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October 11, 2021

VIA EMAIL: concomm@westtisbury-ma.gov

West Tisbury Conservation Commission
c/o Maria McFarland, Board Administrator
1059 State Road
P.O. Box 278, 2nd Floor
West Tisbury, MA 02575

**Re Map 31 Lot 48/21 New Lane/Doane/Potential Wetlands Violation by Abutters at Map 31 Lot 68.1 41 Pond View Farm Road/Eppel/Ratification of EO (EO)/ Formal hearing on restoration plan
Our File No. 10089677**

Dear Chairman Griswold:

This firm represents Nancy Eppel ("Mrs. Eppel") in a pending lawsuit before the Dukes County Superior Court, captioned *Robert A. Doane and Cynthia L. Doane v. Nancy B. Eppel, et al.*, Civil Action No. 2174-CV-00030. A copy of the Amended Complaint is attached for your reference.

We write on behalf of Mrs. Eppel to request that the West Tisbury Conservation Commission ("WTCC"):

- amend the current Enforcement Order (ratified on September 14, 2021) to remove her as a "violator" since she had no involvement in the alleged clearing of the subject area and there is no evidence she had anything to do with the work performed;
- acknowledge the pending litigation and proceed with caution to make sure that the WTCC's Order reflects the product of a full and just investigation, and not the outcome desired by the Doanes; and
- adopt Richard Johnson's recommendation to allow the affected area to regrow naturally for one year.

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As you recall, we attended the WTCC's September 14, 2021 meeting that addressed the current Enforcement Order. The chronology of the matter confirms that our client had absolutely no direct involvement in the clearing of the subject area. Mrs. Eppel holds record title to 37 Pond View Farm Road (Lot 49) and 41 Pond View Farm Road (Lot 68.1) as trustee of The Nancy B. Eppel Revocable Trust. The clearing of the subject area occurred at the direction of Cheryl Eppel sometime in early June 2021.

It should be noted that the Doanes filed suit on June 24, 2021, seeking money damages from, amongst others, Mrs. Eppel. Subsequently, the Doanes, who were represented by counsel, instructed their representative, Scott Smyers from Oxbow Associates, Inc. to notify the WTCC of the clearing in the subject area. Per the WTCC's August 24, 2021 minutes, Mr. Smyers contacted the Board Administrator by telephone on August 12, 2021. The Doanes had already filed their lawsuit at this time. The WTCC should be wary of ulterior motives since it appears the intent of Mr. Smyers telephone call was to obtain an Enforcement Order from the WTCC to use as leverage in the Doanes' lawsuit.

On August 14, 2021, Mr. Smyers provided the WTCC with a series of photographs depicting the alleged area along with a 2019 Orthograph with highlighted areas pointing out alleged property lines, areas of clearing and the proximity to the buffer zone/wetland areas along Tisbury Great Pond. There was no evidence presented to the WTCC that connected Mrs. Eppel to the clearing and alleged violation. The implication is that because Mrs. Eppel holds record title to the parcels abutting the Doanes' property, that she is unequivocally responsible for any unpermitted clearing of the Doanes' property in violation of West Tisbury's Wetlands Protection By-Laws. This is unsupported by any evidence before the WTCC.

After a site visit on August 18, 2021 and without any input from Mrs. Eppel and short notice to Cheryl Eppel's representative, Attorney Benjamin Hall, the WTCC voted to issue an Enforcement Order naming Cheryl Eppel and Mrs. Eppel (as owner of the property) as violators.

The Enforcement Order approved by the WTCC on August 24, 2021 included Mrs. Eppel as a "violation" but again, there is no indication that the WTCC investigated or confirmed how Mrs. Eppel was involved in the alleged clearing of the subject area aside from confirming that she was the record title owner of the 37 Pond View Farm Road (Lot 49) and 41 Pond View Farm Road (Lot 68.1). Though the Enforcement Order includes a chronology as Exhibit A, it incorrectly concludes that Attorney Hall represents both Mrs. Eppel and her daughter, Cheryl Eppel. This is patently incorrect. Mrs. Eppel should not be bound by the terms and conditions of the Enforcement Order as required by Sections

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5 (gathering evidence) and 8 (enforcement orders) of the Wetlands Enforcement Manual provided by the Massachusetts Department of Environmental Protection as guidance to conservation commissions for interpretation and compliance with the Massachusetts Wetlands Protection Act.

The Enforcement Order was ratified by the WTCC at its September 14, 2021 meeting. The WTCC confirmed that neither Mrs. Eppel nor Cheryl Eppel were required to submit a restoration plan. Instead, the WTCC elected to accept the proposed September 13, 2021 restoration plan submitted by Oxbow Associates, Inc. at the September 14, 2021 meeting.

It is unclear from the WTCC's August 24, 2021 meeting minutes if consent or notice was provided to Mrs. Eppel regarding the August 18, 2021 site visit as outlined in the Wetlands Enforcement Manual. It is our understanding that Attorney Hall participated at the meeting on behalf of Cheryl Eppel only. Cheryl Eppel is not a record title owner of 37 Pond View Farm Road (Lot 49) and 41 Pond View Farm Road (Lot 68.1).

The restoration plan first marshalled by Mr. Smyers at the August 24, 2021 meeting was not subject to challenge by Attorney Hall or Mrs. Eppel since she was not included in the proceedings. In addition, the meeting minutes indicate that WTCC member Peter Rodegast stated that "he isn't in favor of a big planting effort as the vegetation may come back on its own."

Ahead of the WTCC's October 12, 2021 meeting, Richard Johnson (Vineyard Environmental) submitted a letter on behalf of Mr. Nagy that responds to Oxbow Associates, Inc.'s September 13, 2021 proposed restoration plan. Specifically, he challenges three aspects of the Doanes' restoration plan, and recommends that the WTCC consider allowing the subject area to "revegetate naturally for a year and then re-evaluate the situation before allowing new plants and seed mixes to be added to the site." We are certain that Mr. Smyers, on behalf of the Doanes, will argue that his much more expensive approach that includes herbicide treatment, extensive plantings and two years of monitoring should be accepted by the WTCC. If accepted by the WTCC, we expect the Doanes will request that this be included by amendment to the existing Enforcement Order. The Doanes will likely then use the amended Enforcement Order as an exhibit in their pending lawsuit to somehow support their theory that Mrs. Eppel should pay for it.

We would also notify the WTCC to heightened hostilities taken by the Doanes against Mrs. Eppel. Cheryl Eppel visited her mother's property on October 5, 2021, and noticed that the Doanes placed blazed posts and "No Trespassing" signs approximate to the shore line of Tisbury Great Pond—see photographs attached. According to Cheryl

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Eppel, these signs were placed to block a path to Tisbury Great Pond the Eppels have been permitted to use for over 30 years.

For the reasons articulated above, we request that the WTCC amend the Enforcement Order to remove Mrs. Eppel as a “violator”, or state the factual basis for this determination. This is within the WTCC’s authority and would accurately represent the situation. In addition, given the time of year, and views expressed by Richard Johnson and Peter Rodegast, it makes sense to table the adoption of a specific restoration plan until later in 2022 to evaluate the conditions at that time. Indeed, the photographs that depict the area presently show significant regrowth already. Finally, delaying adoption of an action plan will not prejudice any person or cause further harm to the impacted area.

We look forward to addressing the WTCC at its October 12, 2021 meeting in support of our request that Mrs. Eppel be removed from the Enforcement Order currently in place. Thank you.

Very truly yours,

MORRISON MAHONEY LLP

William A. Schneider

William A. Schneider

WAS/rrh
Enclosures

COMMONWEALTH OF MASSACHUSETTS

DUKES COUNTY, SS.

SUPERIOR COURT

<hr/>)	
ROBERT A. DOANE, and))	
CYNTHIA L. DOANE, in their))	
capacity as Trustees of the))	
Irrevocable Living Trust of the))	
Doane Children, u.d.t. dated))	
May 3, 1989, as reformed and))	
Modified February 4, 2014,))	
))	
	Plaintiffs,)	CIVIL #: 2174CV00030
v.))	
))	
NANCY B. EPPEL, in her individual))	
capacity and in her capacity))	
As Trustee of the Nancy B. Eppel))	
Revocable Trust, u.d.t dated))	
October 31, 2014;))	
))	
CHERYL C. EPPEL))	
))	
WESLEY NAGY))	
))	
JOHN and/or JANE DOE(s); and/or))	
))	
XYZ Company(ies),))	
))	
	Defendants.)	
<hr/>)	

AMENDED COMPLAINT
(with jury demand endorsed hereon)

Now come Plaintiffs, **ROBERT A. DOANE** and **CYNTHIA L. DOANE**, in their capacities as Trustees of the Irrevocable Living Trust of the Doane Children u.d.t. dated May 3, 1989, as reformed and modified February 4, 2014, and for their amended complaint against Defendants, state and aver as follows:

INTRODUCTION

1. For the purpose of enlarging their view of the Tisbury Great Pond from her family's property, Defendants Nancy Eppel and Cheryl Eppel, individually and/or by and through their agents, including Defendant Wesley Nagy, entered, without Plaintiffs' knowledge or assent, onto Plaintiffs' wooded land along a legally protected shoreline, and brazenly felled Plaintiffs' trees, removed tree limbs, destroyed root systems, and haphazardly chopped down shrubs, underwood and vegetation. As a result, the Doane Trust's property, which has been in the Doane family since the early 1700s and had been lovingly maintained by the family in its natural state for centuries, has been stripped of much of its beauty and littered with debris. Further, the felled trees, shrubs, and other vegetation that Defendants illegally removed were essential to hold the soil, to prevent erosion and prevent loss of the banking at the site. Thus, the property is at heightened risk of loss and must be restored to its original condition to prevent future damage and further diminution of the value of the property. Accordingly, by way of this action, Plaintiffs seek damages against Defendants in accordance with M.G.L. c. 242 § 7 and common law for the costs to fully and completely restore the property, treble damages, attorney's fees, and a permanent injunction against Defendants and their agents from entering upon the property.

THE PARTIES

2. Plaintiff, Robert A. Doane (hereinafter "Mr. Doane" or "Plaintiff"), is an individual residing at 21 New Lane, West Tisbury, MA 02568. Mr. Doane is one of two trustees of the Irrevocable Living Trust of the Doane Children u/d/t dated May 3, 1989, as reformed and modified February 4, 2014 (the "Doane Trust").

3. Plaintiff, Cynthia L. Doane (hereinafter "Ms. Doane" or "Plaintiff"), is an individual residing at 3259 Geddes Drive, San Diego, CA 92117. Ms. Doane is the other trustee of the Doane Trust.

4. The Trustees of the Doane Trust hold record title to the land located at 21 New Lane, West Tisbury, MA 02575 and depicted on the tax map attached herewith as Exhibit A as “Lot 48” and highlighted in yellow (the “Doane Property”). In accordance with the terms of the Trust, the Trustees have the full authority and responsibility of protecting and preserving the Doane Property and prosecuting claims in connection therewith.

5. Defendant, Nancy B. Eppel (“Nancy Eppel”), is an individual residing at 37 Pond View Farm Road, West Tisbury, MA 02575. Mrs. Eppel is the trustee of the Nancy B. Eppel Revocable Trust u/d/t dated October 31, 2014 (“Eppel Trust”).

6. Mrs. Eppel, as trustee, holds record title to the land located at 37 Pond View Farm Road, West Tisbury, MA 02575 and shown on Exhibit B hereto as “Lot 49” (“37 Pond View”).

7. Mrs. Eppel, as trustee, also holds record title to the land located at 41 Pond View Farm Road, West Tisbury, MA 02575, and shown on Exhibit C hereto as “Lot 68.1” (“41 Pond View”).

8. Defendant Cheryl C. Eppel (“Cheryl Eppel”), is an individual residing at 199 Palfrey Street, Apt. 1, Watertown, MA 02472.

9. Defendant Wesley Nagy (“Nagy”) is an individual residing at 25 Averill Lane, Vineyard Haven, MA 02568.

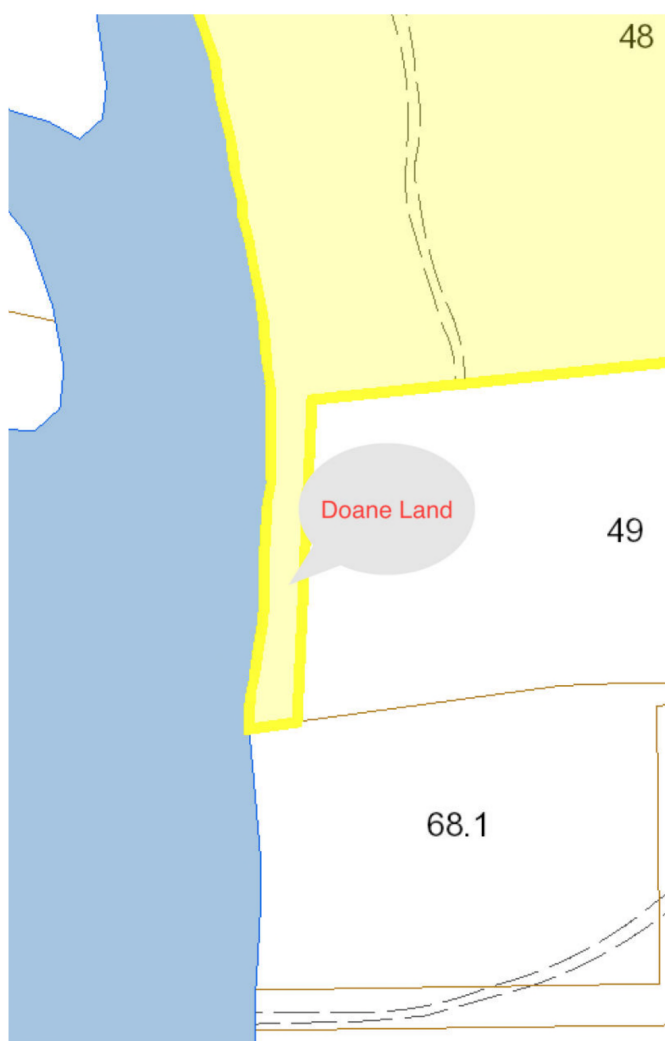
10. Defendant, John Doe(s) and Jane Doe(s) (“Jane Doe(s) and/or John Doe(s)”) are unknown individuals. Upon discovering their true identity(ies) this Amended Complaint will be further amended.

11. Defendant, XYZ Company(ies), is an unknown company(ies). Upon discovering the identity(ies) of this company(ies), this Amended Complaint will be further amended.

STATEMENT OF OPERATIVE FACTS

12. The Doane Property, which has been in the Doane family since the early 1700s, is a 24-acre parcel in West Tisbury, Massachusetts that borders the Mill Brook Stream as it enters the Great Tisbury Pond, with a strip of land approximately 45 feet wide retained between the Great Tisbury Pond and 37 Pond View.

13. The relevant strip of land as shown on the West Tisbury's Assessor's map is depicted in yellow below:



14. 37 Pond View is a 5.2-acre parcel that was formally owned by the Plaintiffs' predecessor in title.

15. The Plaintiffs' predecessor in title, George Hunt Luce ("Mr. Luce"), sold 37 Pond View to the Eppel's predecessor in title, with the 45-foot strip between the Great Tisbury Pond and 37 Pond View retained by Mr. Luce ("Waterfront Strip").

16. 37 Pond View contains a house from where the view of the pond was, until the illegal clearing complained of herein, obstructed by the trees and vegetation on the Waterfront Strip.

17. 37 Pond View has very few trees fronting the house located thereon and next to no vegetation other than grass between the house and the Waterfront Strip.

18. 41 Pond View is a vacant lot that is cleared and has little vegetation other than grass to the shoreline.

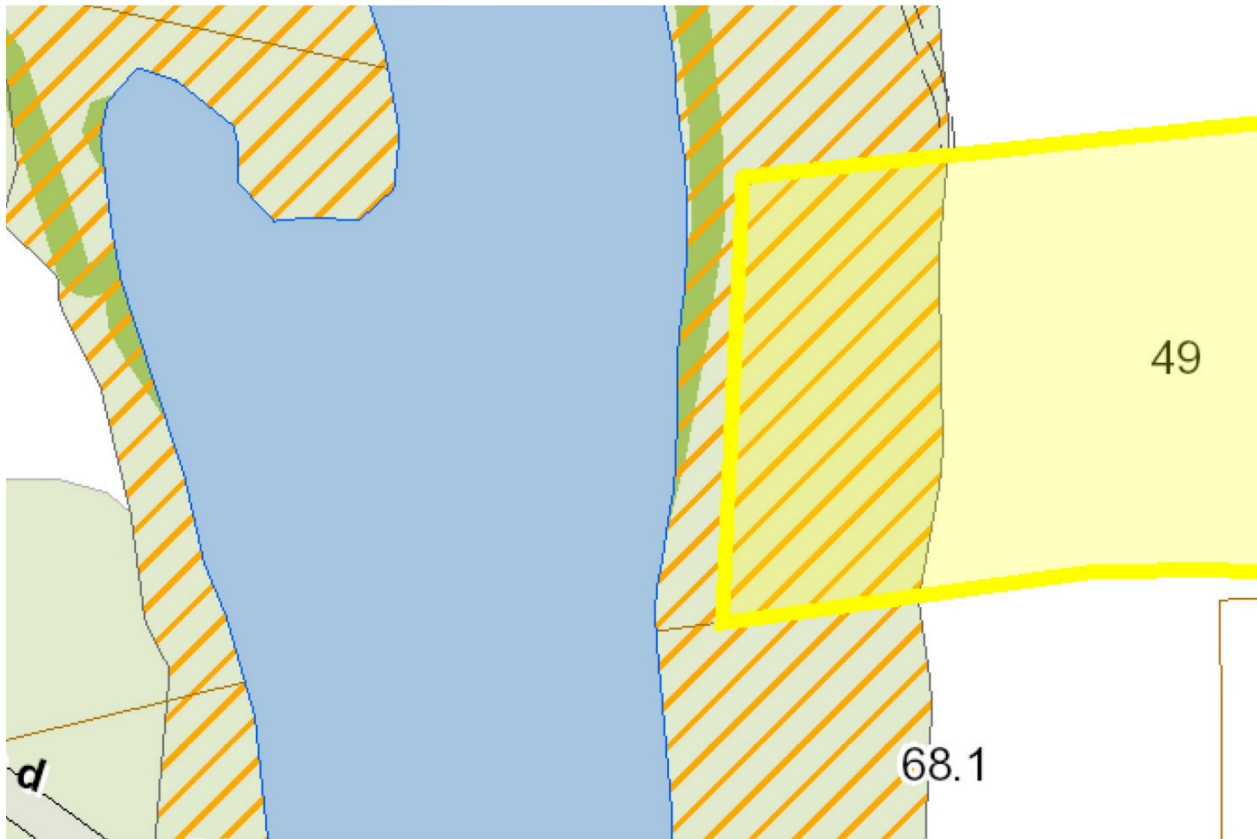
19. For centuries, the Doane family has maintained the Waterfront Strip in its natural condition and has enjoyed the serenity and unaltered beauty of their property while walking with family through it and while traversing the pond along it.

20. The Plaintiffs have utilized and enjoyed the Doane Property, including the Waterfront Strip since childhood and developed a close and personal attachment to the property.

21. Before the illegal clearing complained of herein, the Waterfront Strip was the natural habitat of various species of animals and birds, some of which are rare or endangered, as well as rare and endangered species of plants, including the "lady slipper" wildflower.

22. The entirety of the Waterfront Strip is within the protected shoreline and has been protected as a natural habitat for endangered species and plants for decades, with 25' from the water being absolutely restricted from any disruption.

23. A map showing these designates is attached hereto as Exhibit D, with detail from that map below:



24. As shown on Exhibit D in diagonally hatched red lines and solid light green, the entirety of the Waterfront Strip, well beyond the first 25' do disturbance zone, is designated “Estimated Habitats of Rare Wildlife” and “Priority Habitats of Rare Species.” The solid green line depicted within the Waterfront Strip is a “Title 5 setback area.”

25. In addition to the foregoing, the trees, shrubs, underwood and vegetation on the Doane Property were essential to hold the soil, to prevent erosion, and to prevent the loss of the banking at the site.

26. In addition to the Plaintiffs, other riparian owners along the Great Tisbury Pond have an interest in preserving the natural view of the shoreline.

27. At no time did the Defendants Nancy Eppel or Cheryl Eppel and/or any person(s) on their behalf ask either of Plaintiffs and/or any person(s) on their behalf whether they could disturb, let alone clear, the Waterfront Strip.

28. In or about early June 2021, the Defendants Nancy Eppel and Cheryl Eppel, by and through their agents, including Defendant Wesley Nagy, and without Plaintiffs' knowledge or assent, trespassed on the Doane Property and felled trees, removed tree limbs, removed stumps, destroyed root systems and chopped down shrubs, underwood and vegetation with what appears to have been a brush cutter, leaving numerous shredded stumps where mature arrowwood and blue berry bushes once thrived.

29. Defendant Cheryl Eppel has admitted that the aforesaid illegal clearing of the Waterfront Strip was performed at her direction by her agent Defendant Wesley Nagy.

30. Prior to Nagy's unlawful clearing of the Waterfront Strip, Defendants Nancy Eppel and Cheryl Eppel instructed and directed Nagy as to where to perform the clearing and what trees, scrubs, and vegetation to remove.

31. At no time was Defendant Nagy given permission, either express or implied, by Plaintiff to enter upon the Doane Property or clear the Doane Property.

32. As a result of Defendants' aforesaid illegal actions, the Doane Property was, except for a few mature trees, cleared of all vegetation to within a couple of feet of the Great Tisbury Pond¹. The Doane Property was likewise left littered with debris.

33. The Defendants cleared the Doane Property in order to provide a water view from the house located on 37 Pond View thereby increasing the value of their property, while diminishing the value of the Doane Property.

¹ A large area that was directly in line with the windows from the house on 37 Pond View was cleared to within two feet of the shoreline.

34. According to Defendants Nancy Eppel and Cheryl Eppel, the Defendants likewise cleared the Doane Property in order to provide a water view for the outdoor wedding of Defendant Cheryl Eppel's daughter².

35. As a further result of Defendants' aforesaid illegal actions, the Doane Property is at heightened risk for erosion as the root systems of the felled trees, shrubs, underwood and vegetation are no longer available to hold the soil.

36. As a further result of Defendants' aforesaid illegal actions, the Plaintiffs became greatly distressed by the harm caused to the Waterfront Strip and suffered and continue to suffer intense aggravation, annoyance, upset, worry, and emotional distress.

37. On June 16, 2021, Defendants Nancy Eppel and Cheryl Eppel admitted in writing that the clearing had been done by a "friend", at the behest of the Defendants, later identified as Wesley Nagy.

38. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered harm, including but not limited to damage to the Doane Property, loss of trees, shrubs, underwood and vegetation, loss of use and enjoyment of the Doane Property, diminution of the value of the Doane Property, risk of civil and/or criminal liability, annoyance, upset, aggravation and emotional distress.

39. As a further direct and proximate result of Defendants' unlawful conduct, Plaintiffs have likewise incurred expense, including restoration costs, expert fees, attorney fees, and other expenses in the preparation of reports, studies, and interactions with the Town of West Tisbury, and will incur further expenses, including but not limited to restoration and replanting costs, in the future.

² As the wedding could have just as easily have been held on 41 Pond View (which is clear to the Great Pond), this excuse is specious at best.

COUNT I
(Trespass to Land)
(As Against All Defendants)

40. The allegations of paragraphs 1 through 39 of this Amended Complaint are realleged and incorporated by reference.

41. The Defendants, by and through their agents, trespassed on the Doane Property without right or authorization in violation of relevant law, including M.G.L. c. 266, § 120.

42. Defendants' actions have unlawfully interfered with Plaintiffs' interest in and exclusive possession of the Doane Property as well as their use and enjoyment of the Doane Property by the Plaintiffs and the Doane family.

43. Defendants Nancy and Cheryl Eppel are directly, jointly and severally liable for the trespass of their agent Wesley Nagy.

44. Plaintiffs have been harmed by this trespass and seek to recover all damages and equitable relief to which the Trust is entitled for these actions, including an award of compensatory damages for the harm caused.

COUNT II
(Unlawful entry and wrongful removal of trees, G.L. c. 242 §7)
(As Against All Defendants)

45. The allegations of paragraphs 1 through 44 of this Amended Complaint are realleged and incorporated by reference.

46. M.G.L. c. 242, § 7 states “[a] person who without license willfully cuts down, carries away, girdles or otherwise destroys trees, timber, wood or underwood on the land of another shall be liable to the owner in tort for three times the amount of damages assessed therefor. . .”

47. The Defendants have, without license, cut down, carried away, and/or otherwise destroyed trees, timber, wood, underwood, and vegetation on the Doane Property.

48. The Defendants are liable for all damages caused by this tortious conduct as well as three times the amount of actual damages to be assessed.

49. Defendants Nancy and Cheryl Eppel are directly, jointly and severally liable for the illegal clearing performed by their agent Wesley Nagy.

50. Plaintiffs have been harmed by Defendants' tortious actions and seek to recover all damages and equitable relief to which the Trust is entitled for these actions, including an award of compensatory damages, treble damages, and all other remedies which the Plaintiffs are entitled at law or in equity.

COUNT III
(Restitution/Unjust Enrichment)
(As Against All Defendants)

51. The allegations of paragraphs 1 through 50 of this Amended Complaint are realleged and incorporated by reference.

52. The Defendants, by knowingly and willfully committing the actions set forth in Counts I and II, have unjustly enriched themselves so equity and justice require that they be disgorged of their illegal profits, including but not limited to any sums paid to Nagy, the value of the wood removed, and the increase in value, utility and use and enjoyment of the Eppel Property.

COUNT IV
(Indemnity)
(As Against All Defendants)

53. The allegations of paragraphs 1 through 52 of this Amended Complaint are realleged and incorporated by reference.

54. The Defendants' wrongful and illegal conduct has caused the Plaintiffs potential exposure to civil or criminal liabilities and Plaintiffs request that this Court declare that Defendants are liable to indemnify and hold Plaintiffs harmless in connection with any fine,

award, judgment or other liability incurred by Plaintiffs in connection with or concerning the Defendants' conduct complained of herein.

COUNT V
(Civil Conspiracy)
(As Against All Defendants)

55. The allegations of paragraphs 1 through 54 of this Amended Complaint are realleged and incorporated by reference.

56. The Defendants, pursuant to an agreement with each other, acted in concert to commit the unlawful acts alleged herein.

57. The Defendants all sought to profit and seek advantage, a goal the Defendants would not have been able to accomplish acting independently.

58. Each of the Defendants should be held jointly and severally liable and subject to punitive damages without the right of contribution.

RELIEF

WHEREFORE, as to all Counts, the Plaintiffs request that this Court:

1. Award Plaintiffs compensatory damages against Defendants jointly and severally sufficient to restore the Doane Property to its original condition;
2. Award additional damages commensurate with the unjust enrichment reaped by the Defendants as a direct result of the Defendants' illegal conduct;
3. Pursuant to G.L. c. 242, § 7, award three times the actual damages suffered by Plaintiffs, with punitive damages to be applied to each conspirator so found, without right of contribution;
4. Issue a declaration declaring that Defendants are jointly and severally obligated to indemnify Plaintiffs in connection with any claim or liability in connection with or concerning Defendants' illegal actions;

5. Issue a preliminary and permanent injunction, enjoining Defendants from entering upon the Doane Property and/or permitting any third party from entering upon the Doane Property;
6. Award attorney fees and costs of suit to Plaintiffs; and
7. Grant such other relief as the Plaintiffs may be entitled at law or in equity.

JURY DEMAND

Plaintiffs demand trial by jury as to all issues herein.

ROBERT A. DOANE and CYNTHIA L. DOANE
by their Attorneys

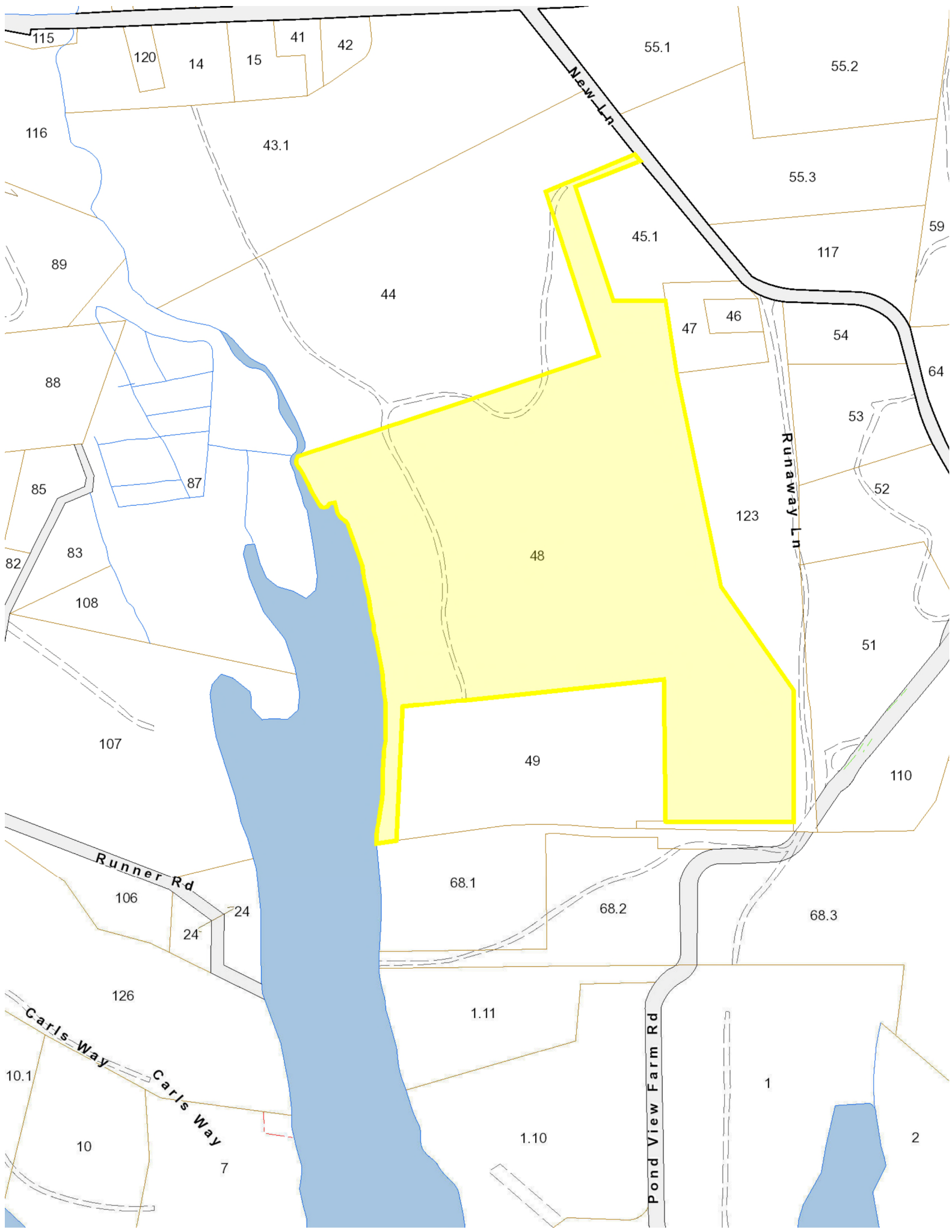
/s/RICHARD B. REILING
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Boston, MA 02110
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richard@bottonereiling.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served upon counsel Defendant Cheryl C. Eppel, Benjamin L. Hall, Jr., Esq., 45 Main St., P. O. Box 5155, Edgartown, MA 02539 by E-Mail and Regular U.S Mail, postage pre-paid and counsel for Defendant Nancy B. Eppel, William A. Schneider, Esq., Morrison Mahoney LLP, 250 Summer St., Boston, MA 02210 by E-Mail and Regular U.S Mail, postage pre-paid this 23rd day of August 2021.

/s/RICHARD B. REILING
RICHARD B. REILING, ESQ.
Attorney at Law

EXHIBIT A



115

120

14

15

41

42

55.1

55.2

116

43.1

55.3

89

44

45.1

117

59

88

47

46

54

64

85

87

53

82

83

108

123

52

51

107

48

110

49

Runner Rd

68.1

68.2

68.3

106

24

24

126

1.11

Pond View Farm Rd

1

10.1

Carls Way

Carls Way

7

10

1.10

2

EXHIBIT B

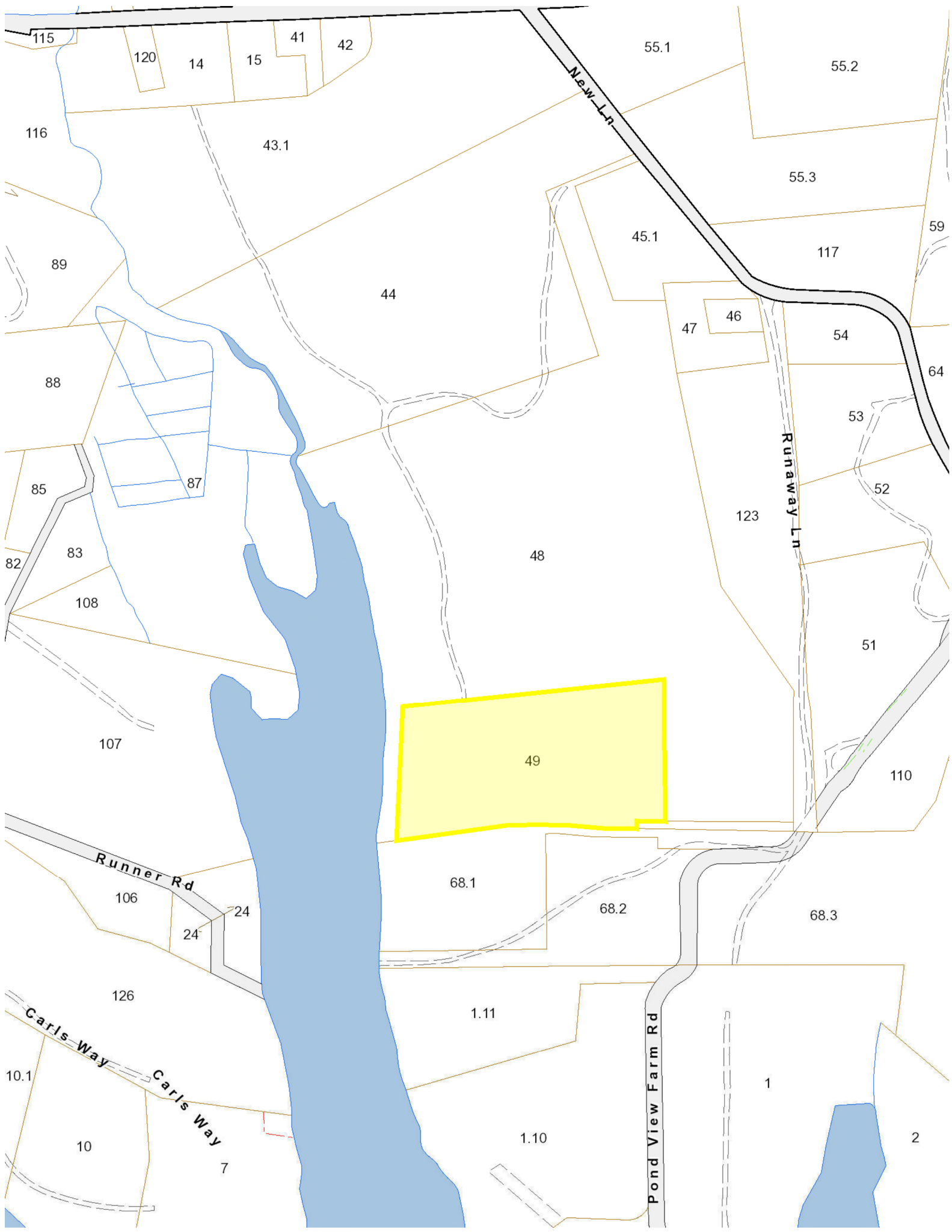


EXHIBIT C

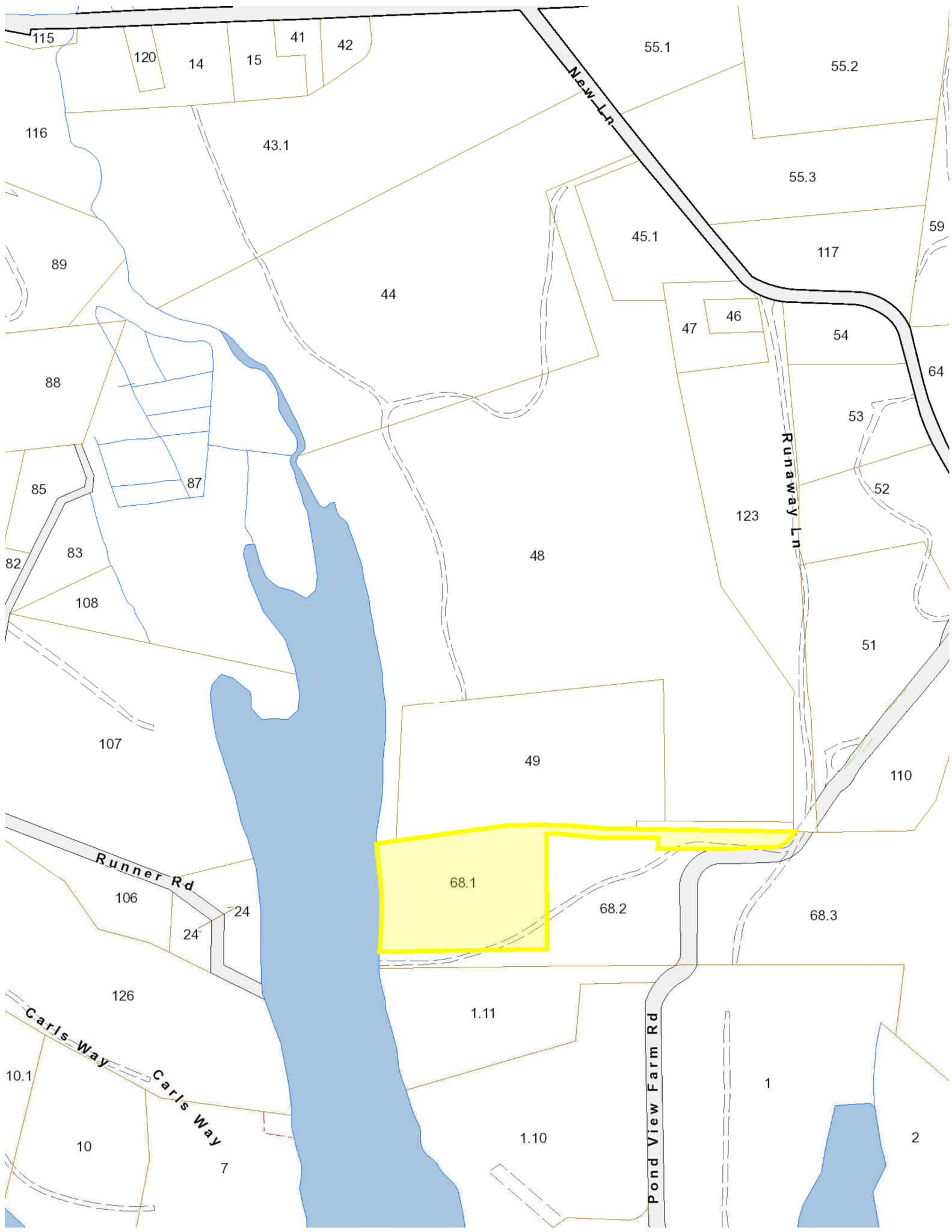


EXHIBIT D

