

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA**  
**ORPHANS' COURT DIVISION**

**No.**

**IN RE: SCHUYLKILL CENTER FOR ENVIRONMENTAL EDUCATION,  
A PENNSYLVANIA NONPROFIT CORPORATION  
(FORMERLY SCHUYLKILL VALLEY NATURE CENTER)**

**PRELIMINARY DECREE**

AND NOW, this                    day of October, 2006, upon consideration of the annexed Petition and for good cause shown, it is hereby ORDERED and DECREED that a Citation is awarded, directed to **THE SCHUYLKILL CENTER FOR ENVIRONMENTAL EDUCATION, THE GREEN WOODS CHARTER SCHOOL and THE COMMONWEALTH OF PENNSYLVANIA, OFFICE OF ATTORNEY GENERAL**, to show cause, if any, why the Court should not enter an order declaring that:

(1)     The Articles of Incorporation of the Schuylkill Center for Environmental Education (the "Corporation"), as amended as of September 21, 1988 (the "Amended Articles") are void, except to the extent they change the name of the Corporation.

(2)     The charitable purposes of the Corporation are the purposes set forth by the incorporators in the Corporation's original Articles of Incorporation (the "Original Articles").

(3)     The proposed lease agreement (the "Proposed Lease") between the Corporation and Green Woods Charter School (the "Charter School") is void because it violates the Original Articles (or, in the alternative, the Amended Articles).

(4)     The Proposed Lease is void because it was not approved in accordance with the Corporation's bylaws.

(5) The Proposed Lease is void because it was not approved in accordance with Section 5546 of the Pennsylvania Nonprofit Corporations Law, 15 Pa. C.S.A. § 5546.

(6) The Corporation may not lease any of its property to the Charter School because the Charter School was not formed for one or more of the Corporation's charitable purposes.

(7) The Charter School shall remove its modular, trailer classrooms from the Corporation's property and vacate the Corporation's Education Building no later than June 30, 2007.

(8) The Corporation may not develop any of its real property except in accordance with the Original Articles (or, in the alternative, the Amended Articles).

(9) The Corporation may not sell any of its real property (other than the Boy Scout Tract) unless such property is inappropriate for use for the Corporation's charitable purposes as stated in the Original Articles (or, in the alternative, the Amended Articles).

Notice of the filing of the Petition also shall be given via U.S. Mail, postage prepaid, to each member of the Board of Trustees of the Schuylkill Center for Environmental Education.

Citation returnable sec leg.

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**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA  
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**IN RE: SCHUYLKILL CENTER FOR ENVIRONMENTAL EDUCATION,  
A PENNSYLVANIA NONPROFIT CORPORATION  
(FORMERLY SCHUYLKILL VALLEY NATURE CENTER)**

**FINAL DECREE**

AND NOW, this      day of      , 200\_\_, it is hereby

ORDERED and DECREED that:

(1) The Articles of Incorporation of the Schuylkill Center for Environmental Education (the “Corporation”), as amended as of September 21, 1988 (the “Amended Articles”) are void, except to the extent they change the name of the Corporation.

(2) The charitable purposes of the Corporation are the purposes set forth by the incorporators in the Corporation’s original Articles of Incorporation (the “Original Articles”).

(3) The proposed lease agreement (the “Proposed Lease”) between the Corporation and Green Woods Charter School (the “Charter School”) is void because it violates the Original Articles (or, in the alternative, the Amended Articles).

(4) The Proposed Lease is void because it was not approved in accordance with the Corporation’s bylaws.

(5) The Proposed Lease is void because it was not approved in accordance with Section 5546 of the Pennsylvania Nonprofit Corporations Law, 15 Pa. C.S.A. § 5546.

(6) The Corporation may not lease any of its property to the Charter School because the Charter School was not formed for one or more of the Corporation’s charitable purposes.

(7) The Charter School shall remove its modular, trailer classrooms from the Corporation's property and vacate the Corporation's Education Building no later than June 30, 2007.

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A PENNSYLVANIA NONPROFIT CORPORATION  
(FORMERLY SCHUYLKILL VALLEY NATURE CENTER)**

**PETITION FOR DECLARATORY JUDGMENT**

**TO THE HONORABLE, THE JUDGES OF SAID DIVISION:**

The Petition of Eleanor Smith Morris, by her undersigned counsel, represents the following:

1. Petitioner, Eleanor Smith Morris, is a member of the Board of Trustees (the "Board") of The Schuylkill Center for Environmental Education ("SCEE"), a Pennsylvania nonprofit corporation that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. As a Trustee, she is also a Member of SCEE.

2. Until 1988, SCEE was known as the Schuylkill Valley Nature Center (the "Nature Center"). In this Petition, SCEE and the Nature Center are sometimes referred to as "the Corporation."

3. Petitioner has served as a Trustee since 1996, with the exception of 2002, when she was required by the Corporation's bylaws to take a one-year hiatus after six consecutive years of service.

4. The Corporation was organized to provide a nature center and a recreation and conservation area for public use and enjoyment. Its 364-acre property – most of which was donated or devised to the Corporation by Petitioner's mother, Eleanor Houston Smith – is located in a highly desirable area by the Schuylkill River just south of the Montgomery County

border and constitutes the largest area of privately owned open space within the Philadelphia city limits. A deed plot prepared in 2004 is attached as Exhibit A.

5. The Corporation's Articles of Incorporation were amended in connection with its name change in 1988. Although the amendments changed the charitable purposes of the Corporation and resulted in the diversion of charitable assets from the objects to which they were donated, granted or devised, they were not approved by this Court. *See* 15 Pa. C.S.A. §§ 5547(b), 5916(b).

6. Recently, the Board, over Petitioner's objections, has acted contrary to the mission and the governing documents of the Corporation and has further diverted the Corporation's charitable assets. The Board has greatly restricted the public's use and enjoyment of the property and it has discussed potential sale and/or development of a portion of the property.

7. Petitioner, in her capacity as a Trustee and Member of the Corporation, and as the eldest child of two of its incorporators and its largest benefactor, contests such actions by the Board and respectfully requests that the Court grant the relief requested in order to protect the Corporation's property, to restore the mission of its founders and to ensure that the Corporation's assets are used for the charitable purposes to which they were granted, donated or devised.

8. Petitioner has filed this Petition pursuant to the Declaratory Judgments Act, 42 Pa. C.S.A. § 7351, *et seq.*, and Local Rule 1.2.P.

### **Jurisdiction and Venue**

9. This Court has jurisdiction under Section 711(21) of the Probate, Estates and Fiduciaries Code, 20 Pa. C.S.A. § 711(21), and under Rule 2156 of the Rules of Judicial

Administration, Pa. R.J.A. No. 2156, because this matter involves the administration and proper application of property committed to charitable purposes held by a domestic nonprofit corporation.

10. Venue lies in Philadelphia County under Section 726 of the Probate, Estates and Fiduciaries Code, 20 Pa. C.S.A. § 726, because the Corporation's registered office is in Philadelphia County, Pennsylvania.

### **The Property**

11. The Corporation's 364-acre property is located in the Upper Roxborough section of Philadelphia. It extends to the north to within 450 feet of the Philadelphia County-Montgomery County border, and to the west to within 300 feet of the Schuylkill River.

12. The southernmost 24 acres were devised to the Corporation under the Will of Petitioner's mother, Eleanor Houston Smith, and are collectively known as the "Boy Scout Tract." Under the Will, the Corporation may sell or otherwise dispose of the Boy Scout Tract if the Board deems it to be in the best interest of the Corporation.

13. For purposes of this Petition, unless otherwise stated, all references to "Property" mean the core 340 acres, i.e., the Corporation's real property other than the 24-acre Boy Scout Tract.

14. The uses of the Property are restricted to the charitable purposes of the Corporation. Under the Corporation's Articles of Incorporation, no portion of the Property may be sold unless it is inappropriate for use for the Corporation's charitable purposes.

15. The Corporation's Education Building is in the middle of the Property and includes interactive exhibits, a bookstore/gift shop, auditorium and numerous classrooms.

16. During the school year, most of the Education Building is now occupied by the Green Woods Charter School (the “Charter School”), which is attended by approximately 200 children from kindergarten through eighth grade.

17. Approximately 10,000 other individuals, including students from other schools and colleges, as well as adult members of the community, attend the Corporation’s educational programs each year either offsite or in parts of the Education Building not used by the Charter School. Most adult education now takes place at nearby Philadelphia University.

18. Due to the lack of space arising from the presence of the Charter School, participation by college students and adults in the Corporation’s programs has decreased.

19. The Property includes woodlands, meadows, wetlands, five teaching ponds and more than three miles of hiking trails. There also is an outdoor pavilion and amphitheater, picnic areas, seasonal exhibits and organic gardens. The Corporation also maintains a Wildlife Rehabilitation Clinic to care for injured, sick and orphaned wildlife and release them back into their natural habitat.

20. In addition to its land and the improvements thereon, the Corporation holds endowment funds in excess of \$6 million for its charitable purposes.

#### **Incorporation of the Schuylkill Valley Nature Center**

21. Petitioner is the great-granddaughter of Henry Howard Houston, a prominent Philadelphia entrepreneur and philanthropist who died in 1895. At his death, he owned most of the land that is currently owned by the Corporation.

22. Under the Will of Henry Howard Houston, the land was held as part of a trust for the benefit of his grandchildren, who included Petitioner’s mother, Eleanor Houston



Smith, and her aunt, Margaret Houston Meigs. The trust terminated in 1964 when the last living child of Henry Howard Houston died.

23. Upon termination of the trust, Eleanor Houston Smith and Margaret Houston Meigs became entitled to receive most of the land presently owned by the Corporation. From 1966 to 1971, they arranged for the transfer of most of the Property to the Schuylkill Valley Nature Center, a Pennsylvania nonprofit corporation they helped co-found in 1965 (the “Nature Center”).

24. As indicated on Exhibit A, most of the property owned by the Corporation – including the Boy Scout Tract – was donated by Eleanor Houston Smith.

25. The incorporation of the Nature Center was approved by the Court of Common Pleas of Philadelphia County, Pennsylvania by Decree of The Honorable Byron R. Milner, P.J., dated January 4, 1965 (C.P. No. 3, September Term 1964, No. 3976). A copy of the Decree is attached as Exhibit B.

26. Judge Milner’s Decree reflects that the Court reviewed the Articles of Incorporation of the Nature Center, a copy of which is attached as Exhibit C (the “Original Articles”). The Original Articles were approved by the six incorporators: Eleanor Houston Smith and her husband, Lawrence M.C. Smith (i.e., Petitioner’s parents); Margaret Houston Meigs and her son, Henry H.H. Meigs; Allston Jenkins, who founded the Natural Lands Trust; and Raymond S. Green, who was President of the Franklin Broadcasting Company.

27. The Original Articles state the purposes of the Nature Center as follows:

“III. The purposes of the corporation are to acquire, develop and operate property in Philadelphia and Montgomery Counties as a nature center and a recreation and conservation area exclusively for the use and enjoyment of the public. In furtherance of these purposes, the corporation may:

- (1) Develop and operate appropriate portions of the area for public use as a nature education center (and particularly a center of the type sponsored by the National Audubon Society), outdoor recreation, wild life conservation, botanical and agricultural demonstration projects, camp sites, a nature sanctuary and allied activities;
- (2) Permit the use of, or lease, appropriate portions of the area to other qualified charitable organizations formed for one or more of the purposes for which this corporation is organized, or to governmental agencies engaged in the same activities;
- (3) Convey particular portions of the area to other qualified charitable organizations formed or to be formed for one or more of the purposes for which this corporation has been established, if it appears appropriate and in the public interest to have such portions held and operated by a separate organization or organizations;
- (4) Sell such portions of the area acquired by it as may appear inappropriate for use for the purposes above set forth, and hold the proceeds in trust for the uses and purposes of the corporation.”

28. Eleanor Houston Smith died August 29, 1987. Under her Will, she gave approximately 32 acres of her own property to the Nature Center (including the 24-acre Boy Scout Tract). She also gave \$710,000 as a permanent endowment to provide income for the general purposes of the Nature Center, with principal “not to be expended, except in the event of an emergency, and with the approval of the Board of Trustees of the Nature Center.” She also gave an additional \$50,000 to be used, if needed, for the Nature Center’s operating expenses.

29. At the time of her death, the above-quoted Original Articles, which she signed as an incorporator, were effective.

30. Contrary to the provisions of Eleanor Houston Smith’s Will, the Nature Center used the \$710,000 testamentary gift to construct a lobby and a two-story addition to the Education Building in a project that was completed in 1992. The expansion, which included the

addition of a library, a book and gift store, and office space, more than doubled the square footage of the Education Building and is known as the Eleanor Houston Smith Wing.

**The Nature Center Becomes SCEE and  
Its Charitable Purposes Change without Court Approval**

31. Just 13 months after the death of Eleanor Houston Smith, on September 21, 1988, the Nature Center filed with the Pennsylvania Department of State Articles of Amendment (the “Amended Articles”). In the Amended Articles, the Corporation changed its name to The Schuylkill Center for Environmental Education (“SCEE”) and changed its charitable purposes. The Amended Articles are attached as Exhibit D.

32. The Amended Articles state the purposes of SCEE as follows:

“III. The purposes of the Corporation are to provide environmental education for the purpose of fostering appreciation, understanding and responsible use of the ecosystem, and the dissemination of information on current environmental issues; and to maintain the facilities of the Corporation and conserve its land for the purposes of environmental education. In furtherance of these purposes, the corporation may:

A. Acquire, develop and operate property necessary or desirable for the purposes of the Corporation.

B. Develop and operate appropriate portions of the area for public use as a nature education center, outdoor recreation, wild life conservation, botanical and agricultural demonstration projects, camp sites, a nature sanctuary and allied activities.

C. Permit the use of, or lease, appropriate portions of the area to other qualified charitable organizations formed for one or more of the purposes for which this Corporation is organized, or to governmental agencies engaged in the same activities.

D. Convey particular portions of the area to other qualified charitable organizations formed or to be formed for one or more of the purposes for which this Corporation has been established, if it appears appropriate and in the public interest

to have such portions held and operated by a separate organization or organizations.

E. Sell such portions of the area acquired by it as may appear inappropriate for use for the purposes above set forth, and hold the proceeds in trust for the uses and purposes of the Corporation.”

33. The Amended Articles changed the charitable purposes of the Corporation by removing the original, broad provision stating that the Corporation’s property was to be operated “as a nature center and a recreation and conservation area exclusively for the use and enjoyment by the public” and by narrowing the purpose to education.

34. By virtue of the altered charitable purposes, at least some, if not all, of the property received by the Corporation under the Original Articles was diverted from the objects to which it was donated, granted or devised within the meaning of 15 Pa. C.S.A. § 5547(b).

35. Accordingly, the Orphans’ Court was required to approve the Amended Articles. However, such approval was not requested, much less granted.

**SCEE Attempts to Enter into Lease Agreement with Green Woods Charter School**

36. In 2002, during Petitioner’s one-year mandated hiatus from the Board, SCEE entered into an agreement by which it leased space in the Education Building to the Charter School.

37. The Charter School was incorporated on June 27, 2002. Its Articles of Incorporation state that its purpose is “[t]o create and operate a Charter School pursuant to the Pennsylvania Charter School Law, Act 22 of 1997.” A copy of the Charter School’s Articles of Incorporation is attached as Exhibit E.

38. The Charter School filed Articles of Amendment on January 22, 2003. The amendments were twofold. First, the registered address was changed to 8480 Hagy’s Mill Road, Philadelphia (which also is SCEE’s registered address). Second, the amendment adds a

dissolution statement, which provides that upon dissolution of the Charter School, “all classroom space would revert back to [SCEE] from where classroom space is currently being leased.” A copy of the Charter School’s Articles of Amendment is attached as Exhibit F.

39. SCEE’s initial lease with the Charter School expired at the end of the 2005-06 school year. The lease, which originally had been scheduled to expire in 2005, was extended for one year so that its expiration would coincide with the Charter School’s application to renew its charter. The one-year extension was not approved by the Board.

40. Prior to the expiration of the lease, representatives of SCEE and the Charter School commissioned CICADA Architecture/Planning, Inc. (“CICADA”) to develop a joint facilities master plan.

41. The plan proposed by CICADA was completed in June 2005. The plan calls for the Charter School to assume total control of the Education Building – which would then be expanded – with SCEE relocating to smaller new construction elsewhere on its property.

42. As recently as December 2005, it was “SCEE’s long range intention to hand over the keys to the main building to Green Woods”, according to a memorandum dated December 12, 2005 from the Charter School’s School Leadership Team to SCEE’s Executive Director. In connection with that intention, which was expressed by SCEE’s Board Chairman, the Charter School requested additional space in the Education Building, including the last classroom and perhaps the gift shop.

43. On December 15, 2005, the memorandum referred to in Paragraph 43 was read at a meeting of the Corporation’s Buildings and Grounds Committee, which Petitioner attended. She and other committee members (who are also Board members) raised numerous concerns, including the legality of “handing over the keys” of the Education Building to the

Charter School in light of the intent of the Corporation's donors and founders; whether the motivation behind the relationship with the Charter School was financial rather than mission-based; and the need for counsel to review any lease or other contract with the Charter School.

44. The minutes of the December 15, 2005 Buildings and Grounds Committee meeting were circulated to SCEE's Board of Trustees at its regularly scheduled meeting on January 24, 2006.

45. At the request of SCEE's Executive Committee, CICADA presented its joint facilities master plan to SCEE's Board of Trustees at the January 24, 2006 meeting. Adoption of the plan was not put to a vote at the January meeting or at any subsequent Board meeting.

46. More recently, it was recommended to the Board that the Charter School's lease be extended (the "Proposed Lease"). Petitioner understood that the lease would be extended for one year. This understanding was acquired by word of mouth, as the Proposed Lease was not circulated to the Board until September 2006, shortly before it was voted upon. Moreover, other than the amount of rent to be charged, the terms of the Proposed Lease were not discussed by the Board prior to September.

47. At the regularly scheduled Board meeting on March 27, 2006, Petitioner raised the following concerns about SCEE's relationship with the Charter School, which were circulated in writing to the Board members in attendance:

- a. Because SCEE may enter into a lease only with "other qualified charitable organizations formed for one or more of the purposes for which this Corporation is organized" [*see* Exhibits C and D], the Board must review the

Charter School's Articles of Incorporation, bylaws and mission statement, and must confirm that the Charter School is a "charitable organization."

b. Prior to a vote, each member of the Board must receive a copy of the entire Proposed Lease.

c. SCEE's Articles of Incorporation, the Proposed Lease and its financial impact on SCEE must be evaluated by counsel.

d. Allowing the Charter School to use most of the Education Building from September through June severely limits SCEE's ability to carry out its own mission.

48. The Proposed Lease was voted upon at the Board meeting on September 26, 2006. However, it was executed a week earlier (at least by the Charter School), and the term was extended from one year to three years.

49. Prior to the September 26, 2006 meeting, the members of the Board received a draft of the Proposed Lease. However, they did not receive written confirmation that the Charter School was a charitable organization (such as a copy of its IRS determination letter) or that it was formed for one or more of the purposes for which the Corporation was organized. In addition, to Petitioner's knowledge, the Board did not retain outside counsel to review SCEE's Articles of Incorporation, the Proposed Lease or its financial impact on the Corporation.

50. The bylaws of SCEE, a copy of which is attached as Exhibit G, provide:

"A majority of the Trustees in office shall constitute a quorum for the transaction of business and the acts of a majority of the Trustees present at a meeting at which a quorum is present shall be the acts of the Board of Trustees; ***provided, however, that the Corporation shall not purchase real property or sell, mortgage, lease away or otherwise dispose of its real property unless authorized by the vote of two-thirds of the members of the Board of Trustees in office.***" [Emphasis added.]

51. Pennsylvania law also requires a two-thirds majority vote where a nonprofit corporation with a board of directors of less than 21 seeks to lease away its real property. *See* 15 Pa. C.S.A. § 5546.

52. Accordingly, for the Proposed Lease to be valid (assuming it otherwise complied with the Corporation's governing documents), at least 13 of the 19 Trustees presently in office would have to approve it.

53. At the September 26, 2006 meeting, only 11 of the 19 members of the Board of Trustees were present, including Petitioner. By the time a vote was taken with respect to the Proposed Lease, only nine Trustees were present, including Petitioner. The vote was 8-1 in favor of approving the Proposed Lease, with Petitioner being the lone objector.

54. Accordingly, the Proposed Lease was not properly approved by the Board because fewer than 13 Trustees voted in its favor. Moreover, at the time the vote was taken, there was not even a quorum in attendance at the meeting, as fewer than half of the Trustees remained. Thus, even if only a simple majority were required to approve the Proposed Lease, the vote was not valid.

55. Because the Charter School occupies more than 50 percent of the Education Building, including the auditorium and all but one classroom, SCEE is forced to conduct most of its adult education programs offsite, at Philadelphia University. Such programs were held in the Education Building prior to the lease with the Charter School. During the school year, the educational programs that occur in the Education Building are held in the space not occupied by the Charter School.

56. The use of the Education Building by other schoolchildren and college students is similarly restricted due to the presence of the Charter School.



57. SCEE also must conduct more of its fundraising and social activities offsite because the auditorium in the Education Building has been converted for use by the Charter School. For example, in 2005, SCEE's 40<sup>th</sup> Anniversary celebration had to be held at Drexel University, and, in 2006, its Annual Gala had to be held at the Academy of Natural Sciences. Petitioner believes this was the first time that the Gala – SCEE's largest annual fundraising event – was not held on SCEE's grounds.

58. In September 2006, more than ten local wildlife societies and community organizations were informed that they could no longer hold their meetings in the Education Building because the space was in use by the Charter School. Many of those organizations had been holding their regular meetings in the Education Building for 20 years.

59. Due to space needs, SCEE converted its library into two classrooms and gave away many of its books, including some to the Charter School.

60. The Charter School has modular, trailer classrooms on the grounds, which does not serve any purpose of the Corporation and which detract from the aesthetics of the grounds.

61. SCEE has spent at least \$73,000 of its own funds to make capital improvements to the Education Building for the sole purpose of enabling the Charter School to comply with state regulations.

#### **SCEE Contemplates Selling or Developing Some of Its Real Property**

62. The Property is desirable because of its being the largest concentration of privately owned open space in Philadelphia and its proximity to the Schuylkill River. As a result, the Board has recently explored the possibility of selling and/or developing some of the Property.

63. There has been no suggestion that any of the Property is “inappropriate for use for the purposes” of the Corporation within the meaning of the Original Articles or the Amended Articles. *See* Exhibits C and D.

64. There has been no suggestion that any development would further the purposes of the Corporation.

65. In 2004, the Board considered a proposal to sell the Boy Scout Tract (which is permissible under the Will of Eleanor Houston Smith), but also considered selling other property within the core, restricted 340 acres. The proposal ultimately was rejected by the Board.

66. At the September 2006 Board meeting, Natural Lands Trust made a presentation that would result in a series of easements being put on all of the Property. The easements would designate property as “Highest Protection Area”, “Standard Protection Area” or “Minimal Protection Area.”

67. Under the proposal, most of the Property would be designated as Highest Protection Areas, which would be preserved essentially as is. Improvements permitted in Standard Protection Areas would include farming and the construction of kiosks, picnic pavilions, storage structures and educational structures. In the Minimal Protection Areas, construction would be largely unrestricted and could include single family residences, conference centers, parking lots and various other types of buildings.

68. Natural Lands Trust proposed to submit an application on behalf of SCEE to the Pennsylvania Department of Conservation and Natural Resources (“DCNR”) and suggested that DCNR would award grants totaling \$1.5 million over two years in exchange for the easements.

69. The Board had no advance notice that the presentation would be made at the September 2006 meeting, as it did not appear on the agenda that was circulated a week before the meeting. It had never been discussed by the Board that Natural Lands Trust was seeking to have all of the Property subject to easements or that it was contemplated that the some of the Property could be developed outside the charitable purposes of the Corporation.

70. Immediately following the presentation, the Trustees were asked to vote on whether the application to DCNR should be submitted. The Trustees were not given a copy of the application prior to the vote and have not received a copy subsequently.

71. With the understanding that the application to be submitted to DCNR would relate only to the Highest Protection Areas and that a detailed application would be considered by the Board at a later date, Petitioner voted in favor.

72. It is unclear why the Property, the use of which is already restricted by both the Original Articles and Amended Articles, would require protective easements.

**COUNT I**  
**Request for Declaratory Relief re: Articles of Incorporation**

73. Petitioner incorporates Paragraphs 1 through 72 above as if set forth fully herein.

74. When the Amended Articles were filed in 1988, the charitable purposes of the Corporation had not become indefinite, impossible or impractical of fulfillment within the meaning of 20 Pa. C.S.A. § 6110(a).

75. Accordingly, there was no need in 1988 – nor is there a need now – to change the Corporation’s charitable purposes.

76. The Amended Articles changed the charitable purposes of the Corporation as they had been stated by the incorporators in the Original Articles. As stated above, two of the

incorporators – Eleanor Houston Smith and Margaret Houston Meigs – donated nearly all of the land presently owned by the Corporation.

77. The Corporation’s property committed to charitable purposes (including the real property donated by Eleanor Houston Smith and Margaret Houston Meigs) has been diverted from the objects to which it was donated, granted or devised within the meaning of 15 Pa. C.S.A. § 5547(b).

78. Moreover, the \$760,000 testamentary gift by Eleanor Houston Smith was made prior to the amendment of the Original Articles, at a time when she, as co-founder, was fully aware of the charitable purposes of the Corporation, which did not include using the Corporation’s land and buildings to operate a school for 200 children.

79. To the contrary, when Eleanor Houston Smith made her lifetime and testamentary gifts to the Corporation, its purposes were to operate “a nature center and a recreation and conservation area exclusively for the use and enjoyment of the public.” *See* Exhibit C.

80. In connection with filing the Amended Articles, the Corporation did not seek – and thus did not obtain – approval of this Court as required under 15 Pa. C.S.A. § 5547(b) (relating to diversion of property from its charitable purposes) and under 15 Pa. C.S.A. § 5916(b) (relating to effectiveness of articles of amendment which result in diversion of property from its charitable purposes).

**WHEREFORE**, Eleanor Smith Morris respectfully requests that the Court enter an Order declaring that the Amended Articles are void, except to the extent they change the name of the Corporation, and that the charitable purposes of the Corporation are the purposes set forth by the incorporators in the Original Articles.

**COUNT II**  
**Request for Declaratory Relief re: Lease with Charter School**

81. Petitioner incorporates Paragraphs 1 through 80 above as if set forth fully herein.

82. The Proposed Lease was not approved by the Board of Trustees in accordance with the Corporation's bylaws, which requires an affirmative vote of two-thirds of Trustees then in office. Moreover, it was not approved in accordance with Pennsylvania law, which also requires a two-thirds majority where a nonprofit corporation with a board of directors of less than 21 seeks to lease away its real property. *See* 15 Pa. C.S.A. § 5546. Accordingly, the Proposed Lease is not effective.

83. The Proposed Lease – or any lease agreement with the Charter School – violates the Original Articles and the Amended Articles (to the extent they are valid) because the Charter School was not formed for one or more of the charitable purposes of the Corporation.

84. The Proposed Lease violates the Original Articles and the Amended Articles because the space used by the Charter School is not an “appropriate portion” of the Corporation's property within the meaning of the Original Articles and the Amended Articles.

85. Neither the Original Articles nor the Amended Articles contemplate that the Corporation would effectively turn over its main educational facility to a school, forcing the Corporation to conduct educational and fundraising activities offsite and denying access to community organizations that for years had been using the Education Building for their meetings.

86. The Original Articles state that the purposes of the Corporation are to acquire, develop and operate property “as a nature center and a recreation and conservation area exclusively for the use and enjoyment of the public.” *See* Exhibit C.

87. Leasing property to the Charter School does not achieve any of those stated purposes and, in fact, severely restricts public access to most of the Education Building by limiting such access to approximately 200 children.

88. If the Amended Articles are effective, the stated purposes are “to provide environmental education for the purpose of fostering appreciation, understanding and responsible use of the ecosystem, and the dissemination of information on current environmental issues; and to maintain the facilities of the Corporation and conserve its land for the purposes of environmental education.” *See Exhibit D.*

89. Turning over the use of most of the Education Building to the 200-student Charter School does not achieve these charitable purposes.

90. The conduct of the Board of Trustees with respect to the Charter School – including not only the Proposed Lease but also the CICADA joint master facilities plan and the previously stated “intention to hand over the keys to the main building to Green Woods” – indicates its determination to frustrate the charitable purposes of the Corporation as they are expressed in both the Original Articles and the Amended Articles.

91. By ignoring the provisions of the Original Articles, the Amended Articles and the bylaws, the members of the Board of Trustees (other than Petitioner) acted ultra vires in approving the Proposed Lease and considering it to be effective.

92. By failing to abide by the Corporation’s governing documents – the terms of which were explicitly pointed out by Petitioner – at least the members of the Board of Trustees who voted in favor of the Proposed Lease breached their fiduciary duty to the Corporation.

**WHEREFORE**, Eleanor Smith Morris respectfully requests that the Court enter an Order declaring that the Proposed Lease is void because it violates the Original Articles (or, in the alternative, the Amended Articles); that the Proposed Lease is void because it was not approved in accordance with the Corporation's bylaws; that the Proposed Lease is void because it was not approved in accordance with the Pennsylvania Nonprofit Corporations Law; that the Corporation may not lease any of its property to the Charter School because the Charter School was not formed for one or more of the Corporation's charitable purposes; and that the Charter School shall remove its modular, trailer classrooms from the Corporation's property and vacate the Corporation's Education Building no later than June 30, 2007.

### **COUNT III**

#### **Request for Declaratory Relief re: Development and Sale of Real Property**

93. Petitioner incorporates Paragraphs 1 through 92 above as if set forth fully herein.

94. With respect to development of the Corporation's property, the Original Articles state that the Corporation may:

“Develop and operate appropriate portions of the area for public use as a nature education center (and particularly a center of the type sponsored by the National Audubon Society), outdoor recreation, wild life conservation, botanical and agricultural demonstration projects, camp sites, a nature sanctuary and allied activities.”

95. The Amended Articles contain nearly identical language, with the only change being the omission of the parenthetical reference to the National Audubon Society.

96. Accordingly, the Original Articles and Amended Articles, in clear, unambiguous language, restrict the ways in which the Corporation's property may be developed.

97. With respect to the sale of the Corporation's property, both the Original Articles and the Amended Articles state that the Corporation may:

“Sell such portions of the area acquired by it as may appear inappropriate for use for the purposes above set forth, and hold the proceeds in trust for the uses and purposes of the Corporation.”

98. Accordingly, the Original Articles and Amended Articles, in clear, unambiguous language, restrict the circumstances under which the Corporation’s property (other than the Boy Scout Tract) may be sold.

**WHEREFORE**, Eleanor Smith Morris respectfully requests that the Court enter an Order declaring that the Corporation may not develop any of its property except in accordance with the Original Articles (or, in the alternative, the Amended Articles) and that the Corporation may not sell any of its property (other than the Boy Scout Tract) unless such property is inappropriate for use for the Corporation’s charitable purposes as stated in the Original Articles (or, in the alternative, the Amended Articles).

**Parties in Interest**

99. Resolution of the questions presented may affect the interests of the following:

Schuylkill Center for Environmental Education  
c/o Dennis A. Burton, Executive Director  
8480 Hagy’s Mill Road  
Philadelphia, PA 19128

Green Woods Charter School  
c/o Steven Tilney, President, Board of Trustees  
8480 Hagy’s Mill Road  
Philadelphia, PA 19128

100. The Commonwealth of Pennsylvania, Office of Attorney General, as *parens patriae* for charities, also is an interested party to these proceedings.



**WHEREFORE**, Eleanor Smith Morris respectfully requests that this Court issue a Citation, directed to the Schuylkill Center for Environmental Education (the “Corporation”), the Green Woods Charter School (the “Charter School”), and the Commonwealth of Pennsylvania, Office of Attorney General to show cause, if any, why the Court should not enter an Order declaring that: (1) the Corporation’s Articles of Incorporation, as amended as of September 21, 1988 (the “Amended Articles”), are void, except to the extent they change the name of the Corporation; (2) the charitable purposes of the Corporation are the purposes set forth by the incorporators in the Corporation’s original Articles of Incorporation (the “Original Articles”); (3) the proposed lease agreement (the “Proposed Lease”) between the Corporation and the Charter School is void because it violates the Original Articles (or, in the alternative, the Amended Articles); (4) the Proposed Lease is void because it was not approved in accordance with the Corporation’s bylaws; (5) the Proposed Lease is void because it was not approved in accordance with Section 5546 of the Pennsylvania Nonprofit Corporations Law, 15 Pa. C.S.A. § 5546; (6) the Corporation may not lease any of its property to the Charter School because the Charter School was not formed for one or more of the Corporation’s charitable purposes; (7) the Charter School shall remove its modular, trailer classrooms from the Corporation’s property and vacate the Corporation’s Education Building no later than June 30, 2007; (8) the Corporation may not develop any of its real property except in accordance with the Original Articles (or, in the alternative, the Amended Articles); and (9) the Corporation may not sell any of its real property (other than the Boy Scout Tract) unless such property is inappropriate for use for the

Corporation's charitable purposes as stated in the Original Articles (or, in the alternative, the Amended Articles).

Respectfully submitted,

/s/ James F. Mannion

James F. Mannion, Esquire (#58951)

Adam T. Gusdorff, Esquire (#87998)

Mannion Prior, LLP

550 American Avenue, Suite 302

King of Prussia, PA 19406-1441

(610) 265-7800

Counsel for Petitioner, Eleanor Smith Morris

Dated: October 13, 2006

**VERIFICATION**

I, Eleanor Smith Morris, verify that to the extent the facts set forth in the foregoing pleading are based upon my personal knowledge, they are true and correct, and to the extent based upon information provided by others, they are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

/s/ Eleanor Smith Morris  
Eleanor Smith Morris