

52



# New Hampshire Fish and Game Department

11 Hazen Drive, Concord, NH 03301-6500  
Headquarters: (603) 271-3421  
Web site: www.WildNH.com

TDD Access: Relay NH 1-800-735-2964  
FAX (603) 271-1438  
E-mail: info@wildlife.nh.gov

July 30, 2013

*Sole Source*

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 purchase a conservation easement on 465.3 acres in Hooksett from Bear-Paw Regional Greenways (Vendor Code 162206) for up to \$185,000, effective upon Governor and Council approval through December 31, 2013. Funding is 100% Federal.

Funding 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>FY2014</u> \$185,000

2. Authorize the New Hampshire Fish and Game Department (NHFG) to enter into a grant agreement with Bear-Paw Regional Greenways (Vendor Code 162206) to provide up to \$110,000.00 to partially fund the purchase of the fee acquisition on 465.3 acres in Hooksett, effective upon Governor and Council approval through December 31, 2013. Funding 100% Other (Conservation License Plate).

Funding is available as follows:

<u>03-75-75-751520-2139 Wildlife Program – Conservation License Plate</u>		
20-07500-21390000-305-500845	Habitat Acquisition and Management	<u>FY2014</u> \$110,000

3. Authorize the New Hampshire Fish and Game Department (NHFG) to enter into a **SOLE- SOURCE** contract with Bear-Paw Regional Greenways (Vendor Code 162206) for up to \$10,000.00 to be used for costs associated with land conservation efforts in the Bear Brook – Hooksett Focus Area, from date of Governor and Council approval through December 31, 2013. Funding 100% Other (Conservation License Plate).



Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
July 30, 2013  
Page 2 of 2

Funding is available as follows:

03-75-75-751520-2139 Wildlife Program – Conservation License Plate	<u>FY2014</u>
20-07500-21390000-305-500845 Habitat Acquisition and Management	\$10,000

EXPLANATION

NHFG is partnering with Bear-Paw Regional Greenways (BPRG) to protect 465.3 acres of significant wildlife habitat in Hooksett. NHFG will use up to \$185,000 in Wildlife Restoration Program funds to purchase a conservation easement on the property.

Prior to that transaction, BPRG will use a variety of funding sources including \$110,000 in Conservation License Plate funds to purchase the fee title to the same property from a private landowner.

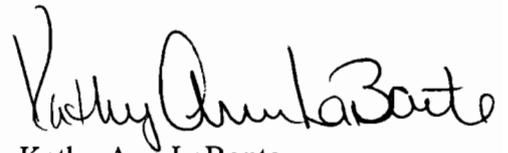
NHFG will also provide BPRG with \$10,000 in Conservation License Plate Funds to be used to cover associated transaction costs including survey, title work and appraisals.

This approach will allow NHFG to ensure the protection of the wildlife habitat values on the property and that the lands remain open for low-impact non-commercial recreational uses while keeping the parcel in private ownership.

Respectfully submitted,



Glenn Normandeau  
Executive Director



Kathy Ann LaBonte  
Chief, Business Division



**STATE OF NEW HAMPSHIRE**

**Inter-Department Communication**

**DATE:** July 30, 2013

**FROM:** Evan J. Mulholland  
Assistant Attorney General

**AT (OFFICE)**

Department of Justice  
Environmental Protection Bureau

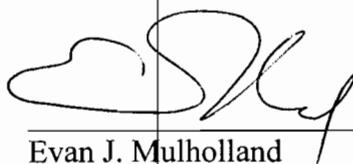
**SUBJECT:** Manchester Sand and Gravel Conservation Easement Deed

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

---

I have reviewed and I approve for form and substance the conservation easement deed to the State from Bear Paw Regional Greenways for the 465.3 acre Hinman Pond / Manchester Sand and Gravel parcel in Hooksett.

I will approve the deed for execution once it is signed.



Evan J. Mulholland



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

**BEAR-PAW REGIONAL GREENWAYS**, a corporation with a principal place of business at 63 Nottingham Road, Deerfield, Rockingham County, State of New Hampshire, 03037 (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 Eleven Hazen Drive, City of Concord, County of Merrimack, 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 "Easement") hereinafter described with respect to those certain parcels of land (hereinafter "Property") being unimproved lands known as the Manchester Sand and Gravel parcel consisting of approximately 465.3 acres situated on the Chester Turnpike, in the Town of Hooksett, County of Merrimack, State of New Hampshire, as shown on the plan entitled "XXX", dated XXX, 2013, prepared by T.D. Brouillette Land Surveying, recorded of near or even date herewith in the Merrimack County Registry of Deeds, (herein referred to as the "Plan"), and more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

ALSO CONVEYING AND GRANTING an Executory Interest and a contingent right of termination on the Property to the **LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM AUTHORITY** ("LCHIP," also sometimes referred to as the "Executory Interest Holder"), a New Hampshire nonprofit corporation and public instrumentality of the State of New Hampshire with a mailing address of 13 West Street, Suite 3, Concord, Merrimack County, State of New Hampshire 03301, which, unless the context clearly indicates otherwise, includes LCHIP's successors and assigns).

ALSO CONVEYING AND GRANTING a Third Party Right of Enforcement to **NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES** ("NHDES", also sometimes referred to as the

“Third Party Right of Enforcement Holder,” an agency of the State of New Hampshire with a mailing address of 29 Hazen Drive, Concord, Merrimack County, NH 03301, which, unless the context clearly indicates otherwise, includes NHDES’s successors and assigns.) The parties understand that the Property was acquired, in part, with funding received from the NHDES Aquatic Resources Mitigation Fund and the NHDES Water Supply Land Protection Grant Program. NHDES shall have the right to enforce the conditions and restrictions contained herein and NHDES shall have the right to recover the costs of such enforcement from the Grantee or its successors and assigns, as more fully described in Section 7 below.

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, (RSA 227-M:14)

The Grantor and Grantee have identified the area as critical wildlife habitat, which includes wetlands and uplands for a diversity of birds, mammals and other wildlife, including some that are rare, threatened or endangered in New Hampshire.

### **1. PURPOSES**

The Easement hereby granted is pursuant to NH RSA 477:45-47 and RSA chapter 227-M, exclusively for the following conservation purposes (“Purposes”):

- A. To retain the Property forever in its undeveloped state for rare and endangered critical wildlife habitat including wetlands and uplands, and to prevent any use of the Property that will impair or interfere with its conservation values;
- B. To further 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 (hereinafter the “Service”) including but not limited to protecting and conserving habitats for birds and mammals and providing the public access to those resources.
- C. To protect 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;
- D. The perpetual protection of the quality and sustainable yield of surface water and groundwater resources on and under the Property to safeguard present and future community drinking water supplies, including Lake Massabesic watershed, and the environmental values of the Property which are dependent on water quality and quantity.

This Purpose yields a substantial public benefit and is consistent with the water supply protection goals and land conservation policies stated in the Town of Hooksett’s Master Plan and with NH RSA 481:1, which states, in part, “The general court declares and determines that the water of New Hampshire whether located above or below ground constitutes a limited and, therefore, precious and invaluable public resource which should be protected, conserved and managed in the interest of present and future generations”; and

- E. To conserve and manage the wildlife habitats of which the Property consists to benefit a diversity

of wildlife species including birds, mammals and rare, threatened and endangered wildlife.

F. Use and maintain the Property exclusively for the uses permitted under RSA 227-M and shall make the property available for public access.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 2004 Master Plan of the Town of Hooksett, which states among its recommendations, the following: establish conservation land in the northeast quadrant of the Town; target as a goal that 25% of the total land area in Hooksett be set aside in some manner as open space land; explore all possible avenues to fund the preservation of Hooksett's key natural resource assets; and 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 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 purposes and the characteristics of the Property are also consistent with the conservation goals of the Grantor, including:

- The protection of conservation land within large contiguous blocks of unfragmented lands in southeastern New Hampshire;
- The protection of forestland;
- The protection of surface waters, groundwater and wetlands; and
- The protection of habitat for native plant and animal species.

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

All of the 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 provisions specified in Sections 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 agricultural, industrial or commercial activities, except forestry, including timber harvesting in accordance with the approved Stewardship Plan as described in Section 2.A.iv herein and provided that the productive capacity of the Property to support diverse wildlife populations shall not be degraded by on-site activities and subject to the following conditions:

- Such activities shall comply with the Purposes of this Easement;
  - Such activities shall not damage or destroy rare, threatened or endangered species or exemplary natural communities;
  - Such activities shall not degrade or otherwise impact water quality or aquatic habitats.
- i. 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 forest equipment, all as not to be detrimental to the Purposes of this Easement.
  - ii. For the purposes hereof, "Forest Management" or "Forestry" shall include the growing, cutting, and sale of forest trees of any size capable of producing timber or other forest products; those forest practices employed primarily to enhance the forest, including the protection of wildlife habitat; and the construction of access ways for the purposes of removing forest products from the Property.
  - iii. For the purposes hereof, "Recreational Use" activities shall include low-impact, non-motorized, non-commercial recreational activities including, but not be 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
  - iv. Wildlife Habitat Management, Forest Management, and Recreational Use activities shall be conducted by the Grantor and/or the Grantee in accordance with a Stewardship Plan, prepared by a 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 Grantor and Grantee.

The development of the Stewardship Plan should be, to the greatest extent possible, a collaborative effort involving the Grantor and the Grantee. Said Stewardship Plan must be approved in writing by the Grantor and Grantee prior to any Wildlife Habitat Management or Forest Management activities.

- a. The Grantee's Resource Professional shall draft the Wildlife Habitat Management portion of the Plan and a licensed professional forester, a certified wildlife biologist, or another qualified person approved by the Grantor and Grantee shall draft the Forest Management and Recreational Use portion of the Plan.
- b. The Grantee and Grantor shall approve the Plan in writing.
- c. At least sixty (60) days prior to any management activities, Grantor and Grantee shall have received copies of the Stewardship Plan.
- d. Within sixty (60) days after receipt of said Plan, the Grantor and Grantee shall approve or disapprove the same with respect to its wildlife habitat, forestry, and recreational use

impacts, consistency with the Purposes stated in Section 1, and compliance with this Easement, and so inform the Grantor and Grantee in writing. Any disapproval shall specify in detail the reasons therefore. If the Grantor or Grantee fails to so approve or disapprove within said period Grantor and/or Grantee may proceed with management activities recognizing that the paragraph below applies.

- e. Grantor and Grantee acknowledge that the Stewardship Plan's purpose is to guide management activities in compliance with this Easement and that the actual activities will determine compliance therewith.
- f. While it is agreed by the Grantor and Grantee that the purpose of the "Stewardship Plan" is to broadly describe management activities allowed on the Property, it is also agreed that specific management activities will be considered Stewardship Plan amendments and thus require additional review and approval by the Grantor and the Grantee.
- g. The Stewardship Plan shall have been prepared not more than ten (10) years prior to the date of any activity. Plans prepared more than ten (10) years prior to the anticipated management activities must be reviewed and updated for the Grantor's and Grantee's approval in accordance with Section 2.A.iv.d herein.

B. 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, unless approved by the Grantee and the Executory Interest Holder in writing.

C. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, educational building, tennis court, swimming pool, dock, athletic field, water wells and associated structures, pavilion, shooting range, aircraft landing strip, tower, including cell towers, mobile home, or wind powered generator or similar development, 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 Wildlife Habitat and Forest Management activities on the Property and provided that they are not detrimental to the Purposes of this Easement; and
- ii. unpaved pedestrian trails and temporary wildlife blinds and tree stands may be constructed, placed, or introduced onto the Property provided that they are included in the Stewardship Plan and are not detrimental to wildlife habitat values or other Purposes of this Easement.

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 Wildlife Habitat Management, or low-impact noncommercial outdoor recreational uses of the Property as permitted by this Easement;
- ii. do not harm state or federally recognized rare, threatened, or endangered species 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 Fish and Game

Department, 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

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.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of 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 sixteen (16) square feet in size and no sign shall be artificially illuminated.

F. 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.

G. There shall be no dumping, spreading, injection, burning, or burial of biosolids, man-made materials or materials then known to be environmentally hazardous.

H. There shall be no overnight camping or the construction of fires on the Property without the written consent of the Grantee.

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 any permitted activities must be approved in advance in writing by the Grantee and the Grantor.

K. The Grantor shall not authorize nor permit the use of motorized wheeled vehicles for recreational purposes.

L. Subject to the terms of the Right of First Refusal described in the deed of Manchester Sand, Gravel & Cement Company to Bear-Paw Regional Greenways recorded near or even date herewith in the Merrimack County Registry of Deeds, the fee title to the Property is 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 must be approved in advance by the Grantee.

### **3. RESERVED RIGHTS**

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.

A. The Grantor reserves the right to use motorized vehicles to conduct activities on the Property consistent with the Stewardship Plan required by Section 2.A.iv above.

B. The Grantor reserves the right to post against vehicles, motorized or otherwise, and against access to forest land during harvesting, the establishment of plantations, or the conduct of scientific study.

C. Subject to written approval from the Grantee and in accordance with a written plan approved by the New Hampshire Department of Environmental Services, the Grantor reserves the right to construct, re-construct, and maintain structures or make other improvements intended to restore wetland functions and values and/or to make wildlife habitat improvements so as to provide enhancement of functions within degraded wetland or riparian systems on the Property, provided that their construction and required maintenance 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.

D. The Grantor reserves the right to have professionally conducted archaeological activities conducted on the Property, including without limitation, survey, excavation and artifact removal, following submission of an archaeological field investigation plan to, and its approval in writing by, the State Archaeologist of the New Hampshire Division of Historic Resources (or appropriate successor official), with written notice to the Grantee. Any such archaeological investigations shall be conducted by qualified individuals who meet the Secretary of Interior's Professional Qualification Standards for Archaeology, or subsequent standards. Any area disturbed by any such activities shall be restored to substantially its prior condition within nine (9) months after such activities cease.

E. The provisions of Section 3 are exceptions to the use limitations set forth in Section 2, above.

F. The Grantor reserves the right to post the Property against motorized recreational vehicular use.

G. The Grantor reserves the right to use and maintain the existing snowmobile trail on the Property, along with any associated improvements including, but not limited to, fences, bridges, culverts and signs. Said right to use and maintain a snowmobile trail shall not include the construction of any buildings.

H. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights, unless otherwise specified.

#### **4. 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, 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 with permission of the Grantor as defined in RSA 210:11 on the date of this Easement, hiking, cross country skiing and nature observation, in accordance with current laws and regulations. However, 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 of this Easement.

B. The Grantee shall have access to the Property for all purposes related to wildlife monitoring and/or management.

C. The Grantee and/or its agent shall have reasonable access to the Property and all of its parts for such inspection as are 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.

D. The Grantee and/or its agent reserve the right to use motorized vehicles to conduct activities on the Property consistent with the Stewardship Plan required by Section 2.A.iv above.

E. Grantee shall have the right but not the obligation to mark and maintain the boundaries of the Easement.

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

A. The Grantor agrees to notify the Grantee, the Executory Interest Holder and the Third Party Right of Enforcement 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.

#### **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 and agrees to and is capable of enforcing the conservation purposes of this Easement and has the resources to enforce the restrictions of this Easement, provided that, by virtue of the Wildlife Restoration Program grant associated with the purchase of this Easement, the Grantee has first obtained the approval of the Regional Director of the U.S. Fish and Wildlife Service as specified in the Notice of Grant Agreement (attached hereto as Appendix B). Any such assignee or transferee shall have like power of assignment or transfer.

#### **7. EXECUTORY INTEREST AND 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 Executory Interest Holder and/or the Third Party Right of Enforcement Holder requesting such enforcement, delivered in hand or by certified mail, return receipt requested, then the Executory Interest Holder and/or Third Party Right of Enforcement 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 (attached hereto as Appendix B), have the right to terminate the interest of the Grantee in the Property, except that LCHIP shall not have the right to terminate against interests held by the State of New Hampshire acting through any of its resources protecting departments. The Executory Interest Holder, by recording a notice to that effect referring hereto in the Registry of Deeds of the appropriate county, shall thereupon assume and thereafter have all interests, rights, authority, and responsibilities granted to and incumbent upon the Grantee of this Easement. The right of termination shall be subject to Grantee's right to

dispute such enforcement as described above. The interests held by the Executory Interest Holder and the Third Party Right of Enforcement Holder shall be 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 and the Third Party Right of Enforcement Holder shall have reasonable access to the Premises and all of its parts for such inspection as found necessary to determine compliance with and enforce the terms of this Easement, to exercise the rights conveyed by this Easement, to carry out their duties, and to maintain boundaries if desired.

## **8. 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 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.

## **9. 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. 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.

## **10. 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.

#### **11. 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.

#### **12. 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, 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 (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) 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.

All percentage will need to be checked once final funding source numbers are known!

C. By virtue of the Wildlife Restoration Program Grant from the Service for purchase of this Conservation Easement, and of the provisions set forth in the Notice of Grant Agreement (attached hereto as Appendix B), the Service shall be entitled to 32 percent 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.

D. 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 11 percent of the portion of the proceeds payable to the Grantee pursuant to this Section 12.

E. By virtue of the Grant from the New Hampshire Department of Environmental Services Aquatic Resource Mitigation Fund (NHDES) for purchase of this Conservation Easement, NHDES-ARM shall be entitled to 17 percent of the portion of the proceeds payable to the Grantee pursuant to this Section 12.

F. By virtue of the Grant from the New Hampshire Department of Environmental Services Water Supply Land Protection Grant Program (NHDES) for purchase of this Conservation Easement, NHDES shall be entitled to 31% of the portion of the proceeds payable to the Grantee pursuant to this Section 12.

G. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance

of one or more of the conservation Purposes set forth herein.

### **13. ADDITIONAL EASEMENT**

Any additional conservation easement on the Property shall require prior approval of the Grantee and the Executory Interest Holder, 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.

### **14. FEDERAL GRANT**

The conservation easement on the above-described Property is acquired in part with funding received by the Grantee from Grant Agreement Number (add Federal Grant #) **NH-W-102-L-1** between the Service and the State of New Hampshire Fish and Game Department as Grantee. All present and future terms and conditions of the Property are and shall remain subject to the terms and conditions described in the Notice of Federal Grant Agreement (attached hereto 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.

### **15. STEWARDSHIP RESPONSIBILITIES OF THE GRANTEE**

To facilitate the fulfillment of its responsibilities under this Easement, the Grantee shall be responsible for the following (which shall include, but not be limited to):

- A. Provide an annual on-ground monitoring inspection that confirms that the interest acquired as part of an LCHIP project and a NHDES Water Supply Land Protection Grant is being protected and maintained according to the terms of the Easement;
- B. Provide annual contact with Property owners to inform them of their obligations under the terms of this Easement;
- C. Prepare and submit an annual monitoring report to the Grantor, LCHIP, U.S. Fish and Wildlife Service, NHDES Aquatic Resources Mitigation Fund and the NHDES Water Supply Land Protection Grant Program which shall contain the following:
  - i. Description of the inspection conducted;
  - ii. Description of any physical changes to the Property;
  - iii. Description of any contacts made with Property owners, including their current name and address information;
  - iv. Description of any conditions or activities on the Property, including those which violate or may violate the intent of this Easement;

v. Explanation of the current status of any previously identified violations and any remedial steps taken; and

vi. Any steps to be taken by Property owners to bring the Property into compliance with the terms of the Easement (if necessary).

D. Upon sale of the Property, the Grantee shall contact the new owner and inform them of the provisions of this Easement.

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.

**BEAR-PAW REGIONAL GREENWAYS**

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

Title: \_\_\_\_\_  
Duly Authorized

Date: \_\_\_\_\_

The State of New Hampshire  
County of \_\_\_\_\_

Personally appeared, \_\_\_\_\_, this \_\_\_\_\_ day of 2013 and being duly authorized acknowledged the foregoing on behalf of Bear-Paw Regional Greenways

Before me, \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires: \_\_\_\_\_

ACCEPTED: STATE OF NEW HAMPSHIRE FISH & GAME DEPARTMENT

By: \_\_\_\_\_  
Glenn Normandeau  
Executive Director

Date: \_\_\_\_\_, 2013

**The State of New Hampshire**  
**County of Merrimack**

Personally appeared, Glenn Normandeau, Executive Director of the New Hampshire Fish and Game Department, this \_\_\_\_\_ day of \_\_\_\_\_, 2013 and being duly authorized acknowledged the foregoing on behalf of the State of New Hampshire.

Before me, \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires: \_\_\_\_\_

Approved as to form, substance and execution by the Office of the Attorney General:

\_\_\_\_\_  
Evan Mulholland  
Assistant Attorney General

Approved by the New Hampshire Governor and Executive Council:

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

**APPENDIX A**

**Property description**

**TO BE ADDED**

## Appendix B

### Notice of Grant Agreement

The State of New Hampshire, Fish and Game Department and its successors and assigns (hereinafter "DEPARTMENT") acknowledges that the conservation easement described in the attached deed (hereinafter the "PROPERTY") 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 PROPERTY is subject to all the terms and conditions of Grant Agreement Number \_\_\_\_\_ (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 PROPERTY, which is the subject of this Grant Agreement, is acquired for the approved purpose of permanent protection of wild birds and mammals and their habitat. The Department further acknowledges that the PROPERTY will be administered for the long-term protection of these habitats and species dependent thereon. The Department, as the Grant Recipient hereby acknowledges that it is responsible for ensuring that the PROPERTY is used and will continue to be used for the approved purpose for which it is acquired and that the PROPERTY 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 PROPERTY, control must be fully restored to the Department or the PROPERTY must be replaced, within three years, with like property of equal value at current market prices and equal benefits. Further, if the PROPERTY 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 PROPERTY 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 property or other interest in land of equal value that serves the same approved purpose as the original property and manage the newly acquired property 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 \_\_\_\_\_.

ACCEPTED: STATE OF NEW HAMPSHIRE FISH AND GAME DEPARTMENT

By: \_\_\_\_\_  
Glenn Normandeau, Executive Director

Date: \_\_\_\_\_, 2013

THE STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

Personally appeared Glenn Normandeau, Executive Director of the New Hampshire Fish and Game Department, this \_\_\_\_\_ day of \_\_\_\_\_, 2013, 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: \_\_\_\_\_

488034



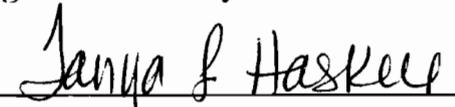
**GRANT AGREEMENT**

(April 2001 revision)

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

**GENERAL PROVISIONS**

**1. Identification and Definitions.**

<b>1.1. State Agency Name</b> Fish and Game Department		<b>1.2. State Agency Address</b> 11 Hazen Drive, Concord, NH, 03301	
<b>1.3. Grantee Name</b> Bear-Paw Regional Greenways		<b>1.4. Grantee Address</b> 63 Nottingham Rd, Deerfield, NH, 03037	
<b>1.5. Effective Date</b> Upon approval	<b>1.6. Completion Date</b> December 31, 2013	<b>1.7. Audit Date</b> NA	<b>1.8. Grant Limitation</b> \$110,000
<b>1.9. Grant Officer for State Agency</b> Glenn Normandeau		<b>1.10. State Agency Telephone No.</b> 603-271-3511	
<b>1.11. Grantee Signature</b> 		<b>1.12. Name &amp; Title of Grantee Signor</b> Daniel Kern, Executive Director	
<b>1.13. Acknowledgment:</b> State of <i>New Hampshire</i> , County of <i>Merimack</i> , on <i>7/30/13</i> //, Before the undersigned officer, personally appeared the person identified in block 1.11., known to me (or satisfactorily proven) to be the person whose name is signed in block 1.12., and acknowledged that <u>he</u> executed this document in the capacity indicated in block 1.12.			
<b>1.13.1 Signature of Notary Public or Justice of the Peace</b> (Seal) 		<b>TANYA L. HASKELL, Notary Public</b> My Commission Expires October 6, 2015	
<b>1.13.2. Name and Title of Notary Public or Justice of the Peace</b>			
<b>1.14. State Agency Signature(s)</b> 		<b>1.15. Name &amp; Title of State Agency Signor(s)</b> Glenn Normandeau, Executive Director	
<b>1.16. Approval by Attorney General (Form, Substance and Execution)</b>			
By: 		Assistant Attorney General, On: <i>7-31-13</i> //	
<b>1.17. Approval by the Governor and Council</b>			
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"), 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 hereinafter referred to as "the Project"). Except as otherwise specifically provided for herein, the Grantee shall perform the Project in the State of New Hampshire



3. EFFECTIVE DATE; COMPLETION OF PROJECT.
- 3.1. 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").
- 3.2. 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").
4. GRANT AMOUNT; MANNER OF PAYMENT; LIMITATIONS.
- 4.1. The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.
- 4.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT B.
- 4.3. 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 4.5 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 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.
- 4.4. The payment by the State of the Grant amount shall be the only, and the complete payment 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.
- 4.5. 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.
5. SPECIAL CONDITIONS. Modifications to these General Conditions and any additional grant conditions shall be set forth in Exhibit C attached hereto.
6. COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Grantee shall comply with all applicable statutes, regulations, and orders of federal, state, county, or municipal authorities that impose any legal 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 of 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, contract for or 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 the Project, to hire any person 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 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 or data, 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, unless otherwise specified in Exhibit C.
10. CONDITIONAL NATURE OR 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 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 representative, 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 interest 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 contractor, 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 representatives, 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.



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 or its contractors, subcontractor, or subgrantee or other agent of the Grantee in the performance of the Project. 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 general liability insurance for 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 thereof has been received by the State. A certificate of insurance demonstrating compliance with subparagraphs 17.1 and 17.2 shall be attached to this Grant Agreement.
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.

  
7/30/13



**EXHIBIT A**  
**Scope of Services**

The Bear-Paw Regional Greenways agrees to complete the following:

1. Work, under the direction of the New Hampshire Fish and Game Department's (NHFG) Non-game and Endangered Wildlife Program, to undertake the due diligence necessary to purchase properties from willing sellers in Bear Brook/Hooksett focus area. The due diligence may include appraisals, title work, surveys, wetland assessments, environmental hazard assessments, baseline documentation and other activities approved by NHFG staff.
2. Acknowledge the funding received through NHFG and the New Hampshire Moose Plate Program in materials produced for public distribution.
3. Maintain financial accounting records to document expenditures
4. Provide NHFG a project completion report and documents associated with land protection efforts in the Bear Brook/Hooksett Project area. The completion report should include a final budget report with documentation of project costs, and any other requested documents.

The New Hampshire Fish and Game Department agrees to:

1. Provide up to \$10,000 to Bear-Paw Regional Greenways for cost associated with land conservation efforts in the Bear Brook/ Hooksett Project area

**EXHIBIT B**  
**Method of Payment and Grant Limits**

NH Fish and Game agrees to reimburse to Bear-Paw up to \$10,000, subject to approval of this agreement between Bear-Paw and NH Fish and Game Department by Governor and Executive Council. Total payment shall not exceed \$10,000.

**EXHIBIT C**  
**Special Provisions**

Paragraph 17, Insurance and Bond, of the General Provisions shall not apply to this Agreement.

Initials                       
Date 7/30/13

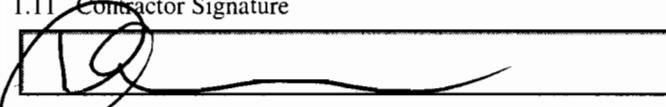
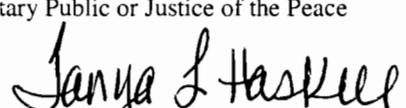
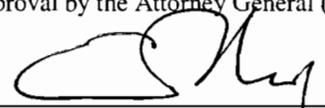


Subject: Hooksett - MSG transaction costs FORM NUMBER P-37 ( version 1/09)

**AGREEMENT**  
The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name <u>Fish and Game Department</u>		1.2 State Agency Address <u>11 Hazen Drive, Concord, NH 03301</u>	
1.3 Contractor Name <u>Bear-Paw Regional Greenways</u>		1.4 Contractor Address <u>63 Nottingham Road, Deerfield, NH 03037</u>	
1.5 Contractor Phone Number <u>(603) 463-9400</u>	1.6 Account Number <u>21390000-305-500845</u>	1.7 Completion Date <u>December 31, 2013</u>	1.8 Price Limitation <u>\$10,000</u>
1.9 Contracting Officer for State Agency <u>Glenn Normandeau</u>		1.10 State Agency Telephone Number <u>271-3511</u>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <u>Daniel E. Kern, Executive Director</u>	
1.13 Acknowledgement: State of <u>New Hampshire</u> , County of <u>Merrimack</u> On <u>July 30, 2013</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 <u>[Seal]</u> 		TANYA L. HASKELL, Notary Public My Commission Expires October 6, 2015	
1.13.2 Name and Title of Notary or Justice of the Peace <u></u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>Glenn Normandeau, Executive Director</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>7-31-13</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			



**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated 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 Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision 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 Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**  
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.  
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**  
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.  
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials Q  
Date 7/30/13



**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder (“Event of Default”):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

- 8.2.1 give the Contractor a written notice specifying the Event of 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 Contractor notice of termination;
- 8.2.2 give the Contractor 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 contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

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 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 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.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR’S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers’ compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Contractor 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 or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. 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 in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials \_\_\_\_\_  
Date \_\_\_\_\_



attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. 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 of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default 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 Event of Default on the part of the Contractor.

**17. 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 given in blocks 1.2 and 1.4, herein.

**18. 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 Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

**20. 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.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. 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.

Contractor Initials \_\_\_\_\_  
Date \_\_\_\_\_



**EXHIBIT A**  
**Scope of Services**

The Bear-Paw Regional Greenways agrees to complete the following:

1. Work, under the direction of the New Hampshire Fish and Game Department's (NHFG) Non-game and Endangered Wildlife Program, to undertake the due diligence necessary to purchase properties from willing sellers in Bear Brook/Hooksett focus area. The due diligence may include appraisals, title work, surveys, wetland assessments, environmental hazard assessments, baseline documentation and other activities approved by NHFG staff.
2. Acknowledge the funding received through NHFG and the New Hampshire Moose Plate Program in materials produced for public distribution.
3. Maintain financial accounting records to document expenditures
4. Provide NHFG a project completion report and documents associated with land protection efforts in the Bear Brook/Hooksett Project area. The completion report should include a final budget report with documentation of project costs, and any other requested documents.

The New Hampshire Fish and Game Department agrees to:

1. Provide up to \$10,000 to Bear-Paw Regional Greenways for cost associated with land conservation efforts in the Bear Brook/ Hooksett Project area

**EXHIBIT B**  
**Method of Payment and Grant Limits**

NH Fish and Game agrees to reimburse to Bear-Paw up to \$10,000, subject to approval of this agreement between Bear-Paw and NH Fish and Game Department by Governor and Executive Council. Total payment shall not exceed \$10,000.

**EXHIBIT C**  
**Special Provisions**

Paragraph 17, Insurance and Bond, of the General Provisions shall not apply to this Agreement.

Initials             
Date 7/30/13



CERTIFICATE OF VOTE

I, Bruce Adami, Chairman of Bear-Paw Regional Greenways do hereby certify that:

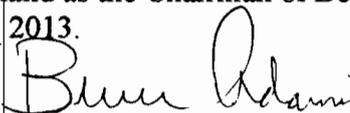
- 1. I am the duly elected Chairman of Bear-Paw Regional Greenways.
- 2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of Bear-Paw Regional Greenways duly held on June 25, 2013.

RESOLVED that this organization shall enter into a contract(s) with the State of New Hampshire, acting through its Fish and Game Department entitled Bear Brook – Hooksett Focus Area Land Conservation Project.

RESOLVED that Daniel E. Kern, Executive Director of Bear-Paw Regional Greenways, is hereby authorized on behalf of this Organization to enter into said contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions or modifications thereto, as they may deem necessary, desirable or appropriate.

- 3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of June 25, 2013.

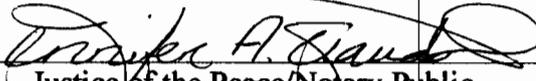
IN WITNESS WHEREOF, I have hereunto set my hand as the Chairman of Bear-Paw Regional Greenways, this 27 th day of June 2013.



Bruce Adami, Chairman

STATE OF NEW HAMPSHIRE  
COUNTY OF Rockingham, SS

On this 27<sup>th</sup> day of June, 2013, before me the undersigned officer, personally appeared Bruce Adami, who acknowledged himself to be an officer of Bear-Paw Regional Greenways, and acting in said capacity, and being authorized so to do, executed the foregoing instrument on behalf of Bear-Paw Regional Greenways as its voluntary act and deed for the purposes therein contained.

Before me,   
Justice of the Peace/Notary Public

My commission expires: JENNIFER A. SCIAUDONE  
Notary Public - New Hampshire  
My Commission Expires February 18, 2014



State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BEAR-PAW REGIONAL GREENWAYS is a New Hampshire nonprofit corporation formed January 13, 1997. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



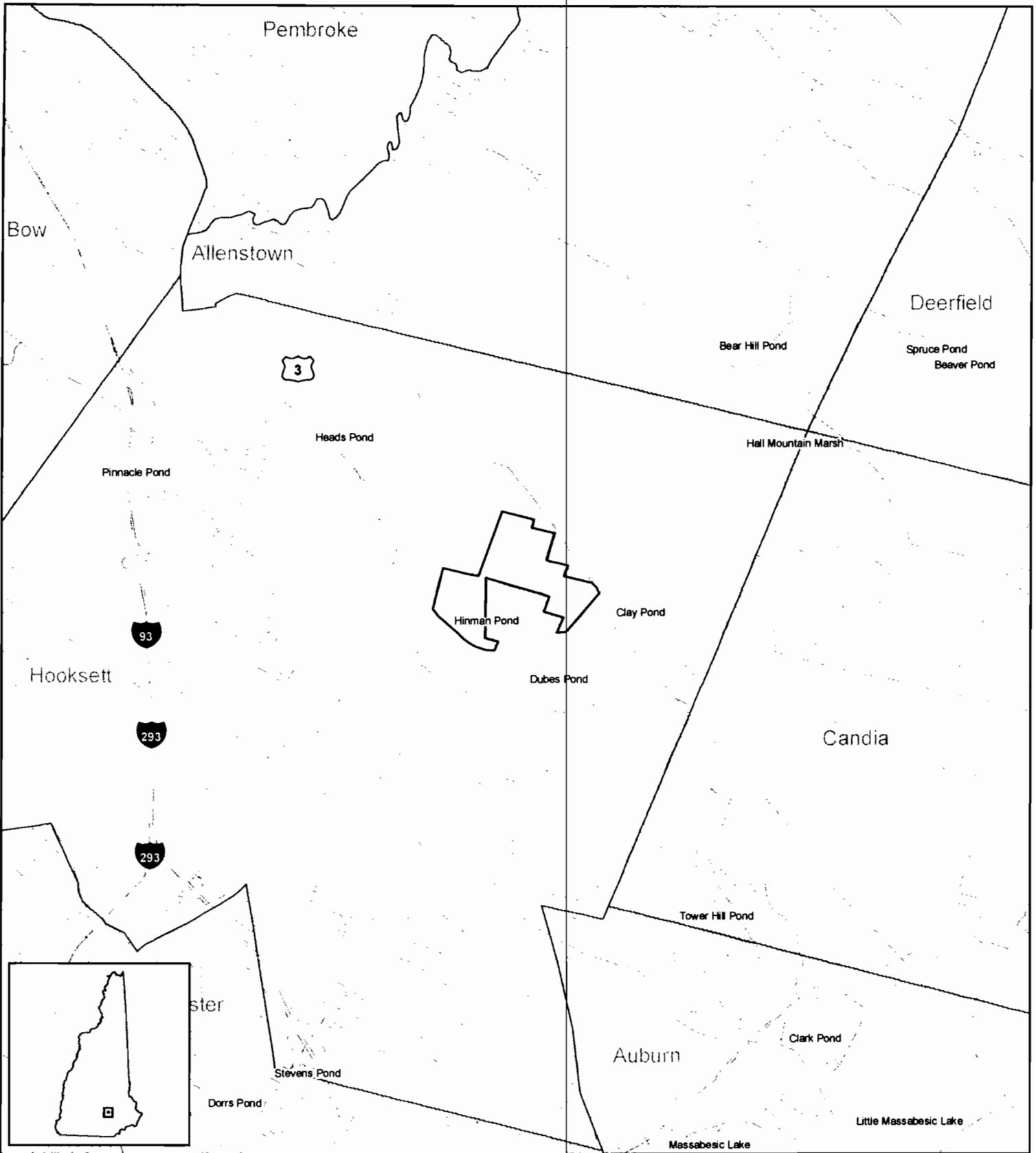
In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 6<sup>th</sup> day of May A.D. 2013

A handwritten signature in black ink, appearing to read "William M. Gardner".

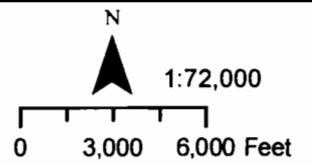
William M. Gardner  
Secretary of State



# Hinman Pond Property, Hooksett - Locus Map



- |   |  |
|---|--|
|  Property           |  Rivers / Streams |
|  Conservation Lands |  Waterbody        |
|  Towns             |  |



STATE OF NH  
DEPT OF JUSTICE  
2013 JUL 30 AM 9:11