor has it notified this Court or the other parties of PLH LLC's conversion from an Indiana LLC to a Florida LLC or that it changed its name from "PLH, LLC" to "PLH Vineyard Sky, LLC."

11. Thomas Melone, knowingly litigated this case for more than one year and recently allowed this Court to certify final judgment of Counts I, II, IV, V, VII, VIII against an entity (Plaintiff PLH, LLC) that no longer exists. No mention was made to the Court by Melone during the March 4, 2021 Hearing when this Court was discussing certifying judgment on the claims that had been dismissed on the pleadings and summary judgment.

12. However, Thomas Melone more recently responded to Harris's Motion for Summary Judgment on remaining Counts III (Cost Sharing) and VI (height restriction), on April 1, 2021, by filing a Cross-Motion for Summary Judgment and Opposition to Harris' Summary Judgment Motion, with an altered caption for the case: Plaintiff is now listed as "PLH Vineyard Sky, LLC" but with no motion or notice to the Court regarding the apparent substitution of parties. No representations have been forthcoming whether record title to Lot #1 or the Van Nostrand Lands has been conveyed from the named Plaintiff PLH, LLC to the new entity "PLH Vineyard

Sky, LLC.”

13. Moreover, Melone has appeared as the attorney of record in this matter, but has now inserted himself as a fact witness and expert witness in his response to the pending Motion for Summary Judgment on Counts III and VI. Melone’s Cross-Motion for Summary Judgment and Opposition to Harris’ Summary Judgment Motion filed on April 1, 2021 is signed by Thomas Melone as Attorney for Plaintiff. The Affidavit of Thomas M. Melone is filed in support of the Cross-Motion wherein he testifies as a material fact witness available for trial and appears to hold himself out as an expert witness as well. This dual role of Attorney and material fact witness is in violation of Vermont Rules of Professional Conduct Rule 3.7 and is prejudicial to Libby Harris, the Court, and certainly to any jury impaneled in this matter.

14. Due to the uncertainty of the name, identity and legal status of the Plaintiff/Counterclaim Defendant, Harris hereby pleads her Counterclaims against both PLH LLC and/or PLH Vineyards, LLC; and, in addition, Ms. Harris pleads her Third-party Claims against Thomas Melone, the individual who is the sole owner of and directly controls PLH LLC and/or PLH Vineyards, LLC, and is its/their alter-ego(s).

15. Thomas Melone is also the sole owner who directly controls Allco Renewable Energy Limited; Allco Finance Limited; Allco Finance Limited, LLC; Chelsea Solar LLC; Apple Hill Solar LLC; and Ecos Energy, LLC (all collectively the “Melone Entities”) which asserted standing before the Vermont Supreme Court, Vermont Trial Courts, and/or the Vermont Federal District Court in lawsuits relating to the awarding of Standard Offer Contracts and Petitions for CPGs (permits) by the Public Utility Commission for the Bennington solar projects on the Van Nostrand lands and Lot #1. Thomas Melone, the individual himself is even suing a Bennington resident for \$25 million in Vermont Federal District Court relating to one of his solar projects.

16. Counterclaim Defendant PLH Vineyards, LLC is a Florida Limited Liability Company (“PLH Vineyards, LLC”), with a registered agent, principal office, and mailing address of 601 S. Ocean Blvd, Delray Beach, FL 33483, which is Thomas Melone’s home address (one of them). Thomas Melone is the sole owner of PLH Vineyards, LLC and serves as its Principal, President, Manager, and Registered Agent. Upon information and belief, PLH Vineyards, LLC was formerly known as PLH LLC, the named Plaintiff in this case. **CC Exhibit 21**, Florida Dept. of State, Corporations Division Records.

17. Third-party Defendant Apple Hill Solar, LLC is a Vermont Limited Liability Company formed for the proposed Apple Hill Solar project and is owned by Allco Finance Limited which is owned by Allco Finance Limited, LLC, which in turn, is solely owned and controlled by Thomas Melone. **CC Exhibit 24**, Vermont Sec. of State, Corporations Division Records. See also PUC Case No. 20-1611-INV, Preliminary Injunction Hearing, December 4, 2020 at 98-101.

18. Third-party Defendant Chelsea Solar, LLC is a Vermont Limited Liability Company formed for the proposed Chelsea Solar project and is owned by Allco Finance Limited which is owned by Allco Finance Limited, LLC, which in turn, is solely owned and controlled by Thomas Melone. **CC Exhibit 25**, Vermont Sec. of State, Corporations Division Records. See also PUC Case No. 20-1611-INV, Preliminary Injunction Hearing, December 4, 2020 at 98-101.

19. Third-party Defendant Allco Finance Limited is a Delaware Corporation with an address of 157 Church Street, 19th Floor, New Haven, CT, 06510 and is in the business of financing solar projects for Allco Renewable Energy Limited. Allco Finance Limited is owned by Allco Finance Limited, LLC. **CC Exhibit 23**, Vermont Sec. of State, Corporations Division Records.

20. Third-party Defendant Allco Finance Limited, LLC is a Florida LLC with a registered agent, principal office, and mailing address of 601 S. Ocean Blvd, Delray Beach, FL 33483, which is Thomas Melone's home address (one of them). Thomas Melone is the sole owner/member of PLH Vineyards, LLC and serves as its Manager, and Registered Agent.

21. Third-party Defendant Allco Renewable Energy Limited, is a Delaware Corporation with an address at 157 Church Street, 19th Floor, New Haven, CT, 06510. Allco Renewable Energy Limited is owned by Allco Finance Limited, LLC which in turn is solely owned by Thomas Melone. Thomas Melone is also listed as Allco Renewable Energy Limited's President, Director and Senior General Counsel. *CC Exhibit 22, Vermont Sec. of State, Corporations Division Records. See <http://allcous.com/allco/>.*

22. Third-party Defendant Ecos Energy LLC, is a Minnesota Limited Liability company located at 222 S. 9th St., Ste 1600 Minneapolis, MN 55402 and which develops and operates solar projects for Allco throughout the United States. Ecos Energy, LLC is owned Allco Finance Limited, LLC, which in turn is solely owned and controlled by Thomas Melone.

23. Third-party Defendant Thomas Melone is an individual who is a resident of Florida, residing at 601 S. Ocean Blvd, Delray Beach, FL 33483.

24. The Melone Entities, all of which are solely owned and directly controlled by Thomas Melone, are the owners, investors, developers, and proposed operators of the Apple Hill Solar and Chelsea Solar electric generating facility projects proposed in Bennington, Vermont. Thomas Melone uses these entities as layers of shell corporations that are used interchangeably by Melone who inserts various Melone Entities as Plaintiff, Petitioner or Appellant in Federal and State Court actions and in proceedings before the PUC. The Melone Entities are thereby used as a shell game and are truly the alter-egos of Thomas Melone to advance his scorched earth serial

litigation which is characterized by bullying and bulldozing anyone in the way.

25. In Florida alone, Thomas Melone has several additional entities registered with similar names to the Melone Entities including: Vineyard Finance Limited Inc.; Allco Vineyard Sky Corp.; Vineyard Sky Farms Corp. It is unknown if any of these shell corporations will be used by Melone to advance claims in future litigation related to the Bennington solar projects.

26. Based upon information and belief, the following factors demonstrate that the Melone Entities are the alter-ego of Thomas Melone warranting piercing of the corporate veil of the PLH, LLC and/or PLH Vineyard Sky, LLC and the other Melone Entities, and holding Thomas Melone, the sole owner, individually responsible and legally liable for his own personal wrongful bad faith conduct:

- a. The nature of the entities' ownership and control: Thomas Melone is sole owner of the Melone Entities and exercises complete dominion and control over the Melone Entities;
- b. The Melone Entities fail to follow statutory formalities required for incorporation and for the transaction of corporate affairs, including litigating cases in Vermont State and Federal courts under the name of terminated and/or defunct entity or an entity that has not been registered to do business in Vermont;
- c. Thomas Melone falsely registered at least one defunct Melone Entity with the Vermont Secretary of State's office.
- d. The Melone Entities are undercapitalized;
- e. The Melone Entities fail to maintain corporate books/filings, contracts, and/or records;
- f. The Melone Entities fail to maintain minutes or adequate corporate records;
- g. The Melone Entities are not operated as distinct business entities;
- h. The Melone Entities are used as mere shell companies to insulate Thomas Melone;
- i. The Melone Entities are merely a façade for the operations of Thomas

Melone.

- j. Three of the Melone Entities (PLH, LLC; PLH Vineyard Sky, LLC; and Allco Finance Limited, LLC) use Thomas Melone's home address in Florida for their principal and mailing addresses;
- k. The Melone Entities fail to maintain arm's length relationships between related entities;
- l. The Melone Entities employ the same attorney, who is Thomas Melone himself;
- m. The Melone Entities employ all of the same employees;
- n. Thomas Melone operates the Melone Entities exclusively in the interest of Thomas Melone;
- o. Thomas Melone has used and is using the Melone Entities to bully, intimidate and harass Ms. Harris to force her to withdraw from the Public Utility Commission ("PUC") proceedings in the Apple Hill Solar and Chelsea Solar cases;
- p. Thomas Melone has used and is using the Melone Entities to file frivolous legal claims in the present case regarding the access to and the permitting of Libby Harris' homeplace seeking declaratory rulings to have her home torn down and her access way eliminated in an effort to force her to withdraw from the PUC permitting proceedings;
- q. Thomas Melone is currently using the Melone Entities to threaten to build an Unnecessary "Spite" Structure in front of Libby Harris' house in violation of Vermont Statutory Law 24 V.S.A. § 3817, Lot #1's deed restrictions, the Covenants of the Apple Hill Homeowner Association, and the Vermont Common Law of Nuisance;
- r. Thomas Melone is currently using the Melone Entities to threaten to plant the entirety of Lot #1 with Commercial Hemp in violation Lot #1's deed restrictions, the Covenants of the Apple Hill Homeowners Association, and the Vermont Common Law of Nuisance.
- s. Thomas Melone's use of the Melone Entities to commit wrongful acts of bad faith, have been the proximate cause of Ms. Harris incurring damages including lost time and opportunity, expense and inconvenience, attorney's fees, expenses and costs of litigation required to protect and defend her property rights and her quiet enjoyment of her property.

FACTS

THE APPLE HILL RESIDENTIAL SUBDIVISION & COMMON DEVELOPMENT SCHEME

27. In the mid- 1970s, Defendants Paul W. Bohne, III and Nancy S. Bohne started making plans to subdivide land they owned in Bennington, then known as the Harwood Hill Orchard, and develop a residential neighborhood pursuant to a common development scheme. *See Complaint at Exh. A; CC Exhibit 1, Map of Harwood Hill Orchards; CC Exhibit 2, Affidavit of Paul W. Bohne III (“Bohne Affidavit”) at ¶ 3.*

28. The Bohnes applied for and received an Act 250 permit for the subdivision, subsequently amended twice as the subdivision grew. *See CC Exhibit 2, Bohne Affidavit at ¶ 3; CC Exhibit 3, Act 250 Land Use Permit #8B0139 issued June 24, 1976, CC Exhibit , Act 250 Land Use Permit #8B0139-1 issued December 30, 1987; CC Exhibit 5, Act 250 Land Use Permit #8B0139-2 issued September 22, 1988.*

29. In support of their common plan of development for the subdivision (which they named "Apple Hill"), the Bohnes had a set of common covenants and restrictions prepared (hereafter, the "Apple Hill Covenants" or "Covenants"). *See CC Exhibit 2, Bohne Affidavit at ¶ 4.*

30. The Covenants included, *inter alia*, the following provisions:

- 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 non-residential purpose whether or not enumerated herein except as herein 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.

- No noxious or offensive activities shall be carried on upon the premises, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.
- Plans and elevations for any building 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 building 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.

See CC Exhibit 2, Bohne Affidavit at ¶ 4 and Exh. A.

31. The Bohnes' intention in crafting the Apple Hill Covenants was, among other things, to ensure the residential character and use of all lots within the subdivision into the future, thereby increasing and preserving the value of all lots. *See CC Exhibit 2, Bohne Affidavit at ¶ 5.*

32. In support of this plan, as the Bohnes sold off lots within the subdivision, they incorporated the Apple Hill Covenants into the deed for each lot sold. *See CC Exhibit 2, Bohne Affidavit at ¶ 7.*

33. The Bohnes' intention was that the Covenants would run with the land and bind all subsequent owners, in service of the common development plan for the subdivision. *See CC Exhibit 2, Bohne Affidavit at ¶ 6,*

34. The Apple Hill Covenants apply to Lot #1 and run with the land, binding PLH LLC and all subsequent owners of Lot #1. *See PLH LLC v. Harris et al*, Docket No. 331-4-19 Cnev, Ruling on Apple Hill's Motion for Summary Judgment, dated July 15, 2020.

THE "ORCHARD LOT"

35. The Orchard Lot was created on September 4, 1988 when the Bohnes were issued Vermont Department of Environmental Conservation *Subdivision Permit #EC-8-0679*, which

approved the 2.47 +/- acre “Orchard Lot” for the construction of one 3-bedroom single family residence and permitted an on-site water supply from a drilled well and a mound-type wastewater disposal system. The permit states that the project “shall be completed as shown on the [approved] plans.” The conditions of the permit, including the approved plans, “shall run with the land and will be binding upon and enforceable against the permittee and all assigns and successors in interest.” *See CC Exhibit 6.*

36. On October 7, 1988, the Bohnes conveyed the Orchard Lot to Hilde Liu by Warranty Deed recorded on October 7, 1988 in Book 0-275 at Page 30 of the Town of Bennington Land Records (hereinafter “Land Records”). *See Complaint at ¶ 9; CC Exhibit 2, Bohne Affidavit, ¶ 8 and Exh. C; CC Exhibit 7.*

37. On July 13, 1998, Hilde Liu conveyed the Orchard Lot to Paul F. Mundt and Jean M. Mundt by Warranty Deed recorded on July 13, 1998 in Book 0-343 at Page 141 of the Land Records. *See CC Exhibit 8.*

38. On June 23, 2004, the Mundts conveyed the Orchard Lot to Paul H. Garrison and Libby H. Garrison (n/k/a Libby Harris) by Warranty Deed recorded June 23, 2004 in Book 410 at Page 36 of the Land Records. *See CC Exhibit 9.*

39. On June 5, 2006, Paul H. Garrison conveyed his interest in the Orchard Lot to Libby Garrison (n/k/a Libby Harris) by Quitclaim Deed recorded June 13, 2006 in Book 433 at Page 6 of the Land Records. *See CC Exhibit 10.*

40. Libby Harris is the current and sole owner of the 2.47 +/- acres of land and premises, with a residential dwelling thereon, commonly known, and referred to herein, as the “Orchard Lot” by and depicted as “Lands of Mundt” on a plan entitled “Subdivision of Property Paul and Nancy Bohne Apple Hill Road Bennington, Vermont August 2001,” prepared by West Mountain

Engineering. *See CC Exhibit 11 (Sheet S-1).*

LOT #1

41. Lot #1 was created on September 19, 2001 when the Bohnes were issued State of Vermont *Subdivision Permit #EC-8-0679-01*, which approved Lot #1 for the construction of one 3-bedroom single family residence, on-site water supply and wastewater disposal, referencing the conditions set forth in *Water Supply and Wastewater Disposal Permit #WW-8-0597*. The subdivision permit states that the project “shall be completed as shown on the [approved] plans” which depict the location of the Orchard Lot’s driveway crossing Lot #1 from the ROW. The conditions of the permit, including the approved plans, “shall run with the land and will be binding upon and enforceable against the permittee and all assigns and successors in interest.” *See CC Exhibit 11.*

42. On October 3, 2001, the Bohnes conveyed Lot #1 to Paul and Jeane Mundt by Warranty Deed recorded on October 3, 2001 in Book 375 at Page 80 of the Land Records. *See Complaint at ¶ 9; CC Exhibit 2, Bohne Affidavit, ¶ 8 and Exh. C; CC Exhibit 12.*

43. The deed from the Bohnes to the Mundts stated: “These lands are conveyed subject to the terms and conditions of the State of Vermont Subdivision Permit #EC-8-0679-1, Water Supply and Wastewater Disposal Permit #WW-8-0597 and Town of Bennington Subdivision Permit #01-183.” *See CC Exhibit 12.*

44. The deed from the Bohnes to the Mundts incorporated the Apple Hill Covenants by reference to an earlier October 7, 1988 deed from the Bohnes to Hilde Liu which was recorded on October 7, 1988 in Book 275 at Page 30 of the Land Records. *See Complaint at ¶ 9; CC Exhibit 2, Bohne Affidavit, ¶ 8 and Exh. B; CC Exhibit 12; CC Exhibit 7.*

45. As with prior lots transferred, the Bohnes intended the Apple Hill Covenants to run with the land for Lot #1. *See CC Exhibit 2, Bohne Affidavit, ¶ 8.*

46. On June 23, 2004, Paul and Jeane Mundt conveyed Lot #1 to Libby H. Garrison (n/k/a Libby Harris) and Paul Garrison by Warranty Deed recorded on June 23, 2004 in Book 410 at Page 37 of the Land Records. *See CC Exhibit 13.*

47. On June 5, 2006, Paul Garrison conveyed his interest in Lot #1 to Libby H. Garrison (n/k/a Libby Harris) by Quit Claim Deed recorded on June 13, 2006 in Book 433 at Page 6 of the Land Records. *See CC Exhibit 14.*

48. On June 3, 2009, Libby Harris (f/k/a Libby H. Garrison) conveyed Lot #1 to Harry R. Olsson and Diane T. Olsson by Warranty Deed recorded on June 4, 2009 in Book 463 at Page 121. *See CC Exhibit 15.*

49. On March 1, 2010, Libby Harris (f/k/a Libby H. Garrison) executed a Corrective Warranty Deed for Lot #1 to Harry R. Olsson and Diane T. Olsson which was recorded on March 4, 2010 in Book 470 at Page 43. *See CC Exhibit 16.*

50. On July 16, 2014, the Olssons conveyed Lot #1 to Plaintiff/Counterclaim Defendant PLH, LLC by Quit Claim Deed recorded on July 17, 2014 in Book 501 at Page 117 of the Land Records. *See Complaint at ¶ 9 and Exh. F; CC Exhibit 17.*

51. PLH, LLC is the current owner of the premises commonly known, and referred to herein, as “Lot #1.”

THE VAN NOSTRAND LANDS AND
THE MELONES’ STANDARD OFFER CONTRACTS

52. PLH, LLC also acquired the 26.8 acre parcel directly south of and abutting the

Apple Hill Residential Subdivision (referred to in this litigation as the “Van Nostrand Lands”) on which corporate entities related to PLH, LLC (the Melone Entities), have been endeavoring to develop two commercial solar projects since 2013. The Van Nostrand Lands directly abut Lot #1 and other Apple Hill Residential Subdivision lots.

53. The power projects proposed since 2013 by the Melone Entities for the Van Nostrand Lands are two side-by-side 2.0 MW (total of 4.0 MW) solar electric generation facilities known as the Apple Hill Solar, LLC project and the Chelsea Solar, LLC (f/k/a Bennington Solar, LLC). *See Complaint at ¶¶ 1, 33.*

54. Standard Offer contracts are Melone’s vehicle of choice for developing solar projects in Vermont.

55. Vermont’s Standard Offer program was established “to encourage the development of renewable energy resources in Vermont as well as the purchase of renewable power by the state’s electric distribution utilities.” The process is administered by VEPP, Inc., which annually issues a Request for Proposals (“RFP”) on which developers bid. Projects are capped at 2.2 mW. (*See <https://vermontstandardoffer.com>*) Contracts are awarded to the lowest qualified bidders. Applicants who bid for contracts are expected to have site control such that they “have a realistic chance of being commissioned,” if a contract is awarded and the PUC subsequently issues a Certificate of Public Good (“CPG”). Contracts contain a site-control requirement, but, unlike the RFP, the contract defines “site control” as “proof of dominion over real property to the extent necessary to construct the project.”

56. In April 2013, Melone d/b/a Ecos Energy LLC submitted two bids in response to VEPP, Inc.’s RFP issued in the Standard Offer program for Bennington Solar LLC, and for Apple Hill Solar LLC, both projects to be located on the same 27 acre parcel in Bennington, Vermont.

Both projects promised to be in commercial operation by May 31, 2015.

57. The PUC approved a contract for Bennington Solar, LLC (which was renamed Chelsea Solar, LLC) to be located on Apple Hill in Bennington, but denied the contiguous Apple Hill Solar LLC on the same parcel of land, finding that the two projects together were really a single plant: one 4.0 mW project that exceeded the 2.2 mW cap of the Standard Offer program.

58. In the Spring of 2013, neighbors who live at the end of the cul-de-sac of the road known as Russett Drive which is located in the Apple Hill Residential Subdivision called the Apple Hill Homeowners Association's President, Bill Knight, to report that heavy earth-moving equipment and trucks were at the end of their street. Mr. Knight went to the scene, identified himself, and asked the operator of the big earth mover what he was doing. He said he was going to make a road through the end of Russett Drive to a solar project. Mr. Knight told him he was in the wrong place. The operator made a phone call and then left.

59. On May 21, 2013, Melone moved the PUC to reconsider its decision to deny the Apple Hill Solar standard offer contract. Attached to its Motion for Reconsideration were two diagrams of the proposed projects showing that each project would be served by a separate access road and a separate point of interconnection. The Apple Hill Solar, LLC project was depicted as being accessed via Willow Road from the south. However, the Bennington/Chelsea Solar LLC project was depicted as being accessed via a road from the north that does not exist. Melone or his agent, had altered the aerial photo and drew in a make-believe extension to Russett Drive's cul-de-sac over the lands of Earl Senecal, a resident of the Apple Hill Residential Subdivision. The road depicted does not exist and is the same road that Melone's contractor tried to bulldoze earlier that spring without permission or ownership of any property rights in the land.

60. On June 20, 2013, Bennington Solar LLC executed a Standard Offer contract for a

2.0 mW solar facility to be located in Bennington.

61. In July 2013, Melone or his agents approached Apple Hill resident Earl Senecal of Russett Drive seeking an easement through his property to access the Bennington Solar site from the north. Senecal declined to enter into an easement with the solar developer.

62. On October 18, 2013, Melone, appearing as Ecos Energy LLC, appealed the PUC's denial of Apple Hill Solar, LLC's standard offer contract to the Vermont Supreme Court. Included in Ecos' Printed Case were the same two diagrams presented to the PUC in the Motion for Reconsideration, showing two separate points of interconnection and two separate access roads, one from the north ("Russett Dr.") leading to Bennington Solar and one from the south ("Willow Road") leading to Apple Hill Solar. Melone's diagram still showed the make-believe extension of Russett Drive through Earl Senecal's property, which Senecal had declined to grant an easement for, just three months prior.

63. Based on the false representations by Melone that the two projects would be served by separate roads with separate points of interconnection, on March 28, 2014 the Vermont Supreme Court reversed the PUC holding that the two projects did not comprise a single plant.

64. On May 12, 2014, Apple Hill Solar LLC executed a Standard Offer contract for a 2.0 mW solar facility to be located in Bennington, Vermont.

PERMITTING OF
APPLE HILL SOLAR, LLC and
CHELSEA SOLAR LLC

65. On June 19, 2014, Ecos Energy LLC filed a Petition (application) seeking a Certificate of Public Good ("CPG") which is a permit to construct the "Chelsea Solar LLC" (f/k/a Bennington Solar, LLC) project.

66. On March 15, 2015, Ecos Energy LLC filed a Petition for a CPG to construct the “Apple Hill Solar LLC” project.

67. The Melone Entities’ petitions for the Apple Hill Solar, LLC and Chelsea Solar, LLC projects include 26.8 +/- acres of the Van Nostrand Lands as well as 5.47+/- acre Lot #1 of the Apple Hill Residential subdivision, for a total proposed Project Site area of 32.27 +/- acres.

68. The Chelsea Solar project application had abandoned its plan to bulldoze a make-believe road from Russett Drive where Melone had no access rights or site control. However the new project plan proposed yet another access road that Melone had no rights to use. This time the proposed access to Chelsea Solar would be from Apple Hill Road from the east, then along the private shared ROW that serves as an access driveway ROW for residential Lots #1, 2 and the Orchard Lot. The Melone Petition proposed using the private residential ROW as a thoroughfare over which to access the Chelsea Solar site, even though Melone had no access rights or site control over the private shared ROW which serves residential Lots# 1, 2 and the Orchard Lot for residential purposes only.

69. The private shared residential ROW serves Lot #1 as one of the dominant estates. The Van Nostrand lands abut Lot #1 to the south, but are not a dominant estate benefitted by the ROW. Melone did not have the right to use Lot #1’s private shared ROW to access lands other than Lot #1 and then only for ingress/egress to a single family residence.

70. Lot #1 is essential to the Melone’s proposal to screen the project from the residences north of the site, including and primarily from the Orchard Lot owned by Libby Harris. By Injunction Order dated April 1, 2021, the PUC confirmed that Lot #1 is part of the project sites, under its jurisdiction and subject to a continuing Injunction prohibiting further site clearing which occurred in violation of the PUC’s Temporary Restraining Order that had been issued June 26,

2020.

71. With regard to the Melone Entities' inclusion of Lot #1 in the proposed commercial solar energy project sites, the developer's application proposed to maintain the existing apple orchard trees on Lot #1 for screening and to add the following plantings to bolster the natural vegetation:

- 10-12 large (20-24 feet) conifers along the northern edge of the Project (along the southern boundary of Lot #1); and,
- 742 mixed deciduous shrubs and trees along the southern boundary of the Harris property (along the northern boundary of Lot #1) "to strengthen the screening provided by the remnant orchard,"

72. The Melone Entities' stated purpose of these plantings was to screen the Project from the most proximate residential neighbor to the north, Libby Harris.

73. Libby Harris obtained Intervenor status before the PUC in both Apple Hill Solar and Chelsea Solar cases in 2015, opposing both projects on, *inter alia*, the issues of orderly development and aesthetics.

74. After two years of litigation at the PUC over a project that Melone had no right of access to or site control over, in June 2017, Melone, through his representative Brad Wilson, submitted revised plans for the Chelsea Solar LLC and Apple Hill Solar LLC projects. The revised plans, *inter alia*, relocated the access road for Chelsea Solar from the private ROW off of Apple Hill Road from the east, to Willow Road from the south, the same southern access road as Apple Hill Solar, LLC, which was the very reason that the PUC DENIED the projects in 2013, but were overturned by Melone's make-believe Russett Drive lie to the Vermont Supreme Court.

75. On September 26, 2018, the PUC granted a CPG to Apple Hill Solar, LLC in PUC Docket No. 8454. The Decision was timely appealed to the Vermont Supreme Court by Libby Harris and AHHA on the issues of orderly development and aesthetics.

76. On September 6, 2019, the Vermont Supreme Court reversed and remanded the case to the PUC to: (1) assess the impact of the Facility on the orderly development of the region in light of the 2010 Bennington Town Plan without consideration of the Selectboard's purported position on the subject; and (2) determine whether the Facility violates clear, written community standards in the Town Plan in assessing whether the Facility's adverse aesthetic effects are undue.

77. On January 6, 2020, the PUC Hearing Officer issued a proposal for decision on the remand from the Vermont Supreme Court, recommending that the PUC Deny Apple Hill Solar LLC Petition and CPG stating that the “Facility would not be in the public good because the Facility is inconsistent with the Town Plan and would unduly interfere with the orderly development of the region and have an undue adverse impact on aesthetics and the scenic or natural beauty of the area.”

78. Oral Argument before the PUC on the Hearing Officer’s Proposal for Decision (which was to DENY the project) was scheduled by the PUC for the morning of March 25, 2020.

79. On March 23, 2020, after seven years of litigation, the Melone Entities (as solar project developer) attempted to amend their Apple Hill Solar, LLC Petition yet again, which procedurally was before the Public Utility Commission only on a limited remand by the Vermont Supreme Court for the PUC to decide two narrow issues: orderly development and aesthetics.

80. The Proposed Hemp Amendment was filed with the PUC by the Melone Entities and served on the other parties’ counsel at 4:29 pm on March 23, 2020 by email, with the Proposed Hemp Amendment documents attached (more than 80 pages). L. Brooke Dingleline, Esq., the attorney of record for Intervenors Libby Harris and the Apple Hill Homeowners Association (“AHHA”), was sent and received the email containing the Proposed Hemp Amendment documents. *See CC Exhibit 18.*

81. The Proposed Hemp Amendment represented, *inter alia*, that the developer now intended to use Lot #1 to plant and cultivate commercial hemp and to build a massive hemp processing facility structure measuring 165 feet long, 30 feet high and 16 feet deep, located directly in front of Libby Harris' house for the purpose of obstructing her view. *See CC Exhibit 18.*

82. The massive hemp processing structure is proposed to be located at the far northeast corner of Lot #1 along the southern boundary of the Harris property (northern boundary of Lot #1) where the 742 mixed deciduous shrubs and trees were to be planted for screening for the solar projects. The Melone Entities argue that the massive structure eliminates the need for maintaining the apple orchard trees and planting 742 trees and shrubs on Lot #1 (and presumably the 10-12 large (20-24 feet) conifers along the southern boundary of Lot #1) for screening because the structure will completely block Libby Harris' view of the project. *See CC Exhibit 18.*

83. The Proposed Hemp Amendment also represented that the Van Nostrand Lands would be clear cut and sheep would be placed on the parcel and massive sheep barns would be built directly in view of the Visitor's Center to block the view of the arrays, thus eliminating the need for any of the screening proposed for the project from the south. *See CC Exhibit 18.*

84. The Melone Entities' Proposed Hemp Amendment filing was taken up by the PUC the morning on March 25, 2020 at the beginning of the Oral Argument on the PUC Hearing Officer's Recommendation for Decision on Remand. The PUC Denied the Melone Entities' Proposed Hemp Amendment to the project ruling that the Proposed Hemp Amendment was untimely and the PUC lacked jurisdiction to entertain such an amendment to a case that was on a limited remand from the Supreme Court.

85. On March 27, 2020, Libby Harris received a mailing at her home in Bennington, Vermont, where she was isolating and sheltering in place due to her vulnerability to the Covid-19

virus because of her age and health issues, both of which are known to the Melones. The mailing contained the 80+ page Proposed Hemp Amendment filing that the Melones had electronically filed with the PUC on March 23rd and which had been emailed to all the parties' counsel 4 days prior.

86. Thomas or Michael Melone had, on March 24, 2020, mailed paper copies of the 80+ pages of documents to Libby Harris, a represented party, from the ALLCO offices in New York City, the epicenter of the Covid-19 Pandemic. No hard paper copies were ever mailed to Libby Harris' counsel, L. Brooke Dingledine, Esq. or to any other party or attorney who had appeared in the action. *See Exhibit 18.*

87. Because this was the second time in less than a month that the Melones contacted Libby Harris, a represented party, directly, instead of through counsel, A Notice to Cease and Desist Communicating with Libby Harris, a Person Represented by Counsel, was sent to Thomas and Michael Melone on March 31, 2020 by Ms. Harris' counsel. *See Exhibit 19.*

88. Earlier in the month, on March 6, 2020, in the case at bar, Thomas Melone communicated directly with Libby Harris, a represented party, by sending her, not either of her two attorneys of record, a copy of a subpoena that was served on Ms. Harris' former real estate attorney's office. Ms. Harris' attorney notified Thomas Melone that he had contacted a represented party and requested that such an error not be repeated. However, before the end of the month, the "error" was repeated as described supra.

89. On April 7, 2020, the Vermont Agency of Natural Resources filed a response to the Melone Entities' Proposed Hemp Amendment to the Apple Hill Solar, LLC Petition seeking a Cease and Desist Order from the Public Utility Commission, arguing that the clear cutting activities described in the Amendment are a pretext to constructing the Apple Hill solar project

and constitute site preparation in violation of 30 V.S.A. § 248(a)(2) which prohibits site preparation or construction prior to the issuance of a certificate of public good. ANR also sought to protect rare, threatened and endangered species that were the subject of a Memorandum of Understanding between the Melone Entities and ANR. ANR's Response was dismissed as moot since the Melones' Proposed Hemp Amendment was denied by the PUC.

90. On May 7, 2020, in *Petition of Apple Hill Solar, LLC*, PUC Docket No. 8454, the PUC issued a Final Order on Remand Adopting the Hearing Officer's Recommended Decision and DENYING the Petition of Apple Hill Solar, LLC for a Certificate of Public Good for the installation and operation of a 2.0 MW solar electric generation facility at 1133 Willow Road in Bennington, Vermont, **finding all 30 arguments raised by Thomas Melone, to be unpersuasive.**

91. On May 28, 2020, despite the PUC's denial of the Proposed Hemp Amendment, Thomas Melone confirmed in a phone conversation to Libby Harris' counsel, of his unwavering intention to plant and cultivate commercial hemp on Lot #1 and to build a massive hemp processing facility structure on Lot #1 in front of Libby Harris' house stating: "they didn't want us to plant trees to block their view, so now they get a hemp barn instead" or words to that effect. Thomas Melone also indicated that no one can stop him from cultivating and processing commercial hemp because agricultural activities are unregulated in Vermont.

92. On June 4, 2020, the Melone Entities filed a Motion to Reconsider the Final Order on Remand denying the Apple Hill Solar LLC Petition with the PUC.

93. On June 19, 2020, it was reported to the PUC by Annette Smith of Vermonters for a Clean Environment, that tree clearing was occurring on the Apple Hill and Chelsea Solar sites and that the area of Apple Hill set aside for rare, threatened, and endangered species was being disturbed by the tree-clearing activity. The PUC requested immediate Comments/Replies from

the Parties.

94. Thomas Melone of Allco Renewable Energy Limited, Apple Hill Solar LLC, and Chelsea Solar LLC filed a response with the PUC claiming that the ANR inspection confirmed that NO rare, threatened, or endangered species areas were being disturbed and that the rare, threatened, or endangered species area was cordoned off to prevent intrusion. This was a lie.

95. On June 23, 2020, ANR filed comments stating that it “has confirmed that site clearing activity is occurring on the 27- acre parcel on which the Apple Hill and Willow Road solar projects are proposed to be constructed.” Contrary to Thomas Melone’s misrepresentation to the PUC, ANR cited its specific concern that the site clearing presents a substantial and immediate harm to “very rare” and “rare” plants at the site and stated that it believed that a cease-and-desist order may be necessary to prevent irreparable harm to the plants.

96. On June 24, 2020, the Commission “opened an investigation pursuant to 30 V.S.A. §§ 30 and 209 into whether **Allco Renewable Energy Limited, Chelsea Solar LLC, Apple Hill Solar LLC, PLC Vineyard Sky LLC, and PLH LLC, and their affiliates, subsidiaries, and contractors (collectively, “Allco” or “petitioner” or “Developer”)** were conducting site clearing on Apple Hill in Bennington, Vermont, in violation of Section 248(a)(2) of Title 30.” See PUC Docket No. 20-1611-INV, *Order Maintaining Injunction Prohibiting Further Site Preparation*. . ., dated April 1, 2021.

97. On June 25, 2020, ANR filed additional comments with supporting affidavits and exhibits and requested that the Commission issue a temporary restraining order pursuant to Commission Rule 2.406.

98. On June 26, 2020, the Commission conducted an evidentiary hearing and issued a temporary restraining order (“TRO”) against Allco, its affiliates and contractors, prohibiting any

further tree clearing or other site preparation on any property for the facilities proposed by Allco in its petitions in Docket 8454 and Case No. 17-5024-PET.

99. The PUC issued the TRO orally to the parties (including directly to Thomas Melone) from the bench during the June 26, 2020 Hearing. At the conclusion of the Hearing, the PUC advised the parties that a written order would issue that evening.

100. The PUC issued a written Decision and TRO, which was emailed to the parties, including directly to Thomas Melone, at 10:31 pm on June 26, 2002, stating:

In this order, pursuant to 30 V.S.A. §§ 8, 10, 30, 203, 209, and 248(a)(2), and Commission Rule 2.406, the Vermont Public Utility Commission (“Commission”) issues a temporary restraining order against Allco Renewable Energy Limited, PLH Apple Hill Solar LLC, and PLH Chelsea Solar LLC, and its affiliates, subsidiaries, and contractors (collectively, “Allco” or “petitioner”) from any further tree clearing on any of the property for the proposed projects identified in any Certificate of Public Good (“CPG”) applications and any property identified in those applications as intended to be part of the projects, including any amendments to those applications that have been approved by the Commission, in the Apple Hill area in Bennington, Vermont (“the Apple Hill site”).

101. The PUC determined that the “petitioner’s claim in his affidavit that his activities are solely for farming purposes is not credible,” pointing to Thomas Melone’s own testimony at hearing that, although the sheep may end up being used for some farming purposes, Melone was putting the sheep in this location “primarily” to serve the proposed solar projects. Thus, the PUC concluded that this does not qualify as farming, relying on the Vermont Agency of Agriculture, Food and Markets’ definition of a farm which is land that is “devoted *primarily* to farming.”

102. The PUC also recounted Thomas Melone’s testimony at hearing admitting that the clearing activities are a prerequisite to building the solar projects that have not received CPGs. Thus, the PUC concluded that the petitioner’s activities constitute site preparation without a CPG in violation of 30 V.S.A. § 248(a)(2).

103. Consequently, the PUC issued the following Temporary Restraining Order:

V. ORDER

Based on the foregoing, the Commission, pursuant to Board Rule 2.406, issues the following temporary restraining order and notice of hearing:

1. Allco and its affiliates and contractors shall immediately cease all tree clearing on the Apple Hill site;
2. Allco shall be prepared to show cause during this investigation why the tree-clearing activity shall not be considered site preparation as defined in Title 30; and
3. Allco shall cooperate fully with the Commission in its further investigation of this matter.
4. Pursuant to 30 V.S.A. §§ 8, 10, 203, and 209, and Commission Rule 2.406, an evidentiary hearing on whether to grant a preliminary injunction will be held by videoconference before the Public Utility Commission on July 9, 2020, at 9:30 A.M. This hearing will address whether the restraining order should be lifted and whether Allco's tree-clearing activities were site-clearing operations without a certificate of public good in violation of 30 V.S.A. § 248(a)(2).

104. The very next morning, Saturday, June 27, 2020 at 9:28am, Thomas Melone electronically filed a Motion for Clarification with the PUC, the contents of which evidence his receipt of the PUC's written TRO. A few hours later, by noontime, Melone's contractor was actively bulldozing the site in violation of the TRO.

105. On July 1, 2020 Thomas Melone filed a Motion to Vacate the Preliminary Injunction Hearing, claiming that the PUC has no jurisdiction over any of the Melone Entities, that the PUC has no authority to issue an injunction or to regulate their activities.

106. On July 31, 2020, in the Apple Hill LLC permitting case, the PUC Denied the Melone Entities' Motion to Reconsider the Final Order on Remand which had denied Apple Hill Solar, LLC a CPG.

107. On August 18, 2020, Melone filed a Motion to Dissolve the TRO, making numerous constitutional claims and that their right to farm is an unregulated activity which cannot be enjoined by the PUC. Most notably, the motion advanced a blatantly false argument to try to

get around the prohibition against cutting the apple orchard on Lot #1: that the TRO is overly broad and the PUC can't enjoin their cutting of the apple orchard on Lot #1 because Lot #1 isn't really a part of the proposed project:

XII. The Application Of The TRO To The Orchard Lot Is Overbroad.

The clearing activities for the Orchard Lot are not "site preparation" for an electric generating facility. Those clearing activities are clearly outside of the "site preparation area." The Commission has no authority where, as here, no CPG has been issued, and the tree clearing is occurring outside of any area that would be part of the "preparation" for the proposed solar facility. While it is true that the old plan for the AHS proposed project would call for the planting of a line of trees on the northern edge of the Orchard lot, those trees do not exist now. Therefore, there is simply no basis for covering the Orchard lot in the TRO, and neither the TRO nor any party advance any valid justification for doing so.

See Melone's Motion to Dissolve dated August 18, 2020 at p. 45

108. Melone's references to "the Orchard Lot" in its Motion to Dissolve filed with the PUC is actually referring to Lot #1 of the Apple Hill Residential Subdivision. Melone was requested to cease using the term "the Orchard Lot" in proceedings before the PUC, due to the confusion and possible cloud on title that it could create on Libby Harris' lot, which is actually named the "Orchard Lot" in all deeds and surveys of the Apple Hill Residential Subdivision, the State Subdivision, Wastewater and Water Supply permits, and the Act 250 permit.

109. Melone refused to stop using the term the "Orchard Lot" to describe Lot #1 which required a motion to be made to the PUC, to stop him from using the term "Orchard Lot" to describe Lot #1. In later filings before the PUC, he has alternatively referred to Lot #1 as the "Horticultural Lot," a thinly veiled attempt to cast Lot #1 as being within the allowance in the Covenants for "horticultural" uses, despite the requirement that any "horticultural" use is limited by and appurtenant to a residential dwelling and use of Lot #1 for residential purposes only, not for a commercial hemp farm.

110. On April 1, 2021, the PUC issued an Order Maintaining Injunction Prohibiting Further Site Preparation as follows:

Conclusion

In this Order we restate our conclusion that Allco’s site-clearing activity without a CPG is a violation of 30 V.S.A. § 248(a)(2)(A), and we enjoin any further site-clearing activity at this time. In our findings, we establish a factual basis for issuing a civil penalty for that violation. To further substantiate the extent of that civil penalty, additional proceedings are required to document the factual basis for the amount of that penalty using the criteria addressed in 30 V.S.A. § 30. . . .

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission (“Commission”) of the State of Vermont that:

1. Allco initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2)(A).
2. The Commission extends its Order of June 26, 2020, enjoining Allco Renewable Energy Limited, Chelsea Solar LLC, Apple Hill Solar LLC, PLC Vineyard Sky LLC, and PLH LLC, and their affiliates, subsidiaries, and contractors from conducting site preparation on the parcels on Apple Hill in Bennington, Vermont, identified in Docket 8454 and Case No. 17-5024-PET, including both the 27-acre site of the two solar facilities and the adjacent 5-acre site identified in both petitions as mitigating the aesthetic impacts of those proposed facilities.
3. . . .

See PUC Case No. 20-1611-INV, Order Maintaining Injunction Prohibiting Further Site Preparation, dated April 1, 2021, at p. 30-31.

111. The PUC also stated as follows:

Additionally, **Allco’s activities challenge the integrity of the Section 248 permitting process.** The Commission issued an order on May 7, 2020, denying Allco’s request to amend a pending application for a certificate of public good. Although Allco sought reconsideration of that order, we denied that motion for reconsideration, and **although Allco has appealed our rulings to the Vermont Supreme Court, Allco has not obtained a stay of our orders. Thus, our decisions remain binding on Allco unless and until the Vermont Supreme Court overrules them. Yet, Allco has**

gone ahead with making the very same permanent changes to the landscape that we told it not to make when we denied its amendment request. And Allco continued making those changes even after the TRO issued. As ANR correctly notes, this is an affront to the Section 248 permitting process. It creates a significant risk that undue adverse effects on the environment will occur before the Commission has had a chance to review the proposed project. This does not comply with the applicable statutes or serve the public interest.

See PUC Case No. 20-1611-INV, Order Maintaining Injunction Prohibiting Further Site Preparation, dated April 1, 2021 at p. 29.

COUNT I - Declaratory Judgment
Easement by Necessity – Location & Width

112. Defendant/Counterclaimant/Third-party Plaintiff Harris re-alleges and incorporates by reference its allegations set forth in ¶¶ 1-111 as if fully set forth herein.

113. The Orchard Lot was sold by Paul Bohne to Hilde Liu in 1988.

114. Hilde Liu developed the property in 1989, installing the utility infrastructure, building the dwelling house, and constructing the driveway in the location where it remains today.

115. Hilde Liu sold the Orchard Lot to Paul and Jean Mundt on July 13, 1998.

116. Paul and Jean Mundt also acquired Lot #1 on October 3, 2001 from the Bohnes.

117. The northern boundary of Lot #1 abuts the southern boundary of the Orchard Lot.

118. Lot #1 and the Orchard Lot were under common ownership of the Mundts from October 3, 2001 to June 23, 2004; of the Garrisons from June 23, 2004 to June 3, 2006; and, of Libby Harris from June 5, 2006 to June 3, 2009, when that common ownership was severed by Harris' conveyance of Lot #1 to Harry R. and Diane T. Olsson by Warranty Deed dated June 3, 2009 and recorded June 4, 2009 in Book 463 at Page 121 of the Land Records. *See Complaint at Count II (admission); CC Exhibit 15.*

119. There is a 20 ft. wide gravel driveway (hereinafter “Driveway”) which is partially located on Lot #1 and which also crosses Lots #2 and 3 to provide access to the public road, Apple Hill Road. *See CC Exhibit 11-005.*

120. The deeded ROW is more particularly described as follows in the Bohne to Liu Orchard Lot deed; the Liu to Mundt Orchard Lot deed; and the Mundt to Garrison Orchard Lot deed:

“Included herein is a 20’ wide right of way, in common with grantors, their heirs, successors, and assigns, for all purposes of ingress and egress to the subject premises over an existing roadway running in a westerly direction from the westerly terminus of Apple Hill Road to the within conveyed premises.
*Grantors and grantees shall share the maintenance of said right of way.

*Except for snowplowing”

See CC Exhibits 7, 8, & 9.

121. This Court, has entered final judgment that the driveway easement over Lot #1 was extinguished by the Doctrine of Merger during the common ownership of the two lots, but that the Orchard Lot is benefited by an easement by necessity over Lot #1, as a servient estate.

122. The Driveway was created in 1989 and existed at the time that Harris acquired the Orchard Lot and Lot #1 on June 23, 2004 and has been continually and obviously used thereafter by Harris for access to the Orchard Lot, both before and after the severance of unity of ownership of the Orchard Lot and Lot #1.

123. Since 2001, all deeds in the chain of title to Lot #1 contain a reference that the land is subject to the terms and conditions of Vermont Subdivision Permit #EC-8-0679-1, which contains a condition requiring that the project “shall be completed as shown on the [approved] plans.” The approved plans for Lot #1 depict the location of the Orchard Lot’s Driveway as crossing Lot #1 from the ROW. Moreover, the conditions of the permit, including the approved

plans, “shall run with the land and will be binding upon and enforceable against the permittee and all assigns and successors in interest.”

124. There is no reasonably practical access to and from the Dwelling and/or the Orchard Lot to a public road other than via the Driveway.

125. At the time Harris conveyed Lot #1 to the Olssons, she intended that the Orchard Lot would retain the benefit of the Driveway while Lot #1 would retain the burden.

126. The width of the traveled portion of the driveway is approximately 22 ft. and is located on the ground as depicted on the State Subdivision and WW permit plans which are binding on Lot #1 and run with the land. The snowbanks on either side of the ROW occupy up to 4 feet on each side of the traveled portion of the road depending on winter’s snowfall. Thus the width of the ROW for the necessary use for ingress and egress (22 feet) and snow storage from snowplowing (4 feet on each side of the road) equals a total easement width of 30 feet, which is 20 feet narrower than the deeded ROW over Lots 2 and 3, which is 50 feet wide.

127. The Driveway was intended to benefit and serve the Orchard Lot and Dwelling thereon, and burden Lot #1, to provide access to the deeded ROW over Lots #2 and #3 connecting to the public road, Apple Hill Road.

128. There is no reasonably practical access to the Orchard Lot other than the Driveway and without the use of the Driveway, Defendant/Counterclaimant would have no reasonably consistent, practical means of reaching the Orchard Lot and would be denied the reasonable use and enjoyment of her land as a result.

129. The Court has rendered final judgment that the Driveway Easement over Lot #1 was extinguished by the doctrine of merger and that the Orchard Lot became landlocked upon the severance of Harris’s unity of ownership of the Orchard Lot and Lot #1, at which time an easement

by necessity was created by operation of law.

130. Therefore, Libby Harris is entitled to an Order declaring that the Easement by Necessity that burdens Lot #1 for the Orchard Lot's access to a public road is located as depicted on the original plans on file with the State of Vermont; however it is 30 feet in width, fifteen feet on each side of the centerline of the existing driveway, as depicted on the State Subdivision Permit for the necessary and proper use and maintenance of the ROW which includes an adequate width for snow plowing and storage in winter.

WHEREFORE, Counterclaimant/Third-party Plaintiff Libby Harris respectfully requests that this Honorable Court grant the following relief:

- a. **Location**: Declare that the location of the Easement by Necessity in the Driveway which burdens Lot #1 (the servient estate) and benefits the Orchard Lot (the dominant estate), is "as built," which location is as depicted on the State of Vermont ANR's Sub-Division, Waste Water and Water Supply Permit EC-8-0679-1.
- b. **Width**: Declare that the width of the Easement by Necessity is 30 feet wide, which width is comprised of 22 feet of traveled portion (11 feet each side of the center line of the driveway) and 4 feet on either side of the traveled portion of the driveway for snow storage from plowing of the road.

COUNT II - Declaratory Judgment

Easement by Implication – Location and Width

131. Defendant/Counterclaimant/Third-party Plaintiff Harris re-alleges and incorporates by reference its allegations set forth in ¶¶ 1-130 as if fully set forth herein.

132. The Driveway and deeded ROW was intended to benefit and serve the Orchard Lot and Dwelling thereon, and to burden Lot #1, in order to provide the Orchard Lot access to and from the ROW leading to the public road.

133. Defendant/Counterclaimant has continually and obviously used the Driveway and ROW both before and after the severance of unity of ownership of the Orchard Lot and Lot #1, for sole access to the Orchard Lot.

134. Plaintiff/Counterclaim Defendant PLH, LLC holds title to Lot #1 vis a vie a deed that references and binds Plaintiff/CC Defendant to the State Subdivision Permit #EC-8-0697-1 and its approved plans which depict the Driveway to the Orchard Lot as burdening and crossing the corner of Lot #1 connecting the ROW to the Orchard Lot. *See CC Exhibit 11.*

135. There is no reasonably practical access to the Orchard Lot other than the Driveway and ROW and without the use of the Driveway and ROW, Defendant/Counterclaimant would have no reasonably consistent, practical means of reaching the Orchard Lot and would be denied the reasonable use and enjoyment of her land.

136. Under Vermont law, where there is severance of unity of title, obvious benefit to the dominant and burden to the servient estates conveyed at the time of severance, continual and obvious use by the common owner prior to severance such that permanent use is presumed to have been intended, and necessity of the use for the beneficial use and enjoyment of the severed parcel, an easement in those benefits which the owner has enjoyed during the unity is implied by operation of law.

137. There was unity of title of the Orchard Lot and Lot #1 in Harris from June 23, 2004 until June 3, 2009 and the Driveway and ROW obviously benefitted the Orchard Lot and burdened Lot #1 at the time of severance.

138. Harris, as the common owner, obviously and continuously used the Driveway and ROW during the entire period of unity such that permanent use of the Driveway and ROW by the Orchard Lot was intended upon severance, and the Driveway is necessary for the beneficial use

and enjoyment of the Orchard Lot.

WHEREFORE, Counterclaimant/Third-party Plaintiff Libby Harris respectfully requests that this Honorable Court grant the following relief:

- a. Declare that Harris's Orchard Lot has an Easement by Implication which arose by operation of law;
- b. **Location:** Declare that the location of the Easement by Implication in the Driveway which burdens Lot #1 (the servient estate) and benefits the Orchard Lot (the dominant estate), is "as built," which location is as depicted on the State of Vermont ANR's Sub-Division, Waste Water and Water Supply Permit EC-8-0679-1.
- c. **Width:** Declare that the width of the Easement by Implication is 30 feet wide, which width is comprised of 22 feet of traveled portion (11 feet each side of the center line of the driveway) and 4 feet on either side of the traveled portion of the driveway for snow storage from plowing of the road.

COUNT III - Declaratory Judgment & Injunctive Relief

The Proposed Hemp Processing Facility Structure and The Planting, Cultivating or Processing of Commercial Hemp Is Prohibited on Lot #1 by the AHHA Covenants and Deed Restrictions.

139. Defendant/Counterclaimant/Third-party Plaintiff Harris re-alleges and incorporates by reference its allegations set forth in ¶¶ 1-138 as if fully set forth herein.

140. The AHHA is a common interest community that pre-existed the enactment of the Vermont Common Interest Ownership Act ("VCIOA" or "Act"). See 27A V.S.A. § 1-101 et seq. Certain limited sections of the Act, including Section 4-117 apply to a pre-existing community.

141. Section 4-117 permits Ms. Harris, as a unit owner, to bring an action to enforce a right granted or obligation imposed by the statute, the declaration, or the bylaws. Mr. Harris therefore, has standing to bring this action under the Vermont VCIOA to enforce her rights under the AHHA Covenants.

142. Under Section 4-117, the court may award reasonable attorneys' fees and costs.

143. The Apple Hill Covenants apply to and are binding upon Lot #1 and run with the land.

144. The Apple Hill Covenants contain restrictive covenants which prohibit not only commercial use, but also any non-residential use of Lot #1 aside from limited exceptions.

145. The Covenants state:

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 non-residential purpose whether or not enumerated herein except as herein provided.

See CC Exhibit 2, Bohne Affidavit at ¶ 4 and Exh. A.

146. The proposed cultivation and processing of hemp and the construction and operation of a hemp processing facility on Lot #1 is a "manufacturing or commercial purpose" which is prohibited by the Covenants.

147. The proposed cultivation and processing of commercial hemp and the construction and operation of a hemp processing facility on Lot #1 is NOT a "garden" or "horticultural enterprise" under the Covenants.

148. The proposed cultivation and processing of commercial hemp and the construction and operation of a hemp processing facility structure on Lot #1 is a "non-residential purpose" which is prohibited by the Covenants.

149. The proposed construction of a hemp processing facility structure on Lot #1 is specifically prohibited by the covenants which state:

"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.”

See CC Exhibit 2, Bohne Affidavit at ¶ 4 and Exh. A.

150. The proposed construction of a hemp processing facility structure on Lot #1 is not “one detached single family dwelling not exceeding 2 ½ stories in height.”

151. The proposed hemp processing facility structure on Lot #1 does not qualify as “a private garage, greenhouse or tool or storage house to be used in connection with the maintenance and cultivation of the lands and premises herein conveyed,” as the Covenants require that these types of structures be appurtenant to the residential dwelling and use.

152. The Covenants also provide:

“No noxious or offensive activities shall be carried on upon the premises, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.”

153. The proposed cultivation and processing of commercial hemp and the construction of a hemp processing facility structure on Lot #1 is a “noxious or offensive activity” which is prohibited by the Covenants.

154. The proposed cultivation and processing of commercial hemp and the construction of a hemp processing facility structure on Lot #1 is an annoyance or nuisance to the neighborhood which is prohibited by the Covenants.

155. The Covenants also require:

“Plans and elevations for any building 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 building 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.”

156. Upon information and belief, the Melone Entities have failed to submit any “[p]lans

and elevations for any building or structures to be erected on the conveyed premises and showing the proposed location of such premises. . . for approval to Paul W. Bohne, III and Nancy S. Bohne, their heirs and assigns.”

157. The hemp processing facility structure is NOT a building “of such construction and...located in such a manner as to maintain a high quality and good appearance for the proposed residential area.” Therefore, the proposed structure is not able to be approved under the Covenants.

158. Paul Bohne’s subdivision permit for Lot #1 provides plans and elevations for the location of the planned residential dwelling and the wastewater system for the Lot, which are the only structures permitted by the State of Vermont. No other structures are permitted under the State sub-division permit. *See CC Exhibit 11 at map S-1 (p. 11-005). See also Exhibit 26, (enlarged version of map S-1.)*

159. Upon information and belief, the Melone Entities have failed to apply for any amendment to the State Sub-division permit that would permit the construction of the proposed hemp processing facility structure.

WHEREFORE, Defendant/Counterclaimant/Third-party Plaintiff Harris respectfully requests that this Honorable Court grant the following relief:

- a. Declare that the planting, cultivation and processing of hemp as well as the construction of a hemp processing facility structure, is prohibited by the Apple Hill Covenants and the State Subdivision Permit.
- b. Issue a Permanent Injunction enjoining Thomas Melone and all of the Melone Entities from planting, cultivating and/or processing hemp or building a hemp processing facility structure, or any other structure other than an approved single family dwelling on Lot #1.
- c. Award Ms. Harris’ reasonable attorneys’ fees and costs pursuant to VCIOA Section 4-117.

COUNT IV - Declaratory Judgment & Injunctive Relief

**Use of the Private ROW to Access a Commercial Hemp Operation
Is Prohibited on Lot #1 by the Scope of the Deeded Easement and the AHHA Covenants.**

160. Defendant/Counterclaimant/Third-party Plaintiff Harris re-alleges and incorporates by reference its allegations set forth in in ¶¶ 1-159 as if fully set forth herein.

161. The Private ROW that benefits Lots #1, 2 and the Orchard Lot and which crosses (and burdens) Lots #2 and #3 provides access to the public road known as Apple Hill Road.

162. The purpose of the deeded ROW is to provide homes in the residential development with access (ingress and egress) rights to a public road, Apple Hill Road.

163. The scope of the deeded ROW is limited to those uses appurtenant to the residential occupation of the premises and which are not prohibited by the covenants.

164. Use of that private deeded ROW for ingress and egress to a commercial hemp operation is prohibited by the Covenants because such an operation itself is prohibited by the Covenants which are binding upon Lots 1, 2 and 3 and which run with the land.

WHEREFORE, Defendant/Counterclaimant/Third-party Plaintiff Libby Harris respectfully requests that this Honorable Court grant the following relief:

- a. Declare that the use of the private ROW which burdens Lots #2 and 3 and provides the Orchard Lot, Lot #1 and Lot #2 access to Apple Hill Road, is limited to ingress and egress to those lots for a single-family residence only and that the use of the ROW to access a hemp farm and/or processing facility is strictly prohibited by the AHHA Covenants and the deed restrictions of Lot #1.
- b. Issue a Permanent Injunction enjoining Thomas Melone and all of the Melone Entities from using the ROW to access a hemp farm and/or processing facility, or for any use other than accessing an approved single family dwelling on Lot #1.

COUNT V - Declaratory Judgement & Injunctive Relief

**The Proposed Hemp Processing Facility Structure
Is an “Unnecessary Structure” Prohibited by 24 VSA § 3817**

165. Defendant/Counterclaimant/Third-party Plaintiff Harris re-alleges and incorporates by reference its allegations set forth in in ¶¶ 1-164 as if fully set forth herein.

166. Vermont’s statute prohibiting “spite fences” and other unnecessary structures provides:

Unnecessary fence; maintenance prohibited; penalty

A person shall not erect or maintain an unnecessary fence or other structure for the purpose of annoying the owners of adjoining property by obstructing their view or depriving them of light or air. A person who violates a provision of this section shall be fined not more than \$100.00.

24 VSA § 3817.

167. PLH LLC’s Lot #1 and Ms. Harris’ Orchard Lot are adjoining properties.

168. The Melone Entities’ March 23, 2020 Proposed Hemp Amendment to the PUC to plant and cultivate hemp, was DENIED by the PUC. However, Thomas Melone continues to represent that he intends to cut down the orchard trees and plant hemp on Lot #1, and build the massive hemp processing facility measuring 165 feet long, 30 feet high, and 16 feet deep, in the location where buffer trees were to be located.

169. The Melone Entities’ stated purpose of the hemp processing facility structure is to block Ms. Harris’ view of the Apple Hill Solar project and in fact, the proposed structure would block her entire viewshed and its beautiful mountain vistas which serve as a breathtaking backdrop to the historic Bennington Battle Monument.

170. The proposed structure is also designed to deprive Ms. Harris of air due to the unpleasant and noxious odors that will permeate the neighborhood, particularly towards Ms. Harris’ home which is directly downwind of Lot #1.

171. The proposed structure creates “a sense of confinement and isolation” because it is massively tall, is made of solid wood, is close to the Harris home, and stands flush to the ground.

172. The proposed structure is massive, measuring 30 feet tall and 165 feet long, (yet only 18 feet deep) providing a solid barrier that will wall Ms. Harris in and create an unsightly obstruction.

173. The proposed structure is prohibited by the Apple Hill Covenants and is an “unnecessary other structure” for the purpose of annoying the owners of adjoining property in violation of 24 V.S.A. §3817.

174. The proposed structure has no utility since it is proposed for a residential sub-division encumbered by Covenants and a state sub-division permit which prohibit the construction of such a structure.

175. The predominant purpose of the proposed structure is to annoy and even intimidate Ms. Harris into withdrawing her opposition to the Melone Entities’ proposed Solar energy projects which is demonstrated by a number of factors:

- a. The Melone Entities’ stated purpose of the proposed structure is to completely block Ms. Harris’ view.
- b. Melone statement to Harris’ Counsel that since Harris didn’t want trees planted on Lot #1, now she gets a huge hemp barn instead.
- c. Melone persisting in his threats to build the unnecessary “spite” structure and registering with the Agency of Agriculture of his intent to plant a hemp farm despite the PUC’s denial of the Proposed Hemp Amendment.
- d. Melone’s history of sharp litigation tactics against Ms. Harris as a *pro se* party in the PUC proceedings including *inter alia*, harassing, intimidating and bullying her, filing frivolous motions, and subpoenaing her in the PUC permitting case to appear for a deposition in Burlington Vermont when she lives in Bennington, requiring Harris to file a Motion to Quash.

- e. Melone's filing of Site Plans with the PUC and the Vermont Supreme Court in 2013, falsely depicting the access road to the Bennington/Chelsea Solar project via a make-believe road extension to Russett Drive and trying to bulldoze the road on the ground, holding no property rights or interests of any kind and having no site control whatsoever.
- f. Then Melone's filing of Chelsea Solar Site Petition to the PUC in 2015, falsely claiming the right to use the private shared ROW as access to a commercial solar project and falsely depicting the private shared ROW as a public road labeled "Apple Hill Road."
- g. Then litigating the Chelsea Solar Petition for 2 years, proposing to use the private shared ROW from Apple Hill Road from the east, as the access road to the commercial solar projects, to which Melone had and has no rights to or site control, wrongfully forcing Harris to engage in litigation to protect her property rights.
- h. Then Melone's vindictive filing in March 2020 of the Proposed Hemp Amendment and his continuing threats to cultivate and process hemp and build a processing facility structure on Lot #1 in violation of the Covenants.
- i. Melone's wrongful filing of frivolous claims and unsupported pleadings, wrongfully causing Ms. Harris to incur litigation costs, expenses, and attorneys' fees in the matter before the PUC, the appeals taken to the Vermont Supreme Court, as well as in the instant suit.
- j. Melone's defamatory statements made about Libby Harris in PUC filings.
- k. Melone's filing of the instant lawsuit with a caption naming every alias that Libby Harris has gone by in her life due to her prior marriages. Melone's use of Ms. Harris' aliases, which names were utterly irrelevant to the claims brought, was misogynistic, abusive and intimidating, and all for bad motive.
- l. Melone directly contacting Ms. Harris, a represented party, twice in three weeks and mailing 80 pages of paper to her home in Bennington from New York City when it was the epicenter of the Covid-19 Pandemic at the time to further frighten and intimidate her.
- m. Melone emailing a Subpoena for Peter Lawrence (Ms. Harris' former real estate attorney) directly to Ms. Harris, a represented party instead of to her attorneys of record in the instant case.

- n. The frivolous characteristics of the proposed structure itself, including: its length of 165 feet, height of 30 feet, and depth of 16 feet; its location, directly in front of the Harris home; and, its orientation, purposely located to block the largest amount of Ms. Harris' highly scenic viewshed including her view of the Bennington Battle Monument.
- o. The proposed use of the structure is for drying and processing commercial hemp, a highly noxious and offensive commercial activity.
- p. The incongruity and illegality of such a structure within a residential development and which is prohibited by the AHHA Covenants and the state subdivision permit.

WHEREFORE, Counterclaimant/Third-party Plaintiff Harris respectfully requests that this Honorable Court grant the following relief:

- a. Declare that the construction of the hemp processing facility structure on Lot #1 is prohibited by 24 V.S.A. § 3817.
- b. Issue a Permanent Injunction enjoining Thomas Melone and all of the Melone Entities from building a hemp processing facility structure, or any other unnecessary structure, other than an approved single family dwelling on Lot #1.

COUNT VI - NUISANCE

176. Defendant/Counterclaimant/Third-party Plaintiff Harris re-alleges and incorporates by reference its allegations set forth in in ¶¶ 1-175 as if fully set forth herein.

177. Ms. Harris is the owner of the Orchard Lot which adjoins the Melone Entities' Lot #1.

178. Ms. Harris' premises are fitted for residential use, a single-family dwelling suitable for that purpose was constructed about 32 years ago and has been used for that purpose continuously to the present.

179. Ms. Harris' dwelling is oriented facing the south to take advantage of the property's spectacular views of the Bennington Battle Monument and the scenic mountain vistas, and has

windows and a deck on the south side of the home from and through which plaintiff receives air and through Lot #1, which immediately adjoins plaintiff's premises on the southern boundary.

180. The owner of Lot #1 (whichever Melone Entity that may be) has a duty not to use its property in a manner that unreasonably injures the property or rights of their neighbors, or that unreasonably annoys or disturbs their neighbors in their possession or enjoyment of the neighbors' property, or renders their neighbors' use or occupancy of their property uncomfortable.

181. Presently, the Melone Entities threaten to commence to erect, maliciously and unlawfully, a hemp processing facility structure in front of Ms. Harris' home, standing 30 feet high and 165 feet long, along the southern boundary of Ms. Harris' property, so as to deprive plaintiff's building of its view and necessary air and light. They also proposed to plant the entirety of Lot #1 with Hemp.

182. The Melone Entities intend that this hemp processing facility structure shall be a permanent structure.

183. If the Melone Entities are allowed to commence this work, it will deprive plaintiff of her view, light and air to her deck and through the windows on the south side of plaintiff's building.

184. The hemp farm and processing structure is illegal, unwarranted and it unreasonably and unnecessarily blocks Ms. Harris' entire viewshed as well as the flow of air, the benefit of light, and the reasonable use and enjoyment of her property.

185. The hemp farm and processing facility structure are abnormal and out of place in its surroundings and in violation of the AHHA Covenants and Deed restrictions and the State of Vermont ANR Subdivision, Wastewater, and Water Supply Permit.

186. The hemp farm and illegal hemp processing facility structure unreasonably, substantially and detrimentally injures and diminishes the value, use, and enjoyment of the Harris property without commensurate lawful benefit to Lot #1.

187. The injury to Plaintiffs and to their property by the threat of the hemp farm and processing facility structure by the Melone Entities, given their highly litigious scorched-earth serial-litigator bullying reputations, is a private nuisance which is causing irreparable harm to Harris' property for which there is no adequate remedy at law.

188. The public interest will not be adversely affected (but would rather be benefitted) by the issuance of an injunction prohibiting the Melone Entities from constructing the illegal structure and planting hemp on Lot #1 in violation of the deed restrictions and covenants.

WHEREFORE, Defendant/Counterclaimant/Third-party Plaintiff Harris respectfully requests that this Honorable Court grant the following relief:

- a. Declare that the planting, cultivation and processing of hemp as well as the construction of a hemp processing facility structure on Lot #1, is a nuisance under Vermont Common Law and in violation of the AHHA Covenants.
- b. Issue a Permanent Injunction enjoining Thomas Melone and all of the Melone Entities from planting, cultivating and/or processing hemp and from erecting the hemp processing facility structure or any other structure so as to obstruct the view, light and air to Harris' property, in violation of her property rights under Vermont's common law of nuisance.
- c. Award Ms. Harris compensatory damages including lost time, opportunity, litigation costs, expenses, attorneys' fees, and diminution in value to her property.

COUNT VII - BAD FAITH

189. Defendant/Counterclaimant/Third-party Plaintiff Harris re-alleges and incorporates by reference its allegations set forth in in ¶¶ 1-188 as if fully set forth herein.

190. The outrageous and vindictive nature of the contents of the Melone Entities' Spite Structure and Hemp Amendment filing, demonstrate Thomas Melone's wanton ill will and bad motive which was designed to shock and inflict severe emotional distress upon Ms. Harris by threatening to destroy her quiet use and enjoyment of her home and the entire value of her property. These actions are but the latest installment in a years-long concerted effort by Thomas Melone to force Ms. Harris to withdraw her opposition to the Bennington solar power projects.

191. Moreover, the Melones' wanton ill will and bad motive is further demonstrated by the mailing of the paper copies of the Amendment documents (more than 80 pages) to Ms. Harris, a represented party, at her home in Bennington, Vermont, directly from the ALLCO offices in New York City, which was, at the time, the epicenter of the Covid-19 Pandemic in the United States. Such an act was intentional and/or was substantially certain to cause, and did in fact cause shock, severe emotional distress, fear, and terror regarding not only the content of these outrageous and vindictive documents but also that the paper documents themselves could carry the Covid-19 virus and infect Ms. Harris' household.

192. The 80+ page "Hemp Mailing" has revealed the depths to which Thomas Melone will stoop to realize his greedy ends. Melone's shameful, vindictive conduct over the past 6 years, has so far surpassed the bounds of human decency in a civilized society, that any rational person would believe that Melone's mailing was purposely sent to infect Ms. Harris since Melone has failed at every other attempt to make Ms. Harris "go away."

193. The Proposed Hemp Amendment, which now proposes that PLH, LLC will plant

hemp on Lot #1 and build a massive structure to block Harris' view, is so despicable and vindictive as to evidence malice and wanton ill will, obviously designed to force Ms. Harris to withdraw from the Apple Hill Solar permitting proceeding before the PUC and/or to punish her for opposing the solar projects to ensure no one opposes Melone's permits in the future.

194. Thomas Melone, a very experienced lawyer who claims to be some sort of legal ethics' expert according to his own Affidavit, is well aware that basic Property Law 101 and that the AHHA covenants and deed restriction have prohibited every single Petition and Amendment that Thomas Melone has ever filed with the PUC for Chelsea Solar, LLC or Apple Hill Solar, LLC since 2015, not to mention the Standard Offer Contract appeal to the Supreme Court in 2013, in which he falsely represented to the Supreme Court, that he had site control over a make-believe road extension off of Russett Drive to access the Chelsea Solar site.

195. The filing of the Proposed Hemp Amendment for a hemp farm and illegal processing facility, is merely the latest installment of Thomas Melone's six years of outrageous, abusive and illegal conduct intentionally designed to cause Libby Harris to withdraw her opposition to his solar energy projects. Melone's continued insistence that he will plant hemp and build his hemp facility despite the PUC denying his amendment in order to block Ms. Harris' spectacular view and necessary light and air, is being done maliciously, wantonly, and without any cause, provocation, or justification, and in deliberate and willful violation of the rights of plaintiff, thereby causing great damage and hardship to plaintiff, and which will continue in the future to cause plaintiff great damage and hardship that cannot be adequately compensated, and for which plaintiff has no adequate remedy at law.

196. Ms. Harris has been forced to intervene in the PUC Chelsea Solar LLC and Apple Hill Solar LLC projects permitting cases since 2015, in order to defend her property interests that

were being ignored, misrepresented, bulldozed, and harmed by the Melone Entities' applications which were wholly unsupported by any colorable claim of site control. Such cases are both on appeal at the Vermont Supreme Court.

197. Ms. Harris has also been forced to defend her property against the frivolous claims brought in the present action as well as having to file these counterclaims/cross claims to protect her property rights and interests which are totally disregarded by Melone who engages in willful egregious behavior including Melone's mislabeling of the private ROW as a public road "Apple Hill Road" and refusing to stop using the term the "Orchard Lot" to describe Lot #1, which could cause a cloud on title to Ms. Harris' property, and which required a motion to be made to the PUC, to stop him from using the term "Orchard Lot" to describe Lot #1.

198. In addition, Thomas Melone has inserted himself into this case as a material fact witness as well as being the attorney of record which is prejudicial to Ms. Harris and in violation of the Vermont Rules of Professional Conduct Rule 3.7 prohibition against such a dual role;

199. The facts and circumstances detailed above, including the latest Proposed Hemp Amendment and Melone's continuing stated intention, is the proximate cause of significant damages to Ms. Harris, including but not limited to lost time and opportunities, litigation costs, expenses, and attorneys' fees to defend against Melone's spiteful, oppressive and abusive conduct and to seek protection from this Court through an injunction to stop Thomas Melone in his quest to destroy Libby Harris, the only individual to stand up to Thomas Melone and his scorched-earth bull-doing litigating tactics.

200. Such extraordinary circumstances, never before seen in the State of Vermont courts, warrant an award of compensatory and punitive damages as well as litigation costs and expenses, including attorneys' fees under the Vermont Common Law "wrongfully causing litigation" and

“bad faith” exceptions to the American Rule. *See Albright v. Fish*, 138 Vt. 585, 591, 422 A.2d 250, 254 (1980); *In re Appeal of Gadue*, 149 Vt. 322, 327 (Vt. 1987).

WHEREFORE, Defendant/Counterclaimant/Third-party Plaintiff Harris respectfully requests that this Honorable Court grant the following relief:

- a. Award Ms. Harris compensatory damages including but not limited to her lost time, opportunity, litigation costs, expenses, attorneys’ fees, and diminution in value to her property in an amount to be determined at trial.
- b. Award Ms. Harris punitive damages in an amount to be determined at trial, to punish Thomas Melone’s bad faith conduct and deter such actions in the future by Melone or by other bad actors.
- c. Enjoin Thomas Melone, the Melone entities and their employees, agents and contractors from referring to Lot #1 as the “Orchard Lot” or the “Horticultural Lot” in any documents, testimony, surveys, maps, site plans or other depictions that are filed in the public domain and order that Thomas Melone correct any such past public filings that contain the misleading label or name of the “Orchard Lot” or the “Horticultural Lot” when referring to Lot #1 in the future so as to avoid any confusion that could cause a cloud on title to the real “Orchard Lot” owned by Libby Harris.
- d. Enjoin Thomas Melone, the Melone entities and their employees, agents and contractors from falsely depicting the private shared ROW as the public road named “Apple Hill Road” in any documents, testimony, surveys, maps, or site plans that are filed in the public domain and order that Thomas Melone correct any such past public filings that contain the misleading label or depiction of the private shared ROW as “Apple Hill Road.”

COUNT VIII—PUNITIVE DAMAGES

201. Defendant/Counterclaimant/Third-party Plaintiff Harris re-alleges and incorporates by reference its allegations set forth in in ¶¶ 1-200 as if fully set forth herein.

202. In addition to all of the above and foregoing, Libby Harris submits and hereby incorporates by reference, **Exhibits 26 and 27**, which are Vermont Federal Court filings in *Allco Renewable Energy Ltd. v. Kulkin et al*, Case No. 2:20-CV-44, in response to a Subpoena served

by Thomas Melone upon Annette Smith, Executive Director of Vermonters for a Clean Environment requesting that the Vermont Federal District Court quash the subpoena, issue a protective order and sanction Thomas Melone for his bad faith conduct.

203. Annette Smith is the Executive Director of Vermonters for a Clean Environment Inc. (VCE), a grassroots, environmental advocacy and educational organization that was formed in 1999 in response to a \$1 billion natural gas power plant and pipeline project supported by then-Governor Howard Dean, proposed for Rutland (1080 mW power plant) and Bennington (270 mW power plant) Counties in Vermont, with two 60-mile 24" high pressure pipelines proposed to fuel the power plants. Prior to the formation of VCE, Annette Smith, a small farmer living off grid with solar in Vermont, wrote a letter to the editor about the project, which was published in the Rutland Herald on December 15, 1998, titled "Solar is Better than Gas Pipeline."

204. After VCE successfully defeated the huge fossil fuel project, the 501(c)(3) non-profit organization assisted Vermonters in the defeat of out-of-scale quarries, large farms, and inappropriately sited landfills. VCE has assisted Vermont communities in addressing toxics issues, air pollution, groundwater contamination and protection, drinking water disinfection, and the preservation of important natural areas in Vermont. VCE has assisted Vermonters in addressing the environmental impacts of electric transmission lines, a second natural gas pipeline, wind, solar, and biomass energy proposals. VCE provides facts and information so people can make informed decisions. Whenever possible, VCE promotes collaboration over conflict.

205. VCE also acts as a clearinghouse and assists individuals and municipalities to participate in regulatory proceedings, including Act 250 (Vermont's land use law and process), Agricultural permitting for large farms, Agency of Natural Resources permits, and the Public Utility Commission. VCE serves in a watchdog role to hold corporations accountable for

their actions in Vermont communities, and calls out the activities of bad actors who are operating outside of Vermont's rules and law. Due to VCE's vigilance and assistance to community members, a wind developer paid ten thousand dollars in fines to the state of Vermont, and a large solar developer paid \$57,500 for violations of its Certificate of Public Good (CPG). Thousands of CPGs have been issued by Vermont's PUC for solar projects, and an extremely tiny percentage of those have earned VCE's attention. VCE has been instrumental in reporting Thomas Melone to the PUC for violations of the law including violating injunctive orders and permit conditions.

206. Annette Smith was named "2016 Vermonter of the Year" by the Burlington Free Press on Jan. 2, 2017, stating:

For nearly two decades, Annette Smith has played a key part in making sure there is public debate over some of the most high-profile energy projects in Vermont.

As executive director of Vermonters for a Clean Environment, the Danby resident has organized communities, testified before government boards and advised residents who felt powerless in the face of state bureaucracies and big business...

... Smith recently has found herself making headlines facing off against major renewable energy projects, generally seen as helping to fight climate change by reducing reliance on fossil fuels. But Smith says she is no friend of oil and coal, or fossil fuels in general, living as she does off the grid on her solar-powered farm in Rutland County where she grows much of own food.

More than any particular issue in which she has been involved, or a specific position she has taken, Smith has distinguished herself by helping to raise awareness about the possible local impact of big projects and give voice to residents who find themselves up against much bigger forces....

... A common thread among those who have sought out Smith is that she helps better the odds against a wealthier, more knowledgeable and better funded adversary.

Burlington Free Press, "Vermonter of the Year: Annette Smith," Jan. 2, 2017.

207. VCE has assisted the Bennington Vermont community and specifically, the Apple

Hill Residential neighborhood and Libby Harris, to have a voice and participate in the PUC permitting process.

208. The federal court case in which Melone has subpoenaed non-party Annette Smith, commanding her to produce all of her emails she has ever sent to anyone ever about Melone's solar projects. The request was served as a quintessential "fishing expedition" brought against a Bennington resident Joseph Kulkin, who is being used as a pawn in Melone's bid to destroy the opposition to this Bennington and Rutland solar projects by filing a frivolous suit for civil conspiracy, defamation and intentional interference with prospective contractual relations for \$25 million, which is Melone's profit on a 5-acre solar array for 25 years (one million dollars per year per 5 acres of panels).

209. However, the true target of his lawsuit is "Jane Doe 1" and Jane Doe 2", who are obviously Annette Smith and Libby Harris as is indicated in a number of false and defamatory statements that Melone has made about Libby Harris and Annette Smith in pleadings before the PUC and the Federal Court including, but not limited to the following:

- a. **PUC - Response to Richard Carroll (Apple Hill) final with exhibits and cover letter.pdf, July 21, 2015**
"Indeed at the public site visit for the Apple Hill Solar project the only members of the public were Mr. Carroll, his wife, and one of Annette Smith's colleagues (who is also advising Intervenor Libby Harris)." P. 2
- b. **PUC - Motion to strike pre-filed testimony of Richard Carroll (FINAL with cert....pdf, Aug. 4, 2015**
"Having failed in her bid to have the Board pay for real expert testimony to address Ms. Harris' NIMBY concerns, she now attempts to drape an area resident and fellow cohort of Annette Smith in expert garb." P. 1
- c. **PUC - Petitioner's Reply Brief (FINAL with Cert of Service).pdf, Aug. 12, 2015**
"Harris and her sponsor, an organization that calls itself "Vermonters for a Clean Environment" ("VCE"), continue to advocate for the status quo. As Governor Peter Shumlin recently stated: 'Climate change is real. It's a threat to humanity.' Harris and her sponsor would rather fiddle while Rome

burns.” P. 2

“Ms. Harris is the lone wolf (with the support of her anti-renewable energy sponsor VCE) that continues to object, but she has not provided any substantive evidence that can assist the Board in making its decision regarding the Petitioner’s satisfaction of the Section 248 criteria.” P. 8

d. **PUC - Memo in opposition to intervention of Town of Bennington (FINAL with cert of service).pdf, Aug. 17, 2015**

“The meeting clearly shows the result when the Annette Smith circus comes to Town and there is no one in attendance to correct false statements and misrepresentations.” P. 7

e. **PUC - Supplemental Memo in opposition to intervention of Town of Bennington - 8.18.pdf, Aug. 18, 2015**

“Obviously, the Select Board was unwittingly drafted into supporting an effort against the project being spearheaded by anti-renewable energy advocate Annette Smith, one of the coal and gas industry’s best friends in Vermont.”

f. **Vermont Supreme Court - IN RE INVESTIGATION PURSUANT TO 30 V.S.A. §§ 30 AND 209 INTO WHETHER THE PETITIONER INITIATED SITE PREPARATION AT APPLE HILL IN BENNINGTON, VERMONT, filed with Vermont Supreme Court, Oct. 27, 2020**

“On June 24, 2020, the PUC opened an investigation *on its own motion* in response to a complaint filed in Docket 8454 by anti-renewable energy activist Annette Smith, who has spearheaded the opposition to the two Bennington solar projects.” p. 9

g. **U.S. District Court - Allco v. Volz, Vepp, PUC, Governor Scott, Complaint for Civil Rights Violations, Unlawful Taking, Declaratory and Injunctive Relief and Damages, March 9, 2020**

“In reality it was directed at the Plaintiffs' Chelsea and Apple Hill solar projects, as part of a coordinated effort of Klein, other legislators, the neighborhood opposition group and their leader, Annette Smith.”

“21. How do we know that Klein's warning to Volz and the PUC was targeted at Plaintiffs' Chelsea and Apple Hill solar projects and was part of a coordinated effort of Klein, the neighborhood opposition group and their leader, Annette Smith?” p. 6

h. **U.S. District Court - Allco v. Kulkin, Complaint for Defamation, Injurious Falsehood and Tortious Interference with Prospective Contractual Relations, March 19, 2020**

“One of Kulkin's allies in his efforts to stop Plaintiffs' solar energy projects

is Annette Smith of an organization that calls itself "Vermonters for a Clean Environment."

"19. On January 30, 2019, Annette Smith filed a complaint with the PUC alleging that the Plaintiffs were violating the CPGs by accessing the Solar Site from Cold River Road for site clearing. The PUC opened case 19-1596 in response to the complaint." p. 6

210. Many of the statements are made against Libby Harris, directly or by reference to being the head of the neighborhood opposition group. Thomas Melone's most loathsome and despicable comments include accusing Ms. Harris and Ms. Smith of being murderers of people of color due to their opposition to the Bennington Solar Projects. Some of the pleadings refer to the "Annette Smith circus" coming to town and attempt to brand her as an anti-renewable energy.

211. All of these ludicrous allegations are designed to create a false narrative through which Melone will assault Ms. Harris and Ms. Smith in his scorched-earth serial litigation to cause financial harm severe enough to eliminate their opposition to his arrogant flouting and utter disregard of the law. Melone's goal - figuratively and literally - is to bulldoze anyone who stands in his way of making \$1 million per 5 acres of Vermont real estate that he can acquire.

212. Moreover, Melone has already foolishly spent some \$800,000.00 to have GMP bring power lines to the Apple Hill site for the two arrays. This investment was a gamble. Without possessing a CPG to construct the projects, the payment for the power line will be lost if Melone fails to obtain his permits, a strong financial incentive that provides evidence of his bad motive and unadulterated greed.

213. Given the totality of the circumstances, Thomas Melone's concerted and sustained actions evidence bad faith, wanton ill will, and utter and deliberate disregards for Ms. Harris' rights. His arrogant flouting of Vermont law and his knowing and deliberate violation of a PUC injunctive Orders, his Proposed Hemp Amendment and its timing along with his "special delivery"

of potentially infected Covid-19 laden documents directly to a represented party for the second time in three weeks, were all intentionally and maliciously designed to force Ms. Harris to withdraw from the PUC permitting appeals. Therefore, an award of punitive damages is absolutely critical, necessary, and totally appropriate to punish Thomas Melone for his bad faith conduct and to deter Melone or other bad actors from engaging in such outrageous, reprehensible conduct in the future in the State of Vermont.

WHEREFORE, Defendant/Counterclaimant/Third-party Plaintiff Harris respectfully requests that this Honorable Court Award Ms. Harris punitive damages in an amount to be determined at trial, to punish Thomas Melone's bad faith conduct and deter such actions in the future by Melone or by other bad actors.

PRAYER FOR RELIEF

WHEREFORE, Counterclaimant/Third-party Plaintiff prays that this Honorable Court:

- (a) Declare that the Easement by Necessity in the Driveway which burdens Lot #1 (the servient estate) and benefits the Orchard Lot (the dominant estate), and which arose by operation of law as previously declared by the Court is located in its "as-built" and as depicted on State Subdivision Permitting documents & the width is 30 feet total (22 feet of traveled portion, 4 feet for snow storage on both sides of the traveled way).
- (b) Declare that the Orchard Lot is benefitted by an Easement by Implication in the Driveway which burdens Lot #1 (the servient estate) and benefits the Orchard Lot (the dominant estate), and declare that it is located in its "as-built" location and as depicted on State Subdivision Permitting documents & that the width is 30 feet total (22 feet of traveled portion, 4 feet for snow storage on both sides of the traveled way).the location and width of the easement.
- (c) Declare that the use of Lot #1 for a hemp farm and the construction of a hemp drying and processing facility structure is prohibited by the AHHA Covenants and Deed Restrictions and State Subdivision, Wastewater & Water Supply Permit, all of which run with the land and bind PLH, LLC (or PLH Vineyard Sky, LLC) as present owner.

- (d) Enjoin Thomas Melone, the Melone entities and their employees, agents and contractors from planting cultivating, storing or processing hemp on Lot #1 and enjoin the construction of a hemp processing facility structure on Lot #1 or any other non-single-family dwelling.
- (e) Award reasonable attorneys' fees and costs pursuant to 27A V.S.A. §4-117.
- (f) Declare that the Private Shared ROW is for the single-family residential use of Lots #1, 2 and the Orchard Lot only and access for a commercial hemp growing operation and/or processing facility is prohibited.
- (g) Enjoin Thomas Melone, the Melone entities and their employees, agents and contractors from using the Private shared ROW for ingress or egress to any property other than Lot #1 or for ingress or egress to a hemp farm, hemp processing facility, or for any other non-single-family residential use of Lot #1.
- (h) Declare that the construction of the hemp processing facility structure on Lot #1 is prohibited by 24 V.S.A. §3817 as an "Unnecessary Spite Structure."
- (i) Enjoin Thomas Melone and the Melone Entities from constructing a hemp processing facility structure on Lot #1 as an "Unnecessary Spite Structure" or any unnecessary structure, other than an approved single-family dwelling, in violation of 24 V.S.A. § 3817.
- (j) Award Ms. Harris compensatory damages, punitive damages, attorneys' fees, litigation costs and expenses under the common law of Nuisance and the Litigation and Bad Faith exceptions to the American rule on attorney fees.
- (k) Enjoin Thomas Melone, the Melone entities and their employees, agents and contractors from referring to Lot #1 as the "Orchard Lot" or the "Horticultural Lot" in any documents, testimony, surveys, maps, site plans or other depictions that are filed in the public domain and order that Thomas Melone correct any such past public filings that contain the misleading label or name of the "Orchard Lot" or the "Horticultural Lot" when referring to Lot #1 in the future so as to avoid any confusion that could cause a cloud on title to the real "Orchard Lot" owned by Libby Harris.
- (l) Enjoin Thomas Melone, the Melone entities and their employees,

agents and contractors from falsely depicting the private shared ROW as the public road named “Apple Hill Road” in any documents, testimony, surveys, maps, or site plans that are filed in the public domain and order that Thomas Melone correct any such past public filings that contain the misleading label or depiction of the private shared ROW as “Apple Hill Road.”

- (m) Award Ms. Harris punitive damages to punish Thomas Melone’s bad faith conduct and deter such actions in the future by Melone or other bad actors.
- (n) Grant such other relief as is this Court deems equitable and just.

DATED at Randolph, County of Orange, and State of Vermont this 16th day of April, 2021.

LIBBY HARRIS,

Defendant/Counterclaimant/Third-party Plaintiff

By: */s/ L. Brooke Dingledine*

L. Brooke Dingledine, Esq.,

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