



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



December 5, 2017

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services to award a Water Supply Land Protection Grant to the Town of Windham, (VC #177507-B003), Windham, NH in the amount of \$115,500 to purchase 28.5 acres of land in the Town of Windham to protect public drinking water supply, effective upon Governor and Council approval through June 30, 2018. 100% Interagency Funds.

Funding is available as follows:

	<u>FY 2018</u>
03-44-44-442010-1879-073-500581	\$115,500
Department of Environmental Services, I-93 Water Supply Land Grant, Grants-Non Federal	

EXPLANATION

Pursuant to RSA 486-A:1, the Department of Environmental Services (DES) has a local assistance program that provides municipalities and non-profit land trusts with up to 50% of the cost of acquiring land and conservation easements in order to permanently protect critical water supply lands. Notices were sent to eligible communities, land trusts, and water suppliers and four applications were received. The eligible project application was evaluated for grant funding based on criteria listed in administrative rules, Env-Dw 1002, and included type and size of water system, proximity of land to water supply source, percent of source water protection area being protected, and the amount of acreage being protected.

A total of \$3 million in federal funds was made available for these grants through an agreement with the NH Department of Transportation - from a fund established to offset impacts to wetlands associated with the widening of Interstate 93 between the Massachusetts border in Salem and the I-93/I-293 interchange in Manchester. During the fall 2011 grant round, four applications were approved for funding. See Attachment A for a list of applicants, rankings and reviewers. The grant to the Town of Windham was approved in 2012, but it took until just recently for the Town of Windham to file its final application with the department.

The Town of Windham will use this grant as well as town conservation funds to purchase 28.5 acres of land within the wellhead protection areas of Autumn Woods, Villages of Windham, Hadleigh Woods,

Lamplighter Village, and Spruce Pond Estates, community water supplies in Windham and Salem and place a conservation easement on this land. The Southeast Land Trust of New Hampshire will hold the conservation easement. The land will be maintained in perpetuity for the purpose of water supply protection.

The total cost for the Town of Windham to acquire the land and conservation easement is \$489,782.50. The Department will provide \$115,500 with \$374,282.50 in match provided by the Town of Windham. The purchase price of this conservation land is based on a recent appraisal of fair market value performed in accordance with administrative rule Env-Dw 1002.17.

Exhibit A describes the scope of the grant. Exhibit B provides the grant amount and payment terms and Exhibit C contains special provisions. Attachment B contains the conservation easement deed with restrictions. The Attorney General's office has approved the attached conservation easement deed as to form, substance, and execution. Attachment C contains a map of the land, which shows the land's relationship to the water supply source being protected.

We respectfully request your approval.



Robert R. Scott
Commissioner

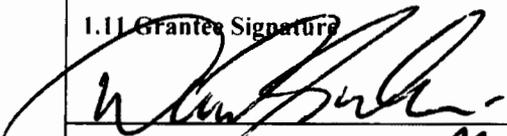
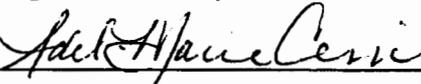
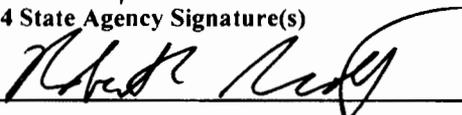
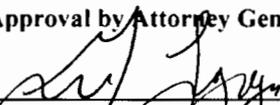
Subject: Grant Agreement for a NH DES Water Supply Land Protection Grant

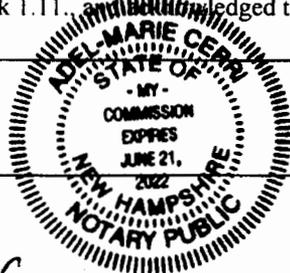
GRANT AGREEMENT

The State of New Hampshire and the Grantee hereby mutually agree as follows:

GENERAL PROVISIONS

I. IDENTIFICATIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302-0095	
1.3 Grantee Name: Town of Windham, NH		1.4 Grantee Address P.O. Box 120, N. Lowell Rd, Windham, NH 03087	
1.5 Effective Date Upon G&C approval	1.6 Completion Date 6/30/2018	1.7 Audit Date N/A	1.8 Grant Limitation \$115,500
1.9 Grant Officer for State Agency Holly Green NH Department of Environmental Services		1.10 State Agency Telephone Number (603) 271-3114	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor DAVID O SULLIVAN Town Administrator	
1.13 Acknowledgment: State of <u>NEW HAMPSHIRE</u> , County of <u>ROCKINGHAM</u> On <u>12/5/17</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) 			
1.13.2 Name & Title of Notary Public or Justice of the Peace <u>ADEL-MARIE CERRI NOTARY PUBLIC</u>			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Robert R. Scott, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By:  Attorney, On: <u>12/5/17</u>			
1.17 Approval by the Governor and Council By: _____ On: / /			



2. **SCOPE OF WORK.** In exchange for grant funds provided by the state of New Hampshire, acting through the agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-O, the Grantee identified in block 1.3 (hereinafter referred to as "the Grantee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being referred to as "the Project").

3. **AREA COVERED.** Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the state of New Hampshire.

4. **EFFECTIVE DATE; COMPLETION OF PROJECT.**

4.1 This Agreement, and all obligations of the parties hereunder, shall become effective on the date in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (hereinafter referred to as "the Effective Date").

4.2 Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.6 (hereinafter referred to as "the Completion Date").

5. **GRANT AMOUNT; LIMITATION ON AMOUNT; VOUCHERS; PAYMENT.**

5.1 The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.

5.2 The manner of, and schedule of payment shall be as set forth in EXHIBIT B.

5.3 In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

5.4 The payment by the State of the Grant amount shall be the only, and the complete, compensation to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.

5.5 Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.

6. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.** In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS.**

7.1 Between the Effective Date and the date seven (7) years after the Completion Date the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

7.2 Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records or personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional,

affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

8.1 The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.

8.2 The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform such Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

8.3 The Grant officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.

9. **DATA; RETENTION OF DATA; ACCESS.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.

9.3 No data shall be subject to copyright in the United States or any other country by anyone other than the State.

9.4 On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.

9.5 The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.

10. **CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.

11. **EVENT OF DEFAULT; REMEDIES.**

11.1 Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

11.1.1 failure to perform the Project satisfactorily or on schedule; or

11.1.2 failure to submit any report required hereunder; or

11.1.3 failure to maintain, or permit access to, the records required hereunder; or

11.1.4 failure to perform any of the other covenants and conditions of this Agreement.

11.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

11.2.1 give the Grantee a written notice specifying the Event of

TS
12/5/17

Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and

11.2.2 give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and

11.2.3 set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and

11.2.4 treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

12. TERMINATION.

12.1 In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.

12.2 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.

12.3 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.

12.4 Notwithstanding anything in this Agreement to the contrary, either the State or except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.

13. CONFLICT OF INTEREST. No officer, member or employee of the Grantee and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement, the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, worker's compensation or emoluments provided by the State to its employees.

15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit A without the prior written consent of the State.

16. INDEMNIFICATION. The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any

person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee of Subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

17. INSURANCE AND BOND.

17.1 The Grantee shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

17.1.1 statutory worker's compensation and employees liability insurance for all employees engaged in the performance of the Project, and

17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2 The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice has been received by the State.

18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.

19. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.

20. AMENDMENT. This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

22. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

EXHIBIT A

SCOPE OF SERVICES

Town of Windham

The Town of Windham will use the grant to purchase approximately 28.5 acres of land in the protection areas of four community water supplies located in Windham and Salem and place a conservation easement on the land. The Town of Windham will own the land and the Southeast Land Trust of New Hampshire will hold the conservation easement. The parcel of land, designated on the current Windham tax map as Lot 8-B-3002 will be protected in perpetuity, as specified in conservation easement deed (see Attachment B), with water supply protection being one of the purposes of the conservation easement.

EXHIBIT B

GRANT AMOUNT & PAYMENT SCHEDULE

Payment in the amount of \$115,500.00 shall be made to the Town of Windham upon receipt of the following:

1. Survey of the parcel of land.
2. A copy of the appraisal as specified in Env-Dw 1002.17.
3. Title examination as specified in Env-Dw 1002.18.
4. Acceptable stewardship plan for the property that ensures the permanent protection of the water supply.
5. Completed baseline documentation form, which indicates the current condition of the property.
6. Documentation to support the \$374,282.50 in match provided by the Town of Windham.
7. The finalized conservation easement deed.

Grantee Initials

Date


12/13/17

EXHIBIT C

SPECIAL PROVISIONS

1. Federal Funds paid under this agreement are from a Grant/Contract/Cooperative Agreement to the State from the United States Department of Transportation, Highway Planning and Construction under CFDA # 20.205. All applicable requirements, regulations, provisions, terms and conditions of this Federal Grant/Contract/Cooperative Agreement are hereby adopted in full force and effect to the relationship between this Department and the grantee. Additionally, the Grantee shall comply with the terms of the Federal Funding Accountability and Transparency Act (FFATA) by providing DES with their Data Universal Numbering System (DUNS) number.
2. Subparagraph 1.7 of the General Provisions shall not apply to this Grant Agreement.

Grantee Initials

Date

AS
12/5/17



TOWN OF WINDHAM, NEW HAMPSHIRE

OFFICE OF THE BOARD OF SELECTMEN/TOWN ADMINISTRATOR
3 NORTH LOWELL ROAD – WINDHAM, NEW HAMPSHIRE 03087

CERTIFICATE OF VOTE

I, Nicole Bottai, do hereby certify that I am the Town Clerk of the Town of Windham, a municipality in the State of New Hampshire, County of Rockingham, in the United States of America.

I do further certify that the Windham Board of Selectmen voted to enter into a grant agreement with the NH Department of Environmental Services, and David Sullivan is the Town Administrator of the municipality and is duly authorized by the by-laws and laws of the State of New Hampshire to execute and deliver on behalf of the municipality any documents which may be necessary for this grant agreement with the State of New Hampshire for the purposes of land acquisition to protect rare habitat and wetland values, and connect other protected resources. This authority was given during an official meeting of the Windham Board of Selectmen on December 19, 2016.

I further certify that such authority has not been repealed, rescinded, or amended.

In witness whereof, I have hereunto set my hand and attached the seal of the Town of Windham on this 24th day of January 2017.

Signed: Nicole Bottai
Nicole Bottai, Town Clerk

State of New Hampshire, County of Rockingham

Dated this 24th day of January, 2017 personally appeared Nicole Bottai, who subscribed and sworn to the above statement.

Attest: Jennifer L. Zins, Notary
Notary Public



409 Mr. Sullivan noted that the grant the Conservation Committee was awarded as
410 reimbursement towards their purchase of the Cyr and Yennaco properties within the
411 Route 28 Town Forest is finally coming to fruition. He requested the board authorize him
412 to sign any of the required legal documentation to complete this transaction.

413

414 **MOTION:** Mr. Breton made a motion to authorize Mr. Sullivan to sign all the required
415 legal documentation for the grant. Mr. Hohenberger seconded the motion.

416 Vote 5-0.

417 Motion carried.

418

419 **NON-PUBLIC SESSION:** Mr. Hohenberger made a motion to go into non-public
420 session in accordance with RSA 91-A:3 II (a, c, d and e). Mr. McLeod seconded the
421 motion. Passed unanimously. Roll call vote all “yes”.

422

423 **MOTION:** Mr. McLeod made a motion to hire a Code Enforcement/ZBA Administrator
424 as recommended by Mr. Gregory, pending successful background checks. Mr.
425 Hohenberger seconded the motion.

426 Vote 5-0.

427 Motion carried.

428

429 **MOTION:** Mr. McLeod made a motion to hire a Planning Board minute taker as
430 recommended by Mr. Sullivan, provided the person could be paid by the stipend. Mr.
431 Hohenberger seconded the motion.

432 Vote 5-0.

433 Motion carried.

434

435 Mr. Hohenberger recused himself for the next discussion.

436

437 **MOTION:** Mr. Breton made a motion to adopt a draft PILOT (payment in lieu of taxes)
438 agreement with McCauley Commons as written. Ms. Simmons seconded the motion.

439 Vote 3-0-1 (Mr. McLeod abstained)

440 Motion carried.

441

442 **MOTION:** Mr. Hohenberger made a motion NOT to sell a piece of Town property that
443 staff had received a request for sale consideration. Ms. Simmons seconded the motion.

444 Vote 5-0

445 Motion carried.

446

447 **MOTION:** Mr. Hohenberger made a motion to accept a reduction in a general assistance
448 lien payment provided no other unsecured creditor received more than 66% of their debt
449 repaid. Ms. Simmons seconded the motion.

450 Vote 5-0

451 Motion carried.

452

453



CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex³) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex³ is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex³ is entitled to the categories of coverage set forth below. In addition, Primex³ may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex³, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex³ Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex³. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

Participating Member: Town of Windham 3 North Lowell Road Windham, NH 03087	Member Number: 329	Company Affording Coverage: NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624
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Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not	
<input type="checkbox"/> General Liability (Occurrence Form) <input type="checkbox"/> Professional Liability (describe) <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence			Each Occurrence	
			General Aggregate	
			Fire Damage (Any one fire)	
			Med Exp (Any one person)	
<input type="checkbox"/> Automobile Liability Deductible Comp and Coll: <input type="checkbox"/> Any auto			Combined Single Limit (Each Accident) Aggregate	
<input checked="" type="checkbox"/> Workers' Compensation & Employers' Liability	7/1/2017	7/1/2018	<input checked="" type="checkbox"/> Statutory	
			Each Accident	\$2,000,000
			Disease – Each Employee	\$2,000,000
			Disease – Policy Limit	
<input type="checkbox"/> Property (Special Risk includes Fire and Theft)			Blanket Limit, Replacement Cost (unless otherwise stated)	

Description: Proof of Primex Member coverage only.

CERTIFICATE HOLDER:	Additional Covered Party	Loss Payee	Primex³ – NH Public Risk Management Exchange
Department of Environmental Services PO Box 95 Concord, NH 03301			By: <i>Tammy Dewar</i>
			Date: 8/21/2017 tdenver@nhprimex.org Please direct inquires to: Primex³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax

Attachment A
Fall 2011 Grant Round - Water Supply Land Protection

Applications and Rankings
Water Supply Land Protection Projects

Grant Applicant	Grant Amount	Project Name	Location	Public Water Supply Source(s) Protected	Score	Rank
Bear Paw Regional Greenways	\$ 66,500	Clay Pond II	Hooksett	Manchester Water Works – Lake Massabesic	32.5	1
Town of Auburn	\$ 77,417.50	Mason	Auburn	Manchester Water Works – Lake Massabesic	25.0	2
Town of Derry	\$ 317,500	South Range Realty Trust	Derry	Willowbend Community Water Supply	34.5	3
Town of Windham	\$ 115,500	Cyr	Windham	Villages of Windham; Hadleigh Woods; PEU/Lamplighter Village; and PEU Spruce Pond Estates	28.5	4

Grant Reviewer List

Name	Department	Bureau	Title	Years Experience
Sarah Pillsbury	NHDES	Drinking Water & Groundwater Bureau	Administrator IV	Twelve years overseeing grant program as Administrator of the Drinking Water & Groundwater Bureau
Paul Susca	NHDES	Drinking Water & Groundwater Bureau	Administrator III	Seven years managing the Source Water Protection Program
Holly Green	NHDES	Drinking Water & Groundwater Bureau	Environmentalist III	Five years managing the grant program

Attachment B

Conservation Easement Deed

The within conveyance involves a non-contractual conveyance from a New Hampshire municipality and is therefore exempt from the New Hampshire Real Estate Transfer Tax pursuant to RSA 78-B:2(I) and exempt from the LCHIP surcharge pursuant to RSA 478:17-g(II)a.

AMENDED AND RESTATED
CONSERVATION EASEMENT DEED

This Amended and Restated Conservation Easement Deed is made as of December 29, 2016 by and between **THE TOWN OF WINDHAM, NEW HAMPSHIRE**, a municipal corporation with a principal place of business at P.O. Box 120, Town of Windham, County of Rockingham, State of New Hampshire, 03087 (hereinafter referred to as the "**Grantor**", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns), the **SOUTHEAST LAND TRUST OF NEW HAMPSHIRE**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 6 Center Street, PO Box 675, Town of Exeter, County of Rockingham, State of New Hampshire, 03833, (hereinafter referred to as the "**Grantee**" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), and the **STATE OF NEW HAMPSHIRE** acting by and through its **DEPARTMENT OF ENVIRONMENTAL SERVICES**, an administrative agency duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03302, (sometimes hereinafter referred to as the "**Third Party Holder**" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

RECITALS;

WHEREAS, the Town of Windham as Grantor conveyed to the Southeast Land Trust of New Hampshire as Grantee a conservation easement deed, recorded in the Rockingham County Registry of Deeds (RCRD) on June 10, 2009, at Book 5020, Page 1689, (the "**2009 Easement**"); and

WHEREAS, on December 9, 2013, the Town of Windham acquired from Douglas A. Yennaco, two parcels of land totaling 25.99 acres recorded at the RCRD at Book 5500, Page 1637

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(identified herein as "**Tract 3**" & "**Tract 5**"), and on May 9, 2014, the Town of Windham acquired from Forty Acres, LLC, one parcel of land totaling 30.00 acres recorded at the RCRD at Book 5529 Page 2748 (identified herein as "**Tract 4**"); and

WHEREAS, the Grantor and Grantee have determined that the expressed purpose of the 2009 Easement would be better effectuated and enhanced by amending and restating the 2009 Easement to include Tracts 3, 4, & 5 totaling 55.99 acres (referred to herein as the "**2016 Addition**") and thus increasing the acreage conserved from 78.08 acres to 134.07; and

WHEREAS, by the 2016 Addition, Tracts 3,4, and 5 shall forthwith be added to, combined, and merged with the 2009 Easement area to constitute the Property conserved and protected under this Easement; and

WHEREAS, the 2016 Addition conveys a Third Party Right of Enforcement to the State of New Hampshire and contains certain provisions added at said Third Party Holder's request; and

WHEREAS, the specific conservation values of the 2009 Easement were documented in a Baseline Documentation Report prepared by Anne Deely of Neatline Associates on behalf of said Grantee dated May 2009 that established the baseline condition of the 2009 Easement as of the date on which the 2009 Easement was granted, and the parties have agreed to amend the 2009 Baseline to acknowledge that the condition of the 2009 Easement remains the same as of the date hereof and to reflect the inclusion of the 2016 Addition; and

NOW, THEREFORE, the Grantor and Grantee hereby agree that the terms and conditions of the 2009 Easement are hereby amended replaced and restated in their entirety with the terms and conditions hereinafter set forth (referred to hereinafter as the "**Easement**"), and that Appendix A to the 2009 Easement is hereby restated and replaced in its entirety with Exhibit A attached hereto and by this reference incorporated and it is hereby understood and acknowledged:

THE TOWN OF WINDHAM, a municipal corporation with a principal place of business at P.O. Box 120, Town of Windham, County of Rockingham, State of New Hampshire, 03087 (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

for consideration paid, with WARRANTY covenants, grants in perpetuity to

the **SOUTHEAST LAND TRUST OF NEW HAMPSHIRE**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 6 Center Street, PO Box 675, Town of Exeter, County of Rockingham, State of New Hampshire, 03833, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

with a **Third Party Right of Enforcement**, as further defined in Section 10 below, therein

granted to the **STATE OF NEW HAMPSHIRE** acting through its **DEPARTMENT OF ENVIRONMENTAL SERVICES**, an administrative agency duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03302, (sometimes referred to herein as the "**Third Party Holder**"),

the **Conservation Easement** (herein referred to as the "Easement") hereinafter described with respect to those certain parcels/area of land (herein referred to as the "Property") being unimproved land, consisting of five tracts situated south of Goodhue Road at the end of Longmeadow Road in the Town of Windham, County of Rockingham, State of New Hampshire, as shown as Tracts 1, 2, 3, 4, & 5 on a plan entitled "Conservation Easement Plan in Windham, NH for portion of Lot 8-B-3001, Owner: Town of Windham, New Hampshire. Drawn for: Southeast Land Trust of New Hampshire" by Edward N. Herbert Assoc. Inc., dated July, 2016, and recorded at the Rockingham County Registry of Deeds as Plan D - 39919 more particularly bounded and described in Exhibit "A" attached hereto and made a part hereof.

The 2009 Easement and 2016 Addition were acquired in part with funds from the New Hampshire Department of Environmental Services Water Supply Land Protection Grant Program. Pursuant to NH RSA 486-A:7 II (e), the Grantee shall henceforth provide annual stewardship reports to the Third Party Holder.

NOW THEREFORE, it is hereby understood and acknowledged:

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes (herein referred to as the "Purposes") for the public benefit:

- A. The assurance that the Property will be retained forever as an important forestland, wetlands, and wildlife habitat; and
- B. The conservation of productive forestland on the Property for responsible forest management that preserves the public benefits of the natural resources of the Property and protects the Property's long-term capacity to produce economically valuable forest products; and
- C. The protection of the Property for low impact, non-commercial outdoor recreation by the general public compatible with these conservation purposes, and for the education of the general public; and
- D. The protection of the quality and sustainable yield of ground water and surface water resources on and under the Property as existing and potential future public water supplies, as defined by RSA 485:1-a, XV, as it may be amended from time to time; and
- E. The prevention of any uses of the Property that will significantly impair or interfere with the conservation purposes of the Property, described above.

The above Purposes are consistent with the 2005 Windham Master Plan, which states that an important goal is to “protect and manage Windham’s valuable open space resources.” The vision statement mentions that, “the Town takes pride in conserving its environmental resources and natural beauty” (p. 3). Further, the Priorities for Action in the Master Plan recognize the role of land conservation in growth management (p. 9) and for long-term water quality and supply protection (p. 10).

These purposes are also consistent with New Hampshire RSA Chapter 79-A, which states: “It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state’s citizens, maintaining the character of the state’s landscape, and conserving the land, water, forest, agricultural and wildlife resources.”

All of these Purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

The Easement hereby granted with respect to the Property is as follows:

2. USE LIMITATIONS (Subject to the reserved rights specified in Section 3 below)

The Property shall be maintained in perpetuity as open space subject to the following use limitations:

A. There shall not be conducted on the Property any industrial or commercial activities, except Agriculture and Forestry, as described below, and provided that the productive capacity of the Property to yield forest and/or agricultural crops shall not be degraded by on-site activities.

i. **Description of Agriculture and Forestry**

a. **Agriculture:** For the purposes hereof, “Agriculture” shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking, cutting, and sale of Christmas trees; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup) all as not detrimental to the Purposes of this Easement.

b. **Forestry:** For the purposes hereof, “Forestry” shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products; all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions; and non-commercial timber stand improvement activities and wildlife habitat improvement.

ii. **Requirements for Agriculture:** Agriculture shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Agricultural management activities shall be in

accordance with the then-current scientifically based practices recommended by UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement.

iii. Requirements for Forestry

- a. Forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. For references on best management practices see:
 - “New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations” (N.H. Division of Forests and Lands, 2016); and
 - “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” (New Hampshire Forest Sustainability Standards Work Team, 2010), or similar successor publications.
- b. Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the ecological, aesthetic, wildlife, or other non-timber values are important components of the forest. To the extent reasonably practicable, forestry shall meet the following goals:
 - maintenance of soil productivity;
 - protection of water quality, wetlands, and riparian zones;
 - maintenance or improvement of the overall quality of forest products;
 - conservation of scenic quality;
 - protection of significant or fragile natural areas;
 - protection of significant historic and cultural features; and
 - conservation of native plant and animal species.
- c. Forestry shall be performed in accordance with a written Forest Management Plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- d. Said Forest Management Plan shall have been prepared not more than ten (10) years prior to the date any harvesting is expected to commence. Or, if more than ten (10) years old, the plan shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to the date of harvest.
- e. Said Forest Management Plan shall include a statement of landowner objectives, and shall specifically address:

- the accomplishment of those Purposes for which this Easement is granted,
 - the goals in Section 2.A.iii.b, above
- f. At least thirty (30) days prior to any commercial timber harvest, the Grantee shall have received from the Grantor a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that the Forest Management Plan, as defined in 2.A.iii, a-d, above, has been prepared in compliance with the terms of this Easement. Grantee may request the Grantor to submit the Plan itself to Grantee within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.
- g. Timber harvesting shall be conducted in accordance with said Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- h. In areas used by, or visible to the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Jones 1993), or similar successor publications.
- B. The Property shall not be subdivided and none of the individual tracts which together comprise the Property shall be conveyed separately from one another except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.
- C. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property and which may include but not be limited to a road, dam, fence, utility line, bridge, culvert, barn, maple sugar house, or shed; and ii) not detrimental to the Purposes of this Easement. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the following structures or improvements: dwelling, mobile home, cabin, residential driveway, any portion of a septic system, tennis court, swimming pool, dock, athletic field, indoor riding arena, golf course, tower, or aircraft landing area.
- D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
- i. are commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, noncommercial outdoor recreation, or educational uses of the Property; and

- ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and
- iii. are not detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

- E. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, noncommercial outdoor recreation, or educational uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed sixteen (16) square feet in size, and no sign shall be artificially illuminated.
- F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., 2.C., 2.D., or 2.E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- G. There shall be no dumping, injection, burning, storage, or burial of man-made materials, wastes generated off the Property or materials then known to be environmentally hazardous. Further, no such materials shall be stored or applied on the Property except in conjunction with any of the agricultural, forestry, conservation, noncommercial outdoor recreation, or educational uses of the Property, and provided such uses are not detrimental to the Purposes of this Easement.
- H. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.
- I. The Grantor shall not operate or grant permission to operate wheeled, motorized vehicles on the Property.

3. AFFIRMATIVE OBLIGATION FOR PUBLIC ACCESS

The Property shall not be posted against, and the Grantor shall keep access to and use of the Property open to the public for, pedestrian, non-motorized, non-wheeled, non-commercial, outdoor recreational and outdoor educational purposes as will have minimal impact on the Property, such as but not limited to hiking, wildlife observation, cross-country skiing, fishing, and hunting. However, the Grantee shall be under no duty to supervise said access, use, or purpose. The Grantor reserves the right to post the Property against public access to forestland during harvesting or other forest management or agricultural activities, for public

safety, or for the protection of public water system facilities, as may be permitted under Section 4.A below.

4. RESERVED RIGHTS

- A. Subject to written approval from the Grantee, which shall not be unreasonably withheld, the Grantor reserves the right to withdraw groundwater on a sustainable yield basis and to remove said groundwater from the Property only for the purpose of providing a community public water system, as defined by NH RSA 485:1-a, as it may be amended from time to time. Withdrawal or removal of groundwater for private, commercial purposes is expressly prohibited, unless such private, commercial use is part of the community public water system. For the purpose hereof, permitted activities in conjunction with said withdrawal and/or removal shall consist of the installation, maintenance, monitoring, and replacement of temporary wells for exploratory and/or testing purposes, long-term water production wells, monitoring wells, pumping stations, and ancillary improvements such as but not limited to permeable-surface roads, signs, electric utilities necessary to power the pumps and related equipment, pipes, conduits, and security facilities, but only if they are required to be located on the Property. To the extent that said facilities and improvements must be located on the Property, those facilities shall, to the maximum extent possible, be located so as to minimize the impact and disturbance of the Property. The Grantor shall submit to the Grantee a written request for said approval, along with information including, but not limited to, documents, maps, plans, specifications, and designs where appropriate, sufficient to identify the proposed water withdrawal with reasonable specificity. The Grantor shall not undertake any such activity until approved in writing by the Grantee, or its/their authorized representative(s).
- B. The Grantor reserves the right to create and maintain trails for low-impact, non-commercial outdoor recreational purposes, provided said trails are consistent with and not detrimental to the Purposes of this Easement. All trails shall conform to best practices recommended by the Appalachian Mountain Club or similar trail-maintaining organization (see Appalachian Mountain Club, The Complete Guide to Trail Building and Maintenance).
- C. The Grantor reserves the right to operate motorized vehicles and other mechanized vehicles for the purposes of maintaining and managing the Property, including forestry and habitat management. This provision is an exception to Section 2.I., above.

5. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantor agrees to notify the Grantee in writing at least 10 days before the transfer of title to the Property.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

6. BENEFITS AND BURDENS

The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas, agrees to and is capable of protecting the conservation purposes of this Easement, and has the resources to enforce the restrictions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

7. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- B. To facilitate such inspection and to identify the Property as conservation land protected by the Grantee, the Grantee shall have the right to place signs, each of which shall not exceed thirty (30) square inches in size, along the Property's boundaries.

8. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.
- C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after

delivery of the notice of mediation, the disagreement shall be submitted to binding arbitration in accordance with New Hampshire RSA 542. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.

- D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, and to require the restoration of the Property to its condition prior to the breach and for such damages as appropriate.
- E. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

9. BREACH OF EASEMENT – GRANTEE’S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor’s name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section, "Breach of Easement...", without prior notice to the Grantor or without waiting for the period provided for cure to expire.
- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor's liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee's rights under this Section, "Breach of Easement...", apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, "Resolution of Disagreements," which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.
- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement...", both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall

impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.

- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

10. THIRD PARTY RIGHT OF ENFORCEMENT

A. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Third Party Holder requesting such, then the notifying Third Party Holder shall have all the rights heretofore granted to the Grantee to enforce this Easement and be entitled to recover the costs of such enforcement from the Grantor or Grantee or both.

B. The interests held by the Third Party Holder are assignable or transferable to any party qualified to become the Grantee's or Third Party Holder's assignee or transferee as specified in Section 6 above. Any such assignee or transferee shall have like power of assignment or transfer.

11. NOTICES

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

12. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

13. CONDEMNATION/EXTINGUISHMENT

A. Whenever all or part of the Property is taken in exercise of eminent domain by public,

corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, or whenever all or a part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of exercise of eminent domain, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

- B. The balance of the land damages recovered from such taking or lawful sale in lieu of exercise of eminent domain shall be divided between the Grantor and the Grantee in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Property condemned. For this purpose and that of any other judicial extinguishment of this Easement, in whole or in part, the values of the Grantor's and Grantee's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation or extinguishment.
- C. The Grantee shall use its share of the proceeds resulting from condemnation or extinguishment in a manner consistent with, in furtherance of one or more of the conservation purposes set forth herein, and to the extent reasonably practicable, in the Town of Windham, New Hampshire.
- D. As required by RSA 486-A:13, any release of the Property from the public trust in order to be converted to another use or due to termination of use shall not be subject to the provisions of Section 12 of this Easement, and shall be undertaken according to the requirements of RSA 486-A:13.

14. AMENDMENT

If, owing to unforeseen or changed circumstances, Grantor and Grantee agree that an amendment to, or modification of, this Easement would be appropriate and desirable, Grantor and Grantee may jointly amend this Easement pursuant to: the provisions and limitations of this section; the then-current amendment policies of the Grantee; notification is given to the New Hampshire Attorney General's Office at least thirty (30) days prior to the adoption of the amendment; and applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall not impair the conservation attributes of the Property protected by this Easement. No amendment shall affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986, as amended, and NH RSA 477:45-47 as may be amended from time to time, nor shall any amendment affect the perpetual duration of this Easement. Any amendment shall be executed by the Grantor and the Grantee and shall be recorded in the Rockingham County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

15. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an

additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in the Section "Benefits and Burdens," above, accepts and records the additional easement.

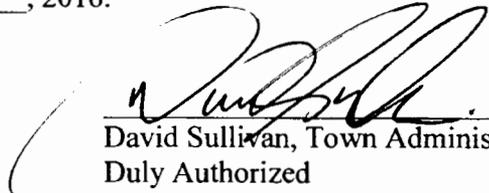
16. SOVEREIGN IMMUNITY

Nothing herein shall be construed as a waiver of sovereign immunity by the State of New Hampshire, such immunity being hereby specifically reserved. If the interests held by the State of New Hampshire herein are assigned or transferred to a qualified party other than the State of New Hampshire or agency thereof, as allowed by Section 10. B. above, this provision 15. ("Sovereign Immunity") shall not apply to the assignee or transferee.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

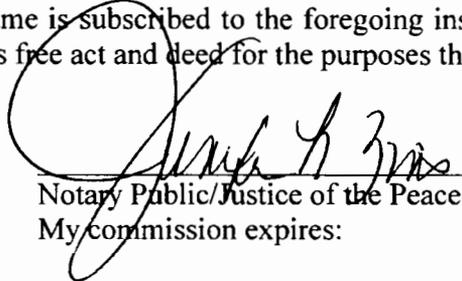
For authority of the Town to execute this Amended and Restated Conservation Easement Deed (adding additional parcels), see Article #17 of the 2016 Windham Town Warrant, adopted at the 2016 Annual Town Meeting.

IN WITNESS WHEREOF, I have hereunto set our hands this 29th day of December, 2016.


David Sullivan, Town Administrator, Town of Windham
Duly Authorized

**STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.**

On this 29 day of December, 2016, before me personally appeared **David Sullivan**, Town Administrator for the Town of Windham known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and deed for the purposes therein contained.


Notary Public/Justice of the Peace
My commission expires:



ACCEPTED: SOUTHEAST LAND TRUST LAND OF NEW HAMPSHIRE

By: 
Title: Executive Director
Duly Authorized
Date: 12/21/2016

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this 21 day of December, 2016, before me personally appeared **Brian Hart, Executive Director of the Southeast Land Trust of New Hampshire**, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and deed for the purposes therein contained.

BEVERLY A. SHADLEY, Notary Public
State of New Hampshire
My Commission Expires March 23, 2021


Notary Public/Justice of the Peace
My commission expires: 3/23/21

Third Party Right of Enforcement accepted by the State of New Hampshire on this 21 day
of December 2016:

By: 
Clark Freise, Assistant Commissioner
New Hampshire Department of Environmental Services

STATE OF NEW HAMPSHIRE

COUNTY OF Merrimack, ss.

On this 20th day of December, 2016, before me personally appeared **Clark Freise**, Assistant Commissioner of the New Hampshire Department of Environmental Services and duly authorized, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his free act and deed for the purposes therein contained.


Notary Public/Justice of the Peace
My commission expires: 05/04/2021



EXHIBIT A

The "Property" subject to the Easement consists of five tracts of land totaling 134.07 acres, situated in the Town of Windham, County of Rockingham, State of New Hampshire, and shown on a Plan entitled "Conservation Easement Plan in Windham, NH for portion of Lot 8-B-3001, Owner: Town of Windham, New Hampshire, Drawn for: Southeast Land Trust of New Hampshire" dated July, 2016 by Edward N. Herbert Assoc. Inc., said tracts described as follows:

Description of Tract 1

A certain tract of land shown as "Tract 1" on said Plan, being more particularly bounded and described as follows:

Beginning at a northeast corner of the within described premises at a cement bound, at land now or formerly of the Town of Windham known as Lot 8-B-5800;

Thence running the following courses and distances:

South 04° 45'50" West, a distance of 283.16 feet to an iron rod;
 South 04° 30'17" East, a distance of 292.00 feet to an iron rod;
 South 04° 59'43" West, a distance of 550.94 feet to a drill hole in a stonewall;
 South 07° 47'15" East, a distance of 115.73 feet along said stonewall to a drill hole;
 South 04° 22'51" East, a distance of 122.55 feet along said stonewall to a drill hole;
 South 01° 56'35" East, a distance of 29.69 feet along said stonewall to a drill hole;
 South 00° 32'04" East, a distance of 52.56 feet along said stonewall to a drill hole at land now or formerly of the Town of Windham, known as Lot 8-B-6600;

Thence turning and running North 87° 44'11" West, along said Town of Windham land a distance of 757.89 feet to an iron rod at land now or formerly of the Town of Windham, known as Lot 8-B-4100;

Thence turning and running North 01° 59'00" East, along said Town of Windham land a distance of 731.18 feet to an iron rod at land now or formerly of the Town of Windham, known as Lot 8-B-3900;

Thence running North 01° 59'27" West, said Town of Windham land a distance of 706.87 feet along to an iron rod at land now or formerly of the Town of Windham known as Lot 8-B-5800;

Thence turning and running South 88° 05'37" East, along said Town of Windham land a distance of 779.00 feet to a cement bound at point of beginning.

Said Tract 1 containing 24.64 acres as shown on said Plan.

MEANING AND INTENDING to describe and convey a conservation easement on all of "Tract 1", described and conveyed by Conservation Easement Deed from the Town of Windham

to the Southeast Land Trust of New Hampshire dated June 10, 2009, and recorded at the Rockingham County Registry of Deeds at Book 5020, Page 1689.

Description of Tract 2

A certain tract of land shown as "Tract 2" on said Plan, being more particularly bounded and described as follows:

Beginning at a northeast corner of the within described premises at an iron pipe at land now or formerly of Naeem & Kimberly Sayeedi, said iron pipe being South 36° 56' 02" West of Longmeadow Road, a distance of 100 feet from a bound set 3-29-07;

Thence running South 09° 48' 02" East, a distance of 436.37 feet to an iron pipe;

Thence turning and running North 88° 11' 59" East, a distance of 366.60 feet to an iron pipe at land now or formerly of Brian Vaillancourt and June Serrentino;

Thence turning and running South 26° 59' 15" East along said Vaillancourt and Serrentino land, a distance of 408.55 feet to an iron pipe at land now or formerly of the Town of Windham;

Then turning and running along said Town of Windham land the following courses and distances:

North 78° 55' 17" West, a distance of 201.58 feet to an iron pipe;
 North 69° 10' 15" West, a distance of 188.88 feet to an iron pipe;
 South 79° 13' 11" West, a distance of 48.81 feet to an iron pipe;
 South 81° 10' 44" West, a distance of 89.38 feet along a stonewall to an iron pipe;
 South 85° 59' 12" West, a distance of 39.64 feet along said stonewall to an iron pipe;
 South 80° 45' 42" West, a distance of 24.76 feet along said stonewall to an iron pipe;
 North 87° 30' 08" West, a distance of 37.51 feet along said stonewall to an iron pipe;
 North 82° 27' 19" West, a distance of 69.26 feet along said stonewall to an iron pipe;
 North 84° 10' 17" West, a distance of 355.22 feet to a field stone bound;
 North 81° 41' 10" West, a distance of 577.83 feet to a field stone bound;
 North 07° 11' 19" East, a distance of 458.00 feet to an iron pipe;
 South 88° 27' 39" West, a distance of 248.78 feet to an iron pipe;
 North 78° 39' 23" West, a distance of 297.00 feet to an iron pipe;
 South 88° 03' 40" West, a distance of 267.95 feet to an iron pipe;
 South 82° 08' 06" West, a distance of 162.36 feet to an iron pipe;

Thence continuing North 80° 24' 42" West along said Town of Windham land and land now or formerly of Nobile Family Trust, a distance of 189.42 feet to an iron pipe at land now or formerly of the Town of Windham;

Then turning and running along said Town of Windham land the following courses and distances:

North 06° 01' 48" East, a distance of 967.19 feet to an iron pipe;

North 00° 08' 11" West, a distance of 17.11 feet along a stonewall to an iron pipe;
North 06° 04' 24" East, a distance of 207.64 feet along said stonewall to an iron pipe;
North 70° 23' 43" East, a distance of 190.44 feet along said stonewall to an iron pipe;
North 81° 32' 46" East, a distance of 114.46 feet along said stonewall to an iron pipe;
North 71° 41' 36" East, a distance of 126.82 feet along said stonewall to an iron pipe;
North 81° 57' 18" East, a distance of 40.89 feet along said stonewall to an iron pipe;
North 77° 10' 39" East, a distance of 62.38 feet along said stonewall to an iron pipe;
North 81° 28' 31" East, a distance of 131.76 feet along said stonewall to an iron pipe at
land now or formerly of Richard & Donna Markham;

Thence turning and running South 68° 32' 26" East, along said Markham land and land now or
formerly of Yoon Jean Choi & Myoung Hee Lee, a distance of 601.44 feet to an iron pipe at land
now or formerly of Todd & Marcia Tracy and land now or formerly of Douglas & Mary Ellen
Capri;

Thence turning and running South 38° 12' 42" West, along said Capri land and land now or
formerly of Jose & Lauren Dacruz, a distance of 491.65 feet to an iron pipe;

Thence turning and running South 50° 44' 49" East, along said Dacruz land, a distance of 394.71
feet, to an iron pipe at land now or formerly of said Sayeedi land;

Thence turning and running along said Sayeedi land the following courses and distances:

South 09° 26' 19" West, a distance of 291.11 feet to an iron pipe;
South 80° 33' 41" East, a distance of 807.00 feet to an iron pipe at the point of beginning.

Said "Tract 2" containing 53.44 acres as shown on said Plan.

MEANING AND INTENDING to describe and convey a conservation easement on all of
"Tract 2", described and conveyed by Conservation Easement Deed from the Town of Windham
to the Southeast Land Trust of New Hampshire dated June 10, 2009, and recorded at the
Rockingham County Registry of Deeds at Book 5020, Page 1689.

TOGETHER WITH a 15 foot-wide pedestrian access easement that benefits Tract 2, running
from the cul-de-sac at the end of Longmeadow Road, along the said Sayeed land, a distance of
100 feet to the above-described premises.

Description of Tract 3

A certain tract of land shown as "Tract 3" on said Plan, being more particularly bounded and
described as follows:

Beginning at the North West corner of said tract; thence

North 81° 24' 11" East a distance of 366.71 feet to an iron pipe; thence

North 79° 57' 57" East a distance of 652.49 feet to an iron pipe found; thence

South 11° 47' 15" East a distance of 358.04 feet to an IRS in stone pile; thence

South 79° 24' 42" West a distance of 1,022.63 feet to an IRS in stone pile; thence

North 11° 10' 04" West a distance of 377.04 feet to an IRS in stone pile and to the point of beginning.

Said "Tract 3" containing 8.0 acres as shown on said Plan.

MEANING AND INTENDING to describe and convey a conservation easement on the parcel identified as "Lot 8-B-5000" and described and conveyed in the Warranty Deed from Douglas A. Yennaco to the Town of Windham dated December 9, 2013, and recorded at the Rockingham County Registry of Deeds at Book 5500, Page 1637.

SUBJECT TO any and all rights of way of record for owners of the abutting premises for purposes of necessity to Route #28 as may exist from abutting properties.

Description of Tract 4

A certain tract of land shown as "Tract 4" on said Plan, being more particularly bounded and described as follows:

Beginning on the North Westerly corner of said parcel on the Easterly side of Rockingham Road (Rte 28).

North 87° 07' 59" East a distance of 547.26 feet to an iron rod FND; thence

South 00° 48' 01" West a distance of 158.13 feet to an iron rod FND; thence

Turning and running South 82° 57' 14" East a distance of 1,646.56 feet to a drill hole set; thence

Turning and running South 01 ° 20' 46" West a distance of 22.68 feet to a drill hole set; thence

Continuing South 02 ° 58' 02" West a distance of 66.72 feet to a stone bound; thence

Turning and running South 15° 37' 11" East a distance of 365.02 feet to an iron rod FND; thence

Turning and running South 76° 27' 32" West a distance of 135.00 feet to an IRS; thence

Continuing South 76° 27' 32" West a distance of 969.39 feet to an IRS; thence

Continuing South 69° 27' 29" West a distance of 83.61 feet to an IRS; thence

Turning and running South 03° 02' 28" East a distance of 195.00 feet to an IRS; thence

Turning and running South 18° 06' 42" East a distance of 220.86 feet to an IRS; thence

Turning and running North 88° 22' 53" West a distance of 36.00 feet to an IRS; thence
Continuing North 88° 22' 53" West a distance of 143.85 feet to and IRS; thence
Turning and running North 14° 27' 38" West a distance of 1,111.14 feet to an IRS; thence
Turning and running South 87° 31' 33" West a distance of 590.00 feet to an IRS; thence
Turning and running North 20° 22' 32" West a distance of 440.00 feet to the point of beginning.
Said "Tract 4" containing 30.0 acres as shown on said Plan.

MEANING AND INTENDING to describe and convey a conservation easement on all of "Lot 8-B-3002" described and conveyed by Warranty Deed from Forty Acres, LLC to the Town of Windham dated May 9, 2014, and recorded at the Rockingham County Registry of Deeds at Book 5529, Page 2748.

SUBJECT TO a 89,134 square foot "well easement" area as shown on Sheets 2 & 4 of said Plan, for the benefit of Lot 8-B-3003, now or formerly owned by Forty Acres, LLC, such that no septic system may be installed, nor may such area be put to any uses which would affect the ability to install wells on the retained parcel (8-B-3003) under the rules and procedures of the New Hampshire Department of Environmental Services.

Description of Tract 5

A certain tract of land shown as "Tract 5" on said Plan, being more particularly bounded and described as follows:

Beginning at the Northwest corner of the tract at property owned by The Garabedian Family Trust; thence

South 89° 12' 48" East a distance of 198.84 feet to FSB; thence

North 84 ° 34' 48" East a distance of 155.73 feet to FSB; thence

South 88° 45' 09" East a distance of 367.15 feet to FSB; thence

South 02° 36' 04" East a distance of 1,078.01 feet to FSB; thence

Turning and running North 88° 08' 41" West a distance of 597.48 feet to a point; thence

Continuing North 88° 47' 27" West a distance of 154.19 feet to a drill hole set; thence

Turning and running North 01° 00' 05" West a distance of 1,050.48 feet to the point of beginning.

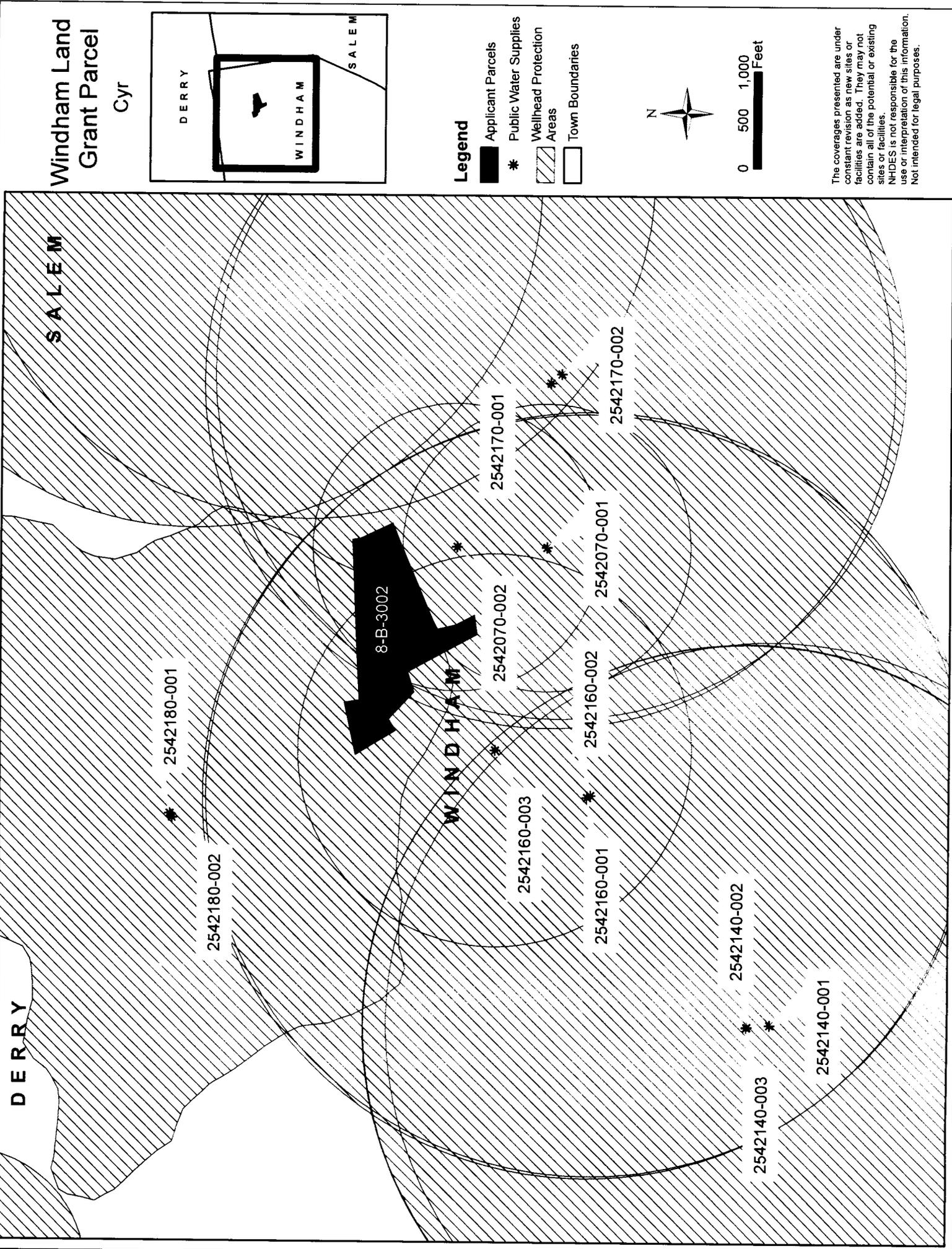
Said "Tract 5" containing 17.99 acres as shown on said Plan.

MEANING AND INTENDING to describe and convey a conservation easement on the parcel identified as "Lot 8-B-6150" and described and conveyed in the Warranty Deed from Douglas A. Yennaco to the Town of Windham dated December 9, 2013, and recorded at the Rockingham County Registry of Deeds at Book 5500, Page 1637.

SUBJECT TO any and all rights of way of record for owners of the abutting premises for purposes of necessity to Route #28 as may exist from abutting properties.

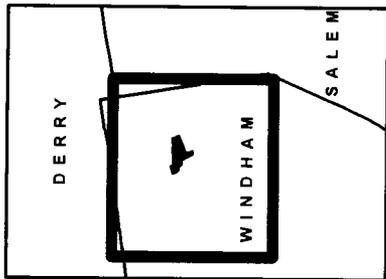
Attachment C

Map of Land to Be Acquired by Water Supply Land Protection Grant



Windham Land Grant Parcel

Cyr



Legend

-  Applicant Parcels
-  Public Water Supplies
-  Wellhead Protection Areas
-  Town Boundaries



0 500 1,000 Feet



The coverages presented are under constant revision as new sites or facilities are added. They may not contain all of the potential or existing sites or facilities.
 NHDES is not responsible for the use or interpretation of this information. Not intended for legal purposes.