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# New Hampshire Fish and Game Department

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March 6, 2015

Her Excellency, Governor Margaret Wood Hassan  
And the Honorable Council  
State House  
Concord, New Hampshire 03301

### REQUESTED ACTION

1. Authorize the New Hampshire Fish and Game Department (NHFG) to acquire a conservation easement on 118+/- acres in Canterbury from the Law Office of Mark R. Dunn (Vendor Code 160143) on behalf of James F. Carter and Sandra F. Carter of Canterbury, Trustees of the James F. Carter and Sandra F. Carter Irrevocable Trust in the amount of \$169,750, effective upon Governor and Council approval through June 30, 2015. Funding is 100% federal.

Funding for this purchase is available as follows:

<u>03 75 75 751520-2155 Wildlife Program – Wildlife Habitat Conservation</u>		
020-07500-21550000-305-500845	Habitat Acquisition and Management	<u>FY2015</u> \$169,750

2. Authorize the New Hampshire Fish and Game Department to deposit \$15,000 in the New Hampshire Land Conservation Endowment held by the Department of Treasury for conservation easement monitoring and stewardship by the Office of Energy and Planning, Conservation Land Stewardship Program on behalf of NHFG pursuant to RSA 162-C:8 and enabled by an MOA approved by Governor and Executive Council on July 24, 2013, Item 37. Funding is 100% other (Wildlife Habitat Funds).

Funding for this expense is available as follows:

<u>03 75 75 751520-2155 Wildlife Program – Wildlife Habitat Conservation</u>		
020-07500-21550000-305-500845	Habitat Acquisition and Management	<u>FY2015</u> \$15,000.00

Her Excellency, Governor Margaret Wood Hassan  
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Page 2 of 2

3. Authorize the New Hampshire Fish and Game Department to enter into a MOA with the New Hampshire Land and Community Heritage Investment Program relative to the acceptance of a conservation easement from James F. Carter and Sandra F. Carter of Canterbury, Trustees of the James F. Carter and Sandra F. Carter Irrevocable Trust.

EXPLANATION

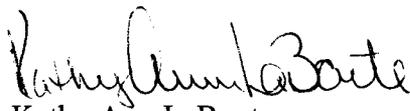
NHFG proposes to acquire a conservation easement on 118+/- acres abutting the Morrill Pond WMA in Canterbury. The conservation of this property will permanently protect 1270 feet of frontage on Morrill Pond and significant wetland and upland habitats on the Carter property. Funding is available from the U.S. Fish and Wildlife Service's Wildlife Restoration Program. The conservation easements will ensure the long term protection of the wildlife habitat on the properties including extensive areas of waterfowl breeding habitat. It will also ensure the permanent availability of the property for hunting, fishing and other wildlife related activities.

The Department also seeks authorization to deposit \$15,000 in the State's Land Conservation Endowment fund to permanently endow monitoring and stewardship responsibilities for the conservation easement. Proceeds from the investment of these funds will be provided to the Land Conservation Stewardship Program at the Office of Energy and Planning to accept responsibility for the monitoring and stewardship of the properties.

The Land and Community Heritage Investment Program (LCHIP) is providing a grant of \$50,250 to The Town of Canterbury towards the acquisition of the conservation easement. In order to protect the investment of LCHIP funds, NHFG has agreed to several conditions contained in the MOA.

Respectfully submitted,

  
Glenn Normandeau  
Executive Director

  
Kathy Ann LaBonte  
Chief, Business Division

# STATE OF NEW HAMPSHIRE

Inter-Department Communication

**DATE** February 25, 2015

**FROM:** Christopher G. Aslin  
Attorney

**AT (OFFICE)** Department of Justice  
Environmental Protection Bureau

**SUBJECT:** Carter Conservation Easement, Canterbury, NH

**TO:** Richard Cook, Land Agent  
Fish and Game Department

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The Office of the Attorney General has reviewed the Conservation Easement Deed and supporting documents provided in connection with the above referenced acquisition and approves the acquisition for form and substance. Please note that once approved by Governor and Council, and signed by all parties, the Conservation Easement Deed should be returned to this office for final review of execution before they are recorded in the appropriate county registry of deeds.

  
\_\_\_\_\_  
Christopher G. Aslin



The within conveyance is a transfer to the State of New Hampshire and pursuant to RSA 78-B:2(I) it is exempt from the New Hampshire Real Estate Transfer Tax

## CONSERVATION EASEMENT DEED

James F. Carter and Sandra F. Carter, Trustees of the James F Carter and Sandra F. Carter Irrevocable Trust dated May 13, 2010, 102 Morrill Road, Town of Canterbury, County of Merrimack, State of New Hampshire, 03224 (hereinafter referred to as the "Grantor", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's successors and assigns),

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

the **STATE OF NEW HAMPSHIRE**, acting by and through the **FISH AND GAME DEPARTMENT**, with a principal office at 11 Hazen Drive, City of Concord, State of New Hampshire 03301 (hereinafter referred to as the "Grantee", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), a Conservation Easement hereinafter (hereinafter "Easement") described with respect to four certain parcels of land (hereinafter "Property") with any improvements thereon, consisting of approximately 118 acres, situated on Morrill Road in the Town of Canterbury, County of Merrimack, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

and grants pursuant to New Hampshire RSA 227-M an **EXECUTORY INTEREST** in said Conservation Easement to the New Hampshire **Land and Community Heritage Investment Authority, a nonprofit corporation and public instrumentality of the State of New Hampshire** (hereinafter referred to at the "**Executory Interest Holder.**" Which, unless the context clearly indicates otherwise, includes it's successors and assigns), with a mailing address of 13 West Street, Suite 3, City of Concord, Merrimack County, State of New Hampshire, 03301.

"In accordance with RSA 227-M:14, notwithstanding any other provision of law relating to disposal of publically-owned real estate, no deviation in uses of any resource asset acquired under this program to uses or purposes not consistent with the purposes of RSA Chapter 227-M shall be permitted. "The sale, transfer, conveyance, or release of any resource asset from the public trust is prohibited, except as provided in RSA 227-M:13." The Grantee has identified the area as critical wildlife habitat which includes extensive wetland, and shoreland habitat, and the property provides significant habitat for waterfowl and numerous other species of wildlife.

## 1. PURPOSES

This Easement is granted pursuant to New Hampshire RSA 477:45-47 and RSA chapter 227-M exclusively for the following conservation purposes (hereinafter "**Purposes of this Easement**") namely:

- A. The conservation of lands identified as "Highest Quality Habitat in the State by ecological condition in the New Hampshire Wildlife Action Plan and contains a diversity of habitats including palustrine and riverine wetlands, hemlock-pine forests and peat-lands
- B. The protection of the Property from future development, and to conserve and maintain the unique characteristics of the Property substantially in its present scenic and open space condition, the preservation of which is important to the public and will serve the public interest in a manner consistent with New Hampshire RSA 477:45-47 and RSA chapter 227-M; and
- C. The furtherance of the goals of the NH Wildlife Action Plan and the Wildlife Restoration Program administered by the Department of Interior, U.S. Fish and Wildlife Service, including but not limited to the management and enhancement of wild birds and mammals and their habitats as well as providing for public use and access to wildlife;
- D. To retain the Property forever in its undeveloped state for critical wildlife habitat including wetland, upland, waterfowl, and deer winter habitat, and to prevent any use of the Property that will significantly impair or interfere with its conservation values;
- E. To conserve and manage the wildlife habitats, wetlands, uplands, open spaces, and scenic values of which the Property consists;
- F. To provide for low-impact non-commercial, non-motorized outdoor recreation by the general public for such activities as hiking, bird watching, cross-country skiing, hunting, fishing, and trapping in accordance with RSA 210:11;

The above Purposes are consistent with the clearly delineated open space conservation objectives as stated in the 2010 Master Plan of the Town of Canterbury which states:

Focus land conservation on areas of highest conservation values including, but not limited to:

- a. Large contiguous areas with limited residential development and high conservation values such as the Sunset Hill/Bean Hill Highlands north of Hackleboro Road; the rolling terrain, wetlands and water bodies near the Schoodac Conservation Area south of Baptist Road and east of Morrill Road; the working landscapes surrounding Shaker Village.
- b. Water resources and riparian corridors such as the Merrimack River and adjacent lands; numerous streams and riparian corridors that connect open spaces; undeveloped or sparsely developed ponds; significant wetlands; aquifers.
- c. Farm lands both large and small considering the present and potential future agricultural productivity, scenic attributes and soil characteristics.
- d. Scenic vistas that define Canterbury's rural character;  
and 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.”

and with New Hampshire RSA chapter 227-M, which states:

“The intent of the program is to conserve and preserve this state’s most important natural, cultural and historical resources through the acquisition of lands, and cultural and historical resources, or interests therein, of local, regional, and statewide significance, in partnership with the state’s municipalities and the private sector, for the primary purposes of protecting and ensuring the perpetual contribution of these resources to the state’s economy, environment and overall quality of life.”

These significant conservation values are set forth in detail in baseline documentation on file with the Grantor and Grantee.

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 rights specified in Section(s) 3 through 5 below:

Any activity on or use of the Property inconsistent with the Purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following use limitations shall apply to the Property except as otherwise specifically provided by the Easement:

- A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except forestry, including timber harvesting in accordance with a stewardship plan approved by Grantee as described in Section 3 herein and provided that the productive capacity of the Property to support diverse wildlife populations shall not be degraded by on-site activities.

### **Definitions**

- i. For the purposes hereof, “forestry” shall include the growing, stocking, cutting, and sale of forest trees of any size for forest products or wildlife habitat management but not for nursery production; the construction of roads or other access ways for the purpose of removing forest products from the Property; and the processing and sale of products produced on the Property (such as maple syrup), all as not to be detrimental to the Purposes of this Easement and guided by a stewardship plan outlined in Section 3.
- ii. For the purposes hereof, “wildlife habitat management” shall include, but not be limited to, alteration of vegetation and soil and the placement of structures to provide habitat for a wide range of wildlife species; the construction or modification of roads or other access ways for the purpose of performing such activities, the use of farm or forest

equipment, the processing and sale of agriculture or forest products in association with such management, all as not to be detrimental to the Purposes of this Easement and guided by a stewardship plan outlined in Section 3.

- iii Shoreland Buffers. For the purposes hereof, "Shoreland Buffers" shall be the areas within 100 feet of streams, ponds and wetlands as defined below. A map entitled Carter Morrill Pond Conservation Easement Area – Shoreland Buffer, on file with the Grantor and NHF&G as part of the baseline documentation, designates the approximate locations of the Riparian Buffers. In the event of a conflict between the Buffer Map and descriptions set forth above, the latter shall govern.
- B. Wildlife habitat management activities not included in the approved Stewardship Plan, shall all be subject to the written approval and conditions of the Grantee regarding timing, location, scope and scale of the activities, but may not be required to meet the stewardship planning requirements in Section 3 herein subject to the sole discretion of the Grantee. No wildlife habitat management activities shall be approved that are detrimental to the Purposes of this Easement, are inconsistent with the stewardship goals in Section 3, or degrade the productive capacity of the Property to support diverse fish and wildlife populations.
  - C. The Property shall not be subdivided or otherwise divided into parcels of separate distinct ownership and none of the individual tracts which together comprise the Property shall be conveyed separately from one another.
  - D. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, parking lot, educational building, tennis court, swimming pool, dock, athletic field, pavilion, shooting range, aircraft landing strip, tower or mobile home, shall be constructed, placed, or introduced onto the Property. However,
    - i. ancillary structures and improvements including, but not limited to, an unpaved road, dam, gate, fence, bridge, culvert, or wildlife nest structure may be constructed, placed, or introduced onto the Property only to the extent necessary to accomplish the forestry, conservation or wildlife habitat management uses of the Property and provided that they are not detrimental to the Purposes of this Easement; and
    - ii. unpaved pedestrian trails and wildlife blinds may be constructed, placed, or introduced onto the Property only to the extent necessary to accomplish the low-impact noncommercial outdoor recreational or educational uses of the Property and provided that they are approved in advance by the Grantee and are not detrimental to the Purposes of this Easement.
  - E. 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 forestry, conservation, wildlife habitat management, or low-impact, non-commercial, outdoor recreational uses of the Property as permitted by this Easement; and
    - ii. do not harm state or federally recognized rare, threatened, endangered species or other species of conservation concern, or exemplary natural communities, such determination of harm to be made at the sole discretion of the Grantee and to be based upon information from the New Hampshire Natural Heritage Inventory or the agency then

- recognized by the State as having responsibility for identification and/or conservation of such species; and
- iii. are not detrimental to the Purposes of this Easement; and
  - iv. are permitted and approved by all federal, state, local, and other governmental entities, as necessary before said activities take place; and
  - v. do not harm state or federally recognized historical or archeological resources, such determination of harm to be made at the sole discretion of the New Hampshire Division of Historic Resources or the agency then recognized by the State as having responsibility for identification and/or conservation of such resources.
- F. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the forestry, conservation, education, or low-impact noncommercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the Purposes of this Easement. No sign shall exceed 16 square feet in size and no sign shall be artificially illuminated.
- G. There shall be no mining, quarrying, or excavation 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., B., D., E., or F, above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- H. The following restrictions shall apply to Shoreland Buffers as defined in Section 2.A.iii.
- i. There shall be no herbicide or pesticide use except as described in Section 4.D below; and
  - ii. Harvesting only in frozen ground conditions or dry summer conditions; and
  - iii) No use of heavy equipment, vehicles, or teams in wetlands within the shoreland buffer; and
  - iv. Within the Shoreland Buffers there shall be no skid trails, log landings or road construction, except in circumstances where complying with this provision may result in a greater overall environmental impact or would preclude reasonable access to areas suitable for forestry. Existing roads may be retained and maintained. Any roads within a riparian buffer zone shall be designed and maintained to minimize degradation of water quality and aquatic habitat.
- I. The within described property shall in no way be used to satisfy the density, frontage or setback requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other property.
- J. Use of pesticides or herbicides in connection with the permitted activities must be approved in advance in writing by the Grantee.
- K. There shall be no dumping, spreading, injection, burning, or burial of biosolids, man-made materials or materials then known to be environmentally hazardous.
- L. A fifty (50') foot minimal harvest buffer shall be established around all documented vernal

pools, allowing only 10% basal area removal, and retaining at a minimum 75% canopy cover. All harvesting activity must take place only in frozen ground conditions or dry summer condition. Documentation to be based on either biological criteria including:

1. Evidence of amphibian breeding.
2. The presence of a vernal pool indicator species;

Or physical characteristics including:

1. The pool occupies a confined basin (standing water without a permanently flowing outlet). The pool may have an intermittent stream flowing out of it at high water, but must be isolated some of the time; and
2. The pool has both a wet/dry cycle:

- M. The use of snowmobiles and/or non-motorized wheeled vehicles for recreational purposes shall be permitted at the discretion of the Grantor with the approval of the Grantee, only on marked trails so placed as to have no significant negative impact on the conservation values protected by this Easement.
- N. The use of motorized wheeled vehicles for recreational purposes shall not be permitted. Grantor reserves the right to post against vehicles, motorized or otherwise.
- O. There shall be no conversion of existing forest land for agricultural purposes.

### **3. Stewardship Planning**

#### ***STEWARDSHIP GOALS***

A. The right to undertake or continue any activity or use of the Property consistent with the Purposes as defined in Section 1 above and not otherwise prohibited by this Easement, provided that all substantial changes in land uses and management activities shall be in accordance with a written wildlife habitat and land management plan (the "Stewardship Plan") consistent with the following stewardship goals at the time of execution of this Easement and in a manner not detrimental to the Purposes of the Easement.

i. The stewardship goals are:

- Protection of fragile or highly erodible soils and maintenance of soil productivity;
- Protection of water quality, aquatic habitat, and the ecological integrity of wetlands and riparian zones;
- Maintenance or enhancement of native biological diversity and natural habitat values found on the Property and representative of the Merrimack Valley;
- Identification, protection, and conservation of exemplary natural communities, unique or fragile natural areas, and rare plant and animal species on the Property, particularly those unique to or concentrated in the Merrimack River watershed as identified by the Nongame and Endangered Wildlife Program, the New Hampshire Natural Heritage Bureau, or their successor entities; and
- Protection of unique historic and cultural features.
- Conservation of scenic quality as seen from public roads, trails and waters;

ii. The goals at the time of the execution of this Easement are:

- To maintain or improve current distributions of waterfowl and other migratory bird populations and to help maintain optimum population levels, distributions and patterns of migration.
- To protect, enhance, restore and manage an appropriate distribution and diversity of wetland ecosystems and other habitats essential and significant for migratory birds, fish, shellfish and other wildlife.
- To protect, enhance, restore and manage exemplary and characteristic natural communities and habitats for rare, threatened and endangered species of animals and plants and natural communities.
- To protect natural areas that are important for aesthetic purposes and provide for quality public recreation and outdoor educational opportunities that are compatible with the waterfowl and wildlife resources and their management, and rare, threatened and endangered species and natural communities and their protection.
- To manage in consideration of a landscape perspective that respects the integrity of the ecosystem of the entire surrounding area.

#### **PLAN PREPARATION AND APPROVAL**

- B. Forestry, and wildlife habitat management activities (“Land Activities”) shall be conducted in accordance with a stewardship plan, prepared by a NH licensed professional forester, a certified wildlife biologist, or by other qualified person (the “Resource Professional”). Any person other than a licensed professional forester or a certified wildlife biologist shall be considered a Resource Professional under this Easement only if approved in advance and in writing by the Grantee. Said Stewardship Plan must be prepared, approved and implemented in accordance with this Easement.
- i. Prior to the Grantor conducting Land Activities on the Property, and if there is no existing plan that meets all the requirements of this section herein; the Grantor shall prepare the Stewardship Plan as follows:
    - a. The Grantor’s Resource Professional shall draft a Plan, prepared as outlined in this section herein.
    - b. The Grantor shall submit said Plan to Grantee for review and input regarding the wildlife habitat impacts, consistency with the Purposes stated in Section 1, the stewardship goals stated in Section 3.A. and compliance with this Easement.
    - c. At least sixty (60) days prior to land management activities, Grantor shall submit the Stewardship Plan to the Grantee for approval.
    - d. Within sixty (60) days after Grantee’s receipt of said Plan, the Grantee shall approve or disapprove the same with respect to its wildlife habitat impacts, consistency with the Purposes stated in Section 1, stewardship goals stated in Section 3.A. and compliance with this Easement, and so inform the Grantor in writing. Any disapproval shall specify in detail the reasons therefore. If the Grantee fails to so approve or disapprove within said period, Grantor may proceed with Land Activities recognizing that the paragraph below applies.
    - e. Grantor and Grantee acknowledge that the Stewardship Plan’s purpose is to guide Land Activities in compliance with this Easement and that the actual activities will determine compliance therewith.

- ii. The Stewardship Plan shall specifically address and include at least the following elements:
    - a. The long-term protection of those values for which this easement is granted, as described in Section 1. above;
    - b. The stewardship goals set forth in Section 3.A. above;
    - c. A statement of landowner management objectives consistent with the Purposes of this Easement and stewardship goals stated in Section 3.A. above;
    - d. A map showing the Property's boundaries, access roads, riparian buffers, and forest stand types;
    - e. A description of the Property's existing conditions and natural features including land cover, topography, soils, geology, wetlands, streams and ponds, wildlife habitat features, low-impact non-commercial recreational and educational uses, and boundary conditions;
    - f. Identification of plant and wildlife species of conservation concern, and how management will enhance or avoid detrimental impacts to said plant and wildlife species;
    - g. Proposed management prescriptions for wildlife habitat management, forestry, conservation, low-impact non-commercial recreation, and education; and
    - h. Proposed schedule of implementation of management prescriptions, including a schedule for boundary, road and trail maintenance.
  - iii. The Stewardship Plan shall have been prepared not more than ten (10) years prior to the date of any forestry activity. Plans prepared more than ten (10) years prior to the anticipated Land Activities date must be reviewed and updated for Grantee's approval in accordance with Section 3.B. herein.
  - iv. In the event that the Grantor proposes a new Land Activities not included in a previously approved Plan, the Grantor shall submit an amendment to the Stewardship Plan for Grantee's approval in accordance with Section 3.B. herein prior to conducting any such new management activity. Such amendments shall include any changes and additions to or deletions from the approved Plan.
- C. Timber harvesting with respect to such Land Activities shall be conducted in accordance with the approved Plan and be supervised by a Resource Professional and shall be subject to the following additional requirements:
- i. Harvesting shall be carried out in accordance with all applicable local, state, federal, and other laws and regulations, and in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices for Forestry: Protecting New Hampshire's Water Quality on Timber Harvesting Operations in New Hampshire" (Sarah Smith, 2005), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (Second Edition, December, 2010), and "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau, 1996), or similar successor standards or other publications as may be mutually agreed to by the Grantor

and the Grantee; and

- ii. In areas used by, or visible to, the general public, such harvesting 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” (Geoffrey Jones, 1993) or similar successor standards or other publications as may be mutually agreed to by the Grantor and the Grantee.

#### **STEWARDSHIP RESPONSIBILITIES OF THE GRANTEE**

The Grantee shall:

- A. Provide an annual on-ground monitoring inspection that confirms that the interest acquired with LCHIP support are being protected and maintained according to the terms of the Easement;
- B. Provide annual contact with the property owner to inform them of their obligations under the terms of the Easement;
- C. Prepare and submit to the Executory Interest Holder and the U.S. Fish and Wildlife Service an annual monitoring report which shall contain the following:
  - i. description of inspection conducted;
  - ii. a description of any physical changes to the property;
  - iii. a description of any contacts made with the property owner, including their current name and address information;
  - iv. a description of any condition or activities on the property, including those which violate or may violate the intent of the Easement;
  - v. an explanation of the current status of previously identified violations and any remedial steps taken;
  - vi. steps to be taken by the property owner to bring property into compliance with the terms of the Easement.
- D. Upon sale of property, immediately contact new owner and inform of Easement provisions.

#### **4. RESERVED RIGHTS OF THE GRANTOR**

Grantor reserves all real property rights not herein explicitly conveyed to the Grantee or restricted or prohibited by this conservation easement. Grantor retains the right to undertake or continue any activity or use of the Property consistent with the Purposes of this Easement as defined in Section 1 above and not otherwise prohibited by this Conservation Easement including without limitation the following:

- A. The Grantor reserves the right to undertake forest and wildlife management activities, including timber harvesting subject to the conditions of this conservation easement.
- B. The Grantor reserves the right to use motorized vehicles, including snowmobiles, all-terrain

vehicles, 4x4 vehicles, and agricultural equipment for management and personal recreational uses.

- C. The Grantor reserves the right to construct and use two (2) 10 feet by 10 feet tent platforms for personal use.
- D. The Grantor reserves the right to use herbicides and pesticides for the control of invasive species within the no management buffer area if said activity is included in the stewardship plan as approved by the Grantee. All chemicals used for invasive species management shall be State approved and used in accordance with state and federal guidelines. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of this reserved right.

## **5. AFFIRMATIVE RIGHTS OF THE GRANTEE**

To accomplish the purpose of this Conservation Easement, the following rights are conveyed to Grantee by this Easement.

- A. Through the auspices of the Grantee and the Executory Interest Holder, the public has the right of pedestrian access, in perpetuity, on and across the Property for low-impact, non-commercial, recreational activities including but not limited to hunting, fishing, trapping in accordance to RSA 210:11, hiking, cross country skiing and nature observation, in accordance with current laws and regulations. The right of overnight camping, non-recreational motorized access or construction of fires on the Property by the public is not hereby conveyed. The Grantee agrees to cooperate with the Grantor, with prior approval of the Executory Interest Holder, to limit allowed public access and use of the property if the public use is not consistent with the Purposes or stewardship goals listed in Sections 1 and 3 of this Easement.
- B. The Grantee and its agents 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.
- C. The Grantee shall have the right but not the obligation to maintain existing wildlife openings on the Property.
- D. Grantee shall have the right but not the obligation to mark and maintain the boundaries of the Easement.

## **6. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE**

- A. The Grantor agrees to notify the Grantee and the Executory Interest Holder in writing at least 30 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.

**7. 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 and agrees to and is capable of enforcing the conservation purposes of this Easement. Provided that by virtue of the Wildlife Restoration Program Grant from the U.S. Fish and Wildlife Service for the purchase of this Easement, and the provisions set forth in the Notice of Grant Agreement recorded herewith and attached hereto as Appendix B, the easement may not be assigned, transferred, conveyed or encumbered, in whole or in part, to any other party, for any other use, whatsoever, without the written consent of the Regional Director of the Service. Any such assignee or transferee shall have like power of assignment or transfer.

**8. EXECUTORY INTEREST**

- 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 Executory Interest Holder requesting such enforcement, delivered in hand or by certified mail, return receipt requested, then the Executory Interest Holder shall have the right to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee. In such circumstances, the Executory Interest Holder shall, having first obtained the approval of the Regional Director of the U.S. Fish and Wildlife Service as specified in the Notice of Grant Agreement, recorded herewith, have the right to terminate the interest of the Grantee in the Premises, subject to Grantee's right to dispute such enforcement as described above, by recording a notice to that effect referring hereto in the Registry of Deeds of the appropriate county, and shall thereupon assume and thereafter have all interests, rights, authority, and responsibilities granted to and incumbent upon the Grantee of this Easement. The interest held by the Executory Interest Holder is assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified above. Any assignee or transferee shall have like power of assignment or transfer.
- B. The Executory Interest Holder shall have reasonable access to the Premises and all of its parts for such inspection as the Executory Interest Holder finds necessary to determine compliance with and enforce the terms of this Easement, to exercise the rights conveyed by this Easement, to carry out the duties assumed by the Executory Interest Holder, and to maintain boundaries if the Executory Interest Holder desires.

## **9. MERGER**

The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee, Executory Interest Holder, or any successor or assign shall be deemed to eliminate the Easement or any portion thereof granted hereunder under the doctrine of "merger" or any other legal doctrine.

## **10. BREACH OF EASEMENT**

- A. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach or conduct, delivered in hand or by certified mail, postage prepaid return receipt requested.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including but not limited to restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this Section.
- C. If the Grantor fails to take such proper action under the preceding paragraph, the Grantee shall, as appropriate to the Purposes of this Easement, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs, and legal fees, shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.
- D. 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.
- E. 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.
- F. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the Purposes of this Easement.

## **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. RIGHT OF FIRST REFUSAL**

In the event the Grantor desires to sell or convey or offer to sell the Property or if the Grantor receives an offer from a third party to purchase the Property and the Grantor desires to accept such an offer, the Grantor must first offer the Property to the Grantee for fair market value as determined by an appraisal provided by a New Hampshire certified general appraiser obtained by the Grantee. The sale and purchase of the Property at fair market value will close within 180 days of the offer, unless a longer period is agreed to by the parties. This Right of First Refusal does not apply to the transfer of this property to the descendants of the Grantors.

## **13. 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.

## **14. CONDEMNATION/EXTINGUISHMENT**

A. The Grantor acknowledges that at the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee. If a change in conditions takes place which makes impossible or impractical any continued protection of the Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the parties agree upon a subsequent sale or exchange of the Property, the Grantee shall be entitled to a portion of the net proceeds equal to the proportionate value of the Conservation Easement relative to the fair market value of the Property as a whole (or in the event that the Property is exchanged, the Grantee shall be entitled to an equivalent amount at the time of such exchange). The values of the Grantor, Grantee's, the U.S. Fish and Wildlife Service's and the Land and Community Heritage Investment Program's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of extinguishment.

By virtue of the Wildlife Restoration Program Grant from the United States Fish and Wildlife Service (sometimes the "Service") for purchase of this Conservation Easement, and to the provisions set forth in the Notice of Grant Agreement recorded herewith, the Service shall be entitled to 73.8% of the portion of the proceeds payable to the Grantee pursuant to this

Section 14 unless the Regional Director of the Service consents to or requires the Grantee's use of the Service's portion of the proceeds to acquire other land or interests in land of equal or greater monetary or resource value. The Grantee shall use its share of the proceeds in a manner consistent with the Purposes set forth herein or for the protection of other interest in land of equal value that serves the same approved purpose as the original property consistent with the Notice of Grant Agreement recorded herewith.

By virtue of the Grant from the New Hampshire Land and Community Heritage Investment Program (LCHIP) for purchase of this Conservation Easement, LCHIP shall be entitled to 21.8% of the portion of the proceeds payable to the Grantee pursuant to this Section 14.

B. Eminent Domain. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. In such event, the proceeds 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. 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.

By virtue of the Wildlife Restoration Program Grant from the U.S. Fish and Wildlife Service for purchase of this Conservation Easement, and to the provisions set forth in the Notice of Grant Agreement recorded herewith, the Service shall be entitled to 73.8% of the portion of the proceeds payable to the Grantee pursuant to this Section 12 unless the Regional Director of the Service consents to or requires the Grantee's use of the Service's portion of the proceeds to acquire other land or interests in land of equal or greater monetary or resource value. The Grantees' proceeds shall be used as specified in Section 14A.

By virtue of the Grant from the New Hampshire Land and Community Heritage Investment Program (LCHIP) for purchase of this Conservation Easement, LCHIP shall be entitled to 21.8% of the portion of the proceeds payable to the Grantee pursuant to this Section 14.

All expenses incurred by the Grantor and the Grantee in any such eminent domain action shall be paid out of the recovered proceeds.

## **15. ADDITIONAL EASEMENT**

Any additional conservation easement on the Property shall require prior approval of the Grantee and the Executory Interest Holder and the written consent of the Regional Director of the U.S. Fish and Wildlife Service, and shall not diminish the conservation purposes for which the Property was originally protected. Any future conservation easement shall be conveyed to and accepted and recorded by either the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, or 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, and agrees to and is capable of enforcing the conservation purposes of the easement. Any such assignee or transferee shall have like power of assignment or transfer.

**16. FEDERAL GRANT AGREEMENT**

This Conservation Easement was acquired in part with funding received by the Grantee from Grant Agreement Number (add Federal grant number) W-107-L-1 between the U.S. Fish and Wildlife Service and the State of New Hampshire, Fish and Game Department as grantee. All present and future uses of the protected property are and shall remain subject to the terms and conditions described in the Notice of Federal Grant Agreement, executed on the same date as this Easement, and recorded herewith as Appendix B, and to the other administrative requirements of the applicable grant funding program of the Service.

Nothing in this Easement shall be interpreted as a waiver of the State's sovereign immunity.

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.

IN WITNESS WHEREOF, we have hereto under set our hand this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

THE JAMES F. CARTER AND SANDRA F. CARTER IRREVOCABLE TRUST

\_\_\_\_\_  
JAMES F. CARTER, TRUSTEE

\_\_\_\_\_  
SANDRA F. CARTER, TRUSTEE

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_

I hereby certify that James F. Carter personally appeared before me on this \_\_\_ day of \_\_\_\_\_, 2015, (known to me or satisfactorily proven) to be the person described in the forgoing instrument and acknowledged that he executed the same in the capacity therein stated and for the purpose therein contained.

Before me, \_\_\_\_\_  
Justice of the Peace/Notary Public

My commission expires:

I hereby certify that Sandra F. Carter personally appeared before me on this \_\_\_ day of \_\_\_\_\_, 2015, (known to me or satisfactorily proven) to be the person described in the forgoing instrument and acknowledged that she executed the same in the capacity therein stated and for the purpose therein contained.

Before me, \_\_\_\_\_  
Justice of the Peace/Notary Public

**ACCEPTED:**

**STATE OF NEW HAMPSHIRE, FISH & GAME DEPARTMENT**

The State of New Hampshire, acting through its Fish and Game Department on this day \_\_\_\_ of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Glenn Normandeau, Executive Director

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK, ss.

Personally appeared before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, Glenn Normandeau who acknowledges himself to be the Executive Director for the New Hampshire Fish and Game Department, and as such is duly authorized to executed the foregoing instrument for the purposes therein contained, by signing his name on behalf of the State of New Hampshire.

\_\_\_\_\_  
Notary Public/Justice of the Peace [seal]  
My Commission Expires: \_\_\_\_\_

Approved by the Governor and Executive Council:

Approval Date: \_\_\_\_\_ Item #: \_\_\_\_\_

**ACCEPTED: EXECUTORY INTEREST**

**LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM AUTHORITY**

By \_\_\_\_\_  
Dorothy Taylor, Executive Director  
Its duly authorized agent

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me the undersigned officer, personally appeared Dorothy Taylor known to me (or satisfactorily proven) to be the authorized agent of the Land and Community Heritage Investment Program Authority and that being authorized so to do on behalf of such entity, executed the foregoing instrument for the purposes therein contained.

In witness whereof I set my hand and seal.

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires:

## APPENDIX A

Certain tracts of land with the buildings thereon, if any, located in the Town of Canterbury, County of Merrimack and State of New Hampshire, more particularly bounded and described as follows:

TRACT 1: Twenty (20) acres of land off the east end of the 40 acre Lot No. 185, laid out to the original right of William Leathers situated in Canterbury, which is known as the Company Lot and which is bounded and described as follows: On the North and West by land formerly owned by David Morrill; on the South by land now or formerly of Abby E. Morrill; on the East by a Range way; and on the west end of the thirty-eight (38) acre Range of Lots

TRACT II: A certain tract of land known as the Jason Chamberlain Spender Hill Farm, bounded and described as follows: On the North by the Company Lot, so-called, and the Nudd Lot; on the West by the land formerly of George P. Morrill; on the South by the land formerly of George P. Morrill and Robert S. Morrill; on the East by land now or formerly of William Wheeler and Sylvester Lovering.

TRACT III: A tract of land lying at the intersection of the Spender Hill Farm Road and the Main Road near the Samuel A. Morrill meadow barn, bounded on the North by the farm road; on the West by the main road; on the south by land formerly occupied by James Bennett; on the East by the rangeway enclosed in the land of Louis D. Morrill. Containing four (4) acres, more or less, and being the first described tract of land in deed of Louis D. Morrill to George P. Morrill dated June 8, 1897, recorded in Merrimack County Registry of Deeds at Book 328, Page 29.

For further description see "Plan of Land Belonging to Joseph and Minnie Maier in Canterbury, New Hampshire dated June 13, 1976 by Gilbert C. Castle RLS #405

ALSO HEREBY CONVEYING a certain tract of and situated in said Canterbury known as Lot #2 Spender Pond and Reservoir Grant, beginning at the S.W. Corner of Lot 185 (of which the "Company Lot" hereinafter named is the East Half) thence North to "Reservoir Tract" owned by Louis D. Morrill thence Northeasterly by said "Reservoir Tract" to a stone cut with the letter "B" and close to the South side of the old "Winter Road", thence in the same general course along said "Road" to, and along the hard land shore of Spender Meadow at no point below high water mark, straightening across rocky points near old Moody mill sawdust pile to the upper "Winter Road" (through which hay was also formerly hauled in summer from "Round Meadow" above through "Road first mentioned and out across "Reservoir tract", then in part used as a meadow); thence along the upper side of said "road" to another boulder also cut with a "B"; thence Northerly across hard land to a flat top stone, by a pine tree, cut with a "B" near the Northwest part of "Round Meadow" above mentioned, then following the hard land shore of the said "Round Meadow" and adjoining swamp lands to land of James Guertin; thence south by the rangeway to the Company Lot" so-called; thence west (by or near South side of Spender Pond and south end of dam, near said pond's outlet) to the North west corner of said "Company Lot", thence South by said lot to land of A.E. Morrill; thence West by said Morrill's land to the South West corner of Lot #185, the point first mentioned.

Meaning and intending to convey all of the parcels conveyed to the Grantors herein by deed of James F Carter and Sandra F. Carter dated July 27, 2010 and recorded in the Merrimack County Registry of Deeds at Book 3205, Page 0519

## APPENDIX B

### *Notice of Federal Grant Agreement*

The State of New Hampshire, Fish and Game Department and its successors and assigns (hereinafter "DEPARTMENT") acknowledges that the above described Conservation Easement (hereinafter "EASEMENT") is acquired in part with federal funds received from the Wildlife Restoration Program administered by the U.S. Fish and Wildlife Service, Division of Federal Assistance and its successors and assigns (hereinafter "SERVICE") and that the Easement is subject to all the terms and conditions of Grant Agreement Number W-107-L-1 (hereinafter "GRANT AGREEMENT" between the Service and the Department). A copy of the Grant Agreement is kept on file at the offices of the Service, 300 Westgate Center Drive, Hadley, MA 01035-9589 and at the offices of the Department, 11 Hazen Drive, Concord, NH 03301.

The Department acknowledges that the Easement, which is the subject of this Grant Agreement, is acquired for the approved purpose of permanent protection of wild birds and mammals and their habitats. The Department further acknowledges that the Easement will be administered for the long-term protection of these habitats and species dependent thereon. The Department, as the Grant Recipient hereby acknowledge that they are responsible for ensuring that the Easement is used and will continue to be used for the approved purpose for which it is acquired and that the Easement may not be conveyed or encumbered, in whole or in part, to any other party or for any other use, whatsoever, without the written consent of the Regional Director of the U.S. Fish and Wildlife Service.

If the Department loses control of the Easement, control must be fully restored to the Department or the property must be replaced, within three years, with a like Easement of equal value at current market prices and equal benefits. Further, if the Easement is used for activities that interfere with the accomplishment of the approved purpose, the violating activities shall cease and any resulting adverse effects shall be remedied.

If the Department determines that the Easement is no longer needed or useful for its original purpose and the Service concurs, the Department may, with the prior written consent of the Service, either (1) acquire a conservation easement or other interest in land of equal value that serves the same approved purpose as the original property and manage the newly acquired conservation easement or other interest in land for the same purposes specified in the original Grant Agreement, or (2) repay the Service, in cash, the proportionate federal share of funds invested in the original purchase price, or to repay the Service, in cash, the proportionate federal share of the current fair market value of the Easement, or any portion thereof, whichever is higher, or (3) as a last resort, transfer the Easement to the Service or to a third-party designated or approved by the Service.

The Department, as Grant Recipient hereby confirms its obligations and responsibilities with regards to the acquired property pursuant to terms and conditions associated with Grant Agreement W-1071-L-1.

By: \_\_\_\_\_

Glenn Normandeau, Executive Director

Date: \_\_\_\_\_, 2015

The State of New Hampshire

County of \_\_\_\_\_

Personally appeared Glenn Normandeau, Executive Director of the New Hampshire Fish and Game Department, this \_\_\_\_\_ day of \_\_\_\_\_, 2015, and being duly authorized acknowledged the foregoing on behalf of the State of New Hampshire.

Before me. \_\_\_\_\_  
Justice of Peace/Notary Public  
My Commission Expires: \_\_\_\_\_



MEMORANDUM OF AGREEMENT  
Between the  
NEW HAMPSHIRE FISH AND GAME DEPARTMENT  
And the  
NEW HAMPSHIRE LAND AND COMMUNITY  
HERITAGE INVESTMENT PROGRAM

This MOA is entered into by the New Hampshire Fish and Game Department, hereinafter referred to as "NHFG," and the New Hampshire Land and Community Heritage Program, hereinafter referred to as "LCHIP."

Whereas LCHIP awarded a grant of \$52,750 to The Town of Canterbury towards the purchase of a conservation easement on 118+/- acres abutting the Morrill Pond Wildlife Management Area in Canterbury hereinafter referred to as the "Property," in accordance with New Hampshire RSA chapter 227-M;

Whereas NHFG acquires property to protect fish and wildlife habitat and provide public access to those resources;

Whereas NHFG will be the holder of said conservation easement on the Property;

Now Therefore NHFG agrees to the following:

1. To limit the use of the target property (hereinafter the Property) to conservation purposes in perpetuity as specified by New Hampshire RSA chapter 227-M, any other applicable laws; and the *Criteria, Guidelines, and Procedures* established by LCHIP;
2. That materials produced to promote or publicize the Property, including on-site kiosks or informational signs, will include the following statement: "This property (name of property may be used) protected with assistance from the NH Land and Community Heritage Investment Program";
3. To place a sign, if provided by LCHIP, at a prominent location on the Property. Any replacement or repair costs to the sign will be the responsibility of the New Hampshire Fish and Game Department;
4. The parties agree that the Property shall be open for public pedestrian access including access for hunting and fishing consistent with NHFG policies and all state and federal laws and regulations;
5. That the Property will be monitored on an annual basis in accordance with the *Standards and Practices* for stewardship of the Land Trust Alliance, and LCHIP's *Criteria, Guidelines and Procedures* to ensure that no actions are occurring which could be detrimental to the purposes of the easement or the conservation values of the Property.

The New Hampshire Fish and Game Department agrees to submit a copy of the annual monitoring report to LCHIP to document the actions taken; and

In witness whereof, the respective parties hereunto set their hands on the dates indicated.

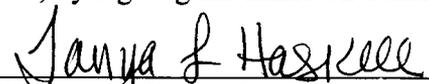
Approved By:

  
Glenn Normandeau  
Executive Director  
NH Fish and Game Department

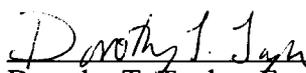
3/6/2015  
Date

THE STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK, SS.

Personally appeared before me on this 10<sup>th</sup> day of March, 2015, Glenn Normandeau, who acknowledges himself to be the Executive Director for the New Hampshire Fish and Game Department, and as such is duly authorized to executed the foregoing instrument for the purposes therein contained, by signing his name on behalf of the State of New Hampshire.

  
Notary Public/Justice of the Peace  
My Commission Expires:

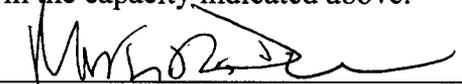
**TANYA L. HASKELL, Notary Public**  
**My Commission Expires October 6, 2015**

  
Dorothy T. Taylor, Executive Director  
Land and Community Heritage Investment  
Program for the State of New Hampshire

3/6/15  
Date

THE STATE OF NEW HAMPSHIRE  
COUNTY OF Merrimack. SS.

On the 6<sup>th</sup> day of March 2015, before me personally appeared Dorothy Taylor, known to me (or satisfactorily proven) to be the person whose name appears above, and s/he acknowledged that s/he executed this document in the capacity indicated above.

  
Notary Public/Justice of the Peace  
My commission expires: 10/29/18  
March 2, 2000

Approved by the Governor and Executive Council: \_\_\_\_\_, Item \_\_\_\_\_

# Carter/Spender Meadow: Conservation Lands



Digital data in NH GRANIT represent the efforts of the contributing agencies to record information from the cited source materials. The cooperating agencies maintain a continuing program to identify and correct errors in these data, and make no claim as to the validity or reliability or to any implied uses of these data.

## CONSERVATION/PUBLIC LAND by Primary Protecting Agency

-  Town/County
-  Federal Agency
-  State Agency
-  Other Public Entity
-  Private Organization



0 0.25 0.5 Miles

NHFG: 10/17/2014







# New Hampshire Fish and Game Department

HEADQUARTERS: 11 Hazen Drive, Concord, NH 03301-6500  
(603) 271-3421  
FAX (603) 271-1438

Governor & Council Approved  
Date: 7-24-13  
Item #: 37

www.WildNH.com  
e-mail: info@wildlife.nh.gov  
TDD Access: Relay NH 1-800-735-2964

July 8, 2013

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

## REQUESTED ACTION

The New Hampshire Fish and Game Department (NHFG) respectfully requests authorization to enter into a Memorandum of Agreement (MOA) with the Council on Resources and Development (CORD) and the Office of Energy and Planning (OEP) relative to stewardship and funding of conservation easement monitoring, pursuant to RSA 162-C:8, for a term of ten (10) years time period from the date of Governor and Council approval through June 30, 2023. **No Cost.**

## EXPLANATION

The NHFG periodically receives gifts, donations, or grants to provide for long-term stewardship monitoring of certain conservation easements held by the NHFG. RSA 162-C:8 authorizes such funds to be deposited into the Land Conservation Endowment, which is administered by CORD, for this purpose.

The proposed MOA enables NHFG to deposit funds into the Land Conservation Endowment so that they will generate interest and provide the OEP Conservation Land Stewardship Program with funding for long-term monitoring and stewardship support of NHFG conservation easements that receive endowments for those purposes.

Providing monitoring and stewardship support for other state-held easement interests through the Conservation Land Stewardship Program, minimizes duplication of effort and enables cost-saving efficiencies since many of these additional state-held easements are contiguous with properties that the program is already responsible for. It allows the same stewardship standards for all easement lands, provides staff expertise to appropriately represent the State's interests, and helps to provide a consistent interpretation of easement language. One of the primary goals of the Conservation Land Stewardship Program is to educate and work with landowners to resolve conflicts with easement restrictions that may arise, thereby avoiding costly litigation. A complete background of the Conservation Land Stewardship Program is provided in Exhibit A.

**REGION 1**  
629B Main Street  
Lancaster, NH 03584-3612  
(603) 788-3164  
FAX (603) 788-4823  
email: reg1@wildlife.nh.gov

**REGION 2**  
PO Box 417  
New Hampton, NH 03256  
(603) 744-5470  
FAX (603) 744-6302  
email: reg2@wildlife.nh.gov

**REGION 3**  
225 Main Street  
Durham, NH 03824-4732  
(603) 868-1095  
FAX (603) 868-3305  
email: reg3@wildlife.nh.gov

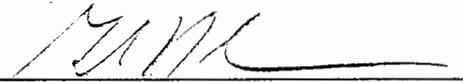
**REGION 4**  
15 Ash Brook Court  
Keene, NH 03431  
(603) 352-9669  
FAX (603) 352-8798  
email: reg4@wildlife.nh.gov

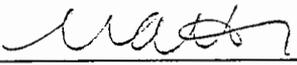
Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Executive Council  
July 8, 2013  
Page 2 of 2

The NHFG will seek Governor and Council approval prior to accepting future gifts, donations and grants subject to this MOA.

Respectfully submitted,

Concurred,

  
\_\_\_\_\_  
Glenn Normandeau, Executive Director  
Fish and Game Department

  
\_\_\_\_\_  
Meredith Hatfield, Director  
Office of Energy and Planning

**MEMORANDUM OF AGREEMENT**  
**Between the**  
**COUNCIL ON RESOURCES AND DEVELOPMENT**  
**and the**  
**OFFICE OF ENERGY AND PLANNING - Conservation Land Stewardship Program**  
**and the**  
**NEW HAMPSHIRE DEPARTMENT OF FISH AND GAME**  
**for the**  
**Monitoring of Conservation Easements under Endowment**

This Memorandum of Agreement (MOA) is entered into by the Council on Resources and Development (CORD), Office of Energy and Planning, Conservation Land Stewardship Program (OEP-CLS), and New Hampshire Fish and Game Department (NHFG).

**Whereas**, NHFG is mandated by RSA 206:4-a to conserve, protect and manage fish, wildlife, and marine resources and to acquire, develop and manage lands and waters for recreational purposes; and

**Whereas**, NHFG acquire conservation easements in perpetuity to protect fish and wildlife habitat and to provide public access to said lands; and

**Whereas**, NHFG periodically receives gifts, donations and grants as endowment to ensure that stewardship monitoring and enforcement will occur in perpetuity on said lands; and

**Whereas**, CORD is authorized under RSA 162-C:8 to accept gifts, donations, and grants to the Land Conservation Endowment to be utilized for monitoring and enforcing land conservation interests that may be acquired by the state; and

**Whereas**, CORD, through the OEP-CLS, has the technical expertise to efficiently carry out easement stewardship, monitoring, and enforcement activities and currently carries out these activities pursuant to RSA 162-C for conservation interests acquired through the Land Conservation Investment Program (LCIP) ;

**Now Therefore**, all parties agree as follows:

- 1) This Agreement applies to all gifts, donations and grants deposited into the Land Conservation Endowment by NHFG pursuant to RSA 162-C:8, and to stewardship of the associated non-LCIP conservation easements held by NHFG for which the funds were received.
- 2) This Agreement covers a ten (10) year time period commencing on the date of Governor and Council approval through June 30, 2023. It is the intention however of the parties to continue the long-term stewardship of conservation lands through timely renewal of this Agreement. This Agreement may be amended in writing if necessary with the consent of all parties.
- 3) CORD, OEP-CLS, and NHFG agree to cooperate as follows:

NHFG agrees to:

- 1) at NHFG's discretion, deposit funds into the Land Conservation Endowment in accordance with RSA 162-C:8 for the purpose of providing conservation easement stewardship support for the

specific easement lands for which the funds were received. The donated amount shall be agreed upon by NHFG and OEP/CLS prior to deposit into the endowment and shall be deemed to be sufficient to generate interest in the long-term to support stewardship efforts for the easement land in perpetuity; and

- 2) provide technical and enforcement support to OEP-CLS regarding the prevention or enforcement of violations or diminution of the terms of any conservation easement deed which is part of this Agreement. NHFG shall have final determination of the disposition of enforcement of the terms of any easement; and
- 3) review and approve/disapprove actions of the Grantor as required by any conservation easement deed which is part of this Agreement; and
- 4) assign responsible staff to serve as the contact person with OEP-CLS regarding any provision of the Agreement.

CORD agrees to:

- 1) at CORD's discretion, in consultation with OEP-CLS, accept endowment contributions from NHFG into the Land Conservation Endowment and allow expenditures from the endowment in accordance RSA 162-C:8 for the purpose of providing conservation easement stewardship support for each of the specific easement lands for which the funds were received; and
- 2) authorize OEP-CLS to carry out stewardship support responsibilities as stated herein.

OEP-CLS agrees to:

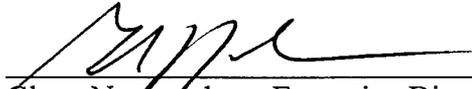
- 1) conduct easement monitoring on each of the easement lands associated with the endowment contribution which generally will include:
  - a. conducting easement monitoring to ensure that conditions of the conservation easement are being met annually (every 12 – 14 months) on each parcel. This shall include, when practical, a personal contact/visit with the landowner(s) or their representative(s) to discuss the easement and any proposed or undertaken activities related to it; and
  - b. maintaining hard and electronic copies of all correspondence, monitoring reports and information regarding changes of address, changes in land management that may affect wildlife habitat, other land management issues etc. for each parcel; and
  - c. developing and maintaining a database to track parcels, landowners, status, etc. and
  - d. conducting aerial monitoring and photography as necessary or desirable to document the condition of the parcels; and
  - e. resolving, to the extent practicable, any and all conflicts which arise from the enforcement of the conditions of the easement
- 2) provide NHFG with copies of all monitoring reports and correspondence for each parcel; and
- 3) meet with NHFG as necessary to resolve any problems which may arise; and

4) serve as the point of contact for requests by the Grantor of activities requiring prior Grantee approval and coordinate with NHFG as necessary to insure that review and approval/disapproval is conducted as required by any conservation easement deed that is part of this Agreement;

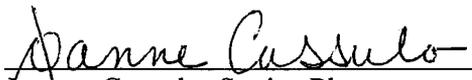
5) report annually to CORD on stewardship responsibilities under agreement.

In witness whereof, the respective parties hereunto set their hands on the dates indicated.

Approved By:

  
\_\_\_\_\_  
Glenn Normandeau, Executive Director  
NH Fish and Game Department

6/18/13  
Date

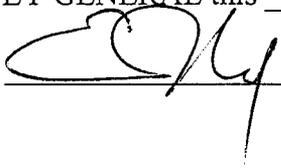
  
\_\_\_\_\_  
Joanne Cassulo, Senior Planner  
NH Office of Energy and Planning

6/24/13  
Date

  
\_\_\_\_\_  
Meredith A. Hatfield, Chair  
Council on Resources and Development

6/21/13  
Date

Approved by the ATTORNEY GENERAL this 25 day of June, 2013.

Assistant Attorney General   
\_\_\_\_\_



## Exhibit A

### Background on the Office of Energy and Planning – Conservation Land Stewardship Program

In 1994, the State of New Hampshire established a stewardship program to protect, in perpetuity, the conservation values and investments acquired through the former Land Conservation Investment Program. This stewardship program, now known as the Conservation Land Stewardship Program (CLS), is housed within the Office of Energy and Planning.

The former Land Conservation Investment Program<sup>1</sup> was established in 1987 as Senate Bill 1. From 1987 until 1993 in cooperation with its private partner, the Trust for New Hampshire Lands, the program permanently protected over 379 individual conservation parcels totaling over 100,000 acres of land. This significant land protection effort is considered to be one of the most successful and wide reaching public-private conservation partnerships in the State's history.

At the end of the program's acquisition phase in 1993, authority for the Land Conservation Investment Program was transferred to the Council on Resources and Development (CORD) in accordance with the former RSA 221-A (now RSA 162-C). In transferring authority to CORD, the general court reaffirmed the conservation purposes of the Land Conservation Investment Program. It recognized the need to respect investments in the conservation of natural resource lands in the state for the perpetual use of the people of New Hampshire. The general court also recognized that the Land Conservation Investment Program was undertaken in part with significant donations of cash and land value by citizens of the state who intended that the conservation values of these lands be protected in perpetuity. In addition, lands and interests in lands acquired through the Land Conservation Investment Program are held in "public trust" and, per RSA 162-C:10, there can be no deviation in the uses to uses not consistent with this section. The sale, transfer, conveyance, or release of any such land from the public trust is prohibited.

Since 1994, the CLS Program has been responsible for two key functions intended to ensure that the State is meeting its responsibilities under RSA 162-C to protect its conservation resources in perpetuity. First, it monitors and stewards the 86 state-held conservation easements acquired through the Land Conservation Investment Program. It works with landowners and others to resolve potential violations or other issues and helps landowners understand the conservation values and restrictions on their land. Secondly, the CLS Program oversees the 240 municipally held interests acquired through the Land Conservation Investment Program and provides technical assistance to those 78 participating municipalities.

These stewardship and monitoring responsibilities are becoming increasingly important as easements age and land ownership changes to new owners who may not understand the legal significance of the restrictions or the unique protected conservation values of the property. One of the primary goals of the CLS Program is to educate and work with landowners to resolve

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<sup>1</sup> Although in many ways the Land Conservation Investment Program was a predecessor to the current Land and Community Heritage Investment Program, known as "LCHIP," the former Land Conservation Investment Program should not be confused with this newer historic property and land protection program.

conflicts with easement restrictions that may arise, thereby avoiding costly litigation. The CLS Program's approach of avoiding problems through direct landowner contact, pro-active discussions relating to potential uses of the land, and regular monitoring continues to be the most cost-effective method for long-term protection of the State's conservation land interests.

Since 2000, the CLS Program has provided similar annual monitoring and stewardship services for Department of Resources and Economic Development's (DRED) non-Land Conservation Investment Program easement lands (through G&C approved Memoranda of Agreements). In 2004, CLS began providing monitoring and stewardship services to the NH Fish and Game Department for its other conservation easement lands as well. Today the CLS Program monitors 89 conservation easements (totaling approximately 38,000 acres) for these two agencies in addition to the original 86 easements acquired through the Land Conservation Investment Program.

Providing easement monitoring and stewardship support through the Conservation Land Stewardship Program for multiple state agencies minimizes duplication of effort and enables cost-saving efficiencies since many of these additional conservation easements are contiguous with conservation easements for which CLS is already responsible. It allows the same stewardship standards for all easement lands and approach to problem resolution, provides staff expertise to appropriately represent the State's interests, and helps to provide a consistent interpretation of easement language.

In addition, stewardship and annual monitoring of many of these additional DRED and NHF&G easements is required under the federal funding that supported the original acquisition. This arrangement helps to ensure that these agencies are complying with federal requirements. It also helps to ensure that the State is effectively and consistently meeting its legal and ethical obligation to protect the natural resources it has invested in.