



The State of New Hampshire
Department of Environmental Services

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Robert R. Scott, Commissioner

May 5, 2020

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

REQUESTED ACTION

Authorize the Department of Environmental Services to award a grant to The Nature Conservancy (hereinafter "TNC"), (VC#177785-B002), Concord, NH in the amount of \$332,067 to acquire 1,368-acres of land in the Towns of Gilsum and Surry and place a conservation easement on the land to protect water supply, effective upon Governor & Council approval through June 30, 2021. 100% Drinking Water/Groundwater Trust Fund.

Funding is available in the following account:

03-44-44-442010-3904-073-500580
Dept Environmental Services, DWGW Trust, Grants Non-Federal

FY 2020
\$332,067

EXPLANATION

The Drinking Water and Groundwater Trust Fund (DWGTF) was created in 2016, using \$276 million of MtBE trial judgment funds, as authorized by RSA 485-F. The purpose of the Trust Fund is to provide sustainable, long-term funding for the protection, preservation, and enhancement of the drinking water and groundwater resources of the state. The Drinking Water and Groundwater Advisory Commission was established to administer the Trust Fund and to provide guidance to the State on the use of the Trust Fund.

On December 9, 2019, the Advisory Commission voted to authorize grants for 7 drinking water source protection projects. TNC's request for \$332,067 was selected for grant funding from the DWGTF. TNC will use the grant funds to acquire approximately 1,368-acres of land in the Towns of Gilsum and Surry, approximately 252 acres of which is in the wellhead protection areas of three Keene Water Department wells. TNC will retain the fee-interest and the New Hampshire Fish and Game Department will hold the conservation easement.

The total cost for TNC to acquire the land and conservation easement is \$3,459,036. The DWGTF will provide \$332,067 with \$2,794,902 provided by TNC, \$332,067 of which can be used as match. The purchase price of this land and conservation easement is based on a recent appraisal of fair market value.

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

We respectfully request your approval.

A handwritten signature in black ink, appearing to read "Robert R. Scott", written over a horizontal line.


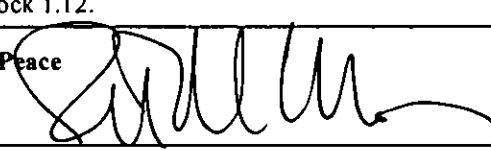
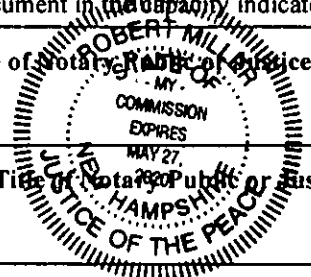
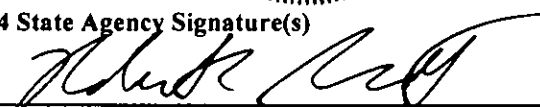

Robert R. Scott
Commissioner

Subject: Grant Agreement for a NH Drinking Water and Groundwater Trust Fund Grant
GRANT AGREEMENT

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

GENERAL PROVISIONS

I. IDENTIFICATIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302-0095	
1.3 Grantee Name: The Nature Conservancy		1.4 Grantee Address 22 Bridge Street, Fourth Floor, Concord, NH 03301	
1.5 Effective Date Upon G&C approval	1.6 Completion Date 6/30/2021	1.7 Audit Date N/A	1.8 Grant Limitation \$332,067
1.9 Grant Officer for State Agency Holly Green NH Department of Environmental Services		1.10 State Agency Telephone Number (603) 271-3114	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor Mark Zankel, State Director	
1.13 Acknowledgment: State of <u>New Hampshire</u> , County of <u>Herrnicks</u> On <u>4/15/2020</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  (Seal) 			
1.13.2 Name & Title of Notary Public or Justice of the Peace <u>Robert H. Muller, Esq.</u>			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Robert R. Scott, Commissioner	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By:  Attorney, On: <u>5/18/2020</u>			
1.17 Approval by the Governor and Council By: _____ On: ____/____/____			

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

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

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

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

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

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

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

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

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

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

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

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

7. **RECORDS AND ACCOUNTS.**

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

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

the entity identified as the Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

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

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

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

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

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

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

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

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

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

10. **CONDITIONAL NATURE OF AGREEMENT.**

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

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

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

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

11.1.2 failure to submit any report required hereunder; or

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

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

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

11.2.1 give the Grantee a written notice specifying the Event of

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

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

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

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

12. TERMINATION.

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

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

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

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

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

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

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

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

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

17. INSURANCE AND BOND.

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

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

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

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

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

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

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

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

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

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

EXHIBIT A

SCOPE OF SERVICES

The Nature Conservancy

The Nature Conservancy (TNC) will use the grant to acquire approximately 1,288 acres of land in Gilsum and Surry, approximately 252 acres of which is in the wellhead protection areas of three wells of the Keene Water Department. The NH Fish and Game Department will hold the conservation easement and TNC will be responsible for long-term stewardship. The parcels of land, designated on the Town of Gilsum's current tax map as Map 406, Lots 5 and 6 and on the Town of Surry's current tax map as Map 3, Lot 6 will be protected in perpetuity, as specified in conservation easement deed (see Attachment A), with water supply protection being one of the purposes of the conservation easement.

EXHIBIT B

GRANT AMOUNT & PAYMENT SCHEDULE

Payment in the amount of \$332,067 shall be made to TNC upon receipt of the following:

1. Survey of the parcel of land.
2. A copy of the appraisal as specified in Env-Dw 1002.22.
3. Title examination as specified in Env-Dw 1002.23.
4. Acceptable stewardship plan for the property that ensures the permanent protection of the water supply.
5. Completed baseline documentation form, which indicates the current condition of the property.
6. Documentation to support the match of \$332,067 provided by TNC.
7. The finalized conservation easement deed.

Grantee Initials mm
Date 5/4/20

EXHIBIT C

SPECIAL PROVISIONS

1. Subparagraph 1.7 of the General Provisions shall not apply to this Grant Agreement.

Grantee Initials MP
Date 5/4/20

State of New Hampshire

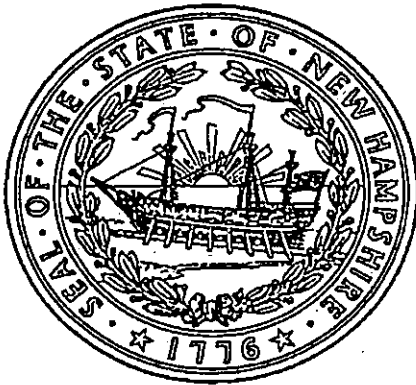
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that THE NATURE CONSERVANCY is a District Of Columbia Nonprofit Corporation registered to transact business in New Hampshire on January 09, 1984. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 75056

Certificate Number : 0004502420



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 22nd day of April A.D. 2019.

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

William M. Gardner
Secretary of State

CERTIFICATE of AUTHORITY

I, Katherine Turner, Assistant Secretary of The Nature Conservancy, do hereby certify that:

1. I am a duly appointed, Assistant Secretary of The Nature Conservancy;
2. The Nature Conservancy has agreed to enter into a Drinking Water and Groundwater Trust Fund grant agreement (the "Grant Agreement") with the NH Department Environmental Services (DWGTF) in the amount of up to \$332,067, as more particularly described in the letter from DWGTF to The Nature Conservancy dated December 20, 2019;
3. The Nature Conservancy has further authorized the Executive Director of The Nature Conservancy's New Hampshire Chapter to execute any documents which may be necessary to accept and effectuate the Grant Agreement;
4. This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
5. The following person has been appointed to and now occupies the office indicated in (3) above:

Mark Zankel
Authorized to Sign

Executive Director- NH Chapter
Title

IN WITNESS WHEREOF, I have hereunto set my hand as an Assistant Secretary of The Nature Conservancy on this 8th day of April, 2020.


Katherine Turner

Assistant Secretary
Title



NATUCON-10

LVIDAL

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/6/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0C36861 Chantilly-Alliant Ins Svc Inc. 4530 Walney Rd Ste 200 Chantilly, VA 20151-2285	CONTACT NAME: Kelly Mitchum		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
	E-MAIL ADDRESS: KMitchum@alliant.com		
INSURED The Nature Conservancy Attn: John Dwelley 4245 North Fairfax Dr - #100 Arlington, VA 22203-1606	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Great Northern Insurance Company		20303
	INSURER B: Federal Insurance Company		20281
	INSURER C:		
	INSURER D:		
	INSURER E:		
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			35353977	7/1/2019	7/1/2020	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000				
			MED EXP (Any one person) \$ 10,000				
			PERSONAL & ADV INJURY \$ 1,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ Included
	OTHER:						\$
B	AUTOMOBILE LIABILITY			73246135	7/1/2019	7/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY	<input type="checkbox"/> SCHEDULED AUTOS	BODILY INJURY (Per person) \$				
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY	<input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	BODILY INJURY (Per accident) \$				
			PROPERTY DAMAGE (Per accident) \$				
						\$	
B	<input checked="" type="checkbox"/> UMBRELLA LIAB		<input checked="" type="checkbox"/> OCCUR	79729278	7/1/2019	7/1/2020	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE	AGGREGATE \$ 5,000,000				
	DED	RETENTION \$	\$				
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Acquisition of a 10.3 acre Lamprey River - Lord parcel in Durham, NH

CERTIFICATE HOLDER

CANCELLATION

New Hampshire Department of Environmental Services
ARM Fund Program
PO Box 95
Concord, NH 03302-0095

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/13/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER MARSH USA, INC. 1050 CONNECTICUT AVENUE, SUITE 700 WASHINGTON, DC 20036-5386 Attn: DC.Certs@marsh.com or Fax to 212-948-0503	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL: ADDRESS:
INSURED THE NATURE CONSERVANCY ATTN: MS. SHERRIE LUSKEY 4245 NORTH FAIRFAX DRIVE SUITE 100 ARLINGTON, VA 22203	INSURER(S) AFFORDING COVERAGE INSURER A: New Hampshire Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
CA102450755-Sind-WC-19-20	NAIC # 23841

COVERAGES

CERTIFICATE NUMBER:

CLE-006568988-01

REVISION NUMBER: 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR YWD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC 014022183 (AOS) ADDITIONAL POLICIES ARE ON PAGE 2	07/01/2019	07/01/2020	X PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Acquiring land and a conservation easement in order to further the protection of the Town of Keene's water supply wells.

CERTIFICATE HOLDER

NH DEPARTMENT OF ENVIRONMENTAL SERVICES
PO BOX 95
CONCORD, NH 03302-0095

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Manashi Mukherjee

Manashi Mukherjee

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ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY MARSH USA, INC.		NAMED INSURED THE NATURE CONSERVANCY ATTN: MS. SHERRIE LUSKEY 4245 NORTH FAIRFAX DRIVE SUITE 100 ARLINGTON, VA 22203	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

ADDITIONAL WORKERS COMPENSATION POLICIES:

INSURER AFFORDING COVERAGE: American Home Assurance Company NAIC# 19380

EFFECTIVE DATE: 07/01/2019

EXPIRATION DATE: 07/01/2020

Policy Number: WC014022181

State: CA

INSURER AFFORDING COVERAGE: Illinois National Insurance Company NAIC# 23817

EFFECTIVE DATE: 07/01/2019

EXPIRATION DATE: 07/01/2020

Policy Number: WC 014022180

State: FL

INSURER AFFORDING COVERAGE: New Hampshire Insurance Company NAIC# 23841

EFFECTIVE DATE: 07/01/2019

EXPIRATION DATE: 07/01/2020

Policy Number: WC 014022179

States: MA, ND, OH, WA, WI, WY

INSURER AFFORDING COVERAGE: New Hampshire Insurance Company NAIC# 23841

EFFECTIVE DATE: 07/01/2019

EXPIRATION DATE: 07/01/2020

Policy Number: WC 014022182

State: NJ

INSURER AFFORDING COVERAGE: New Hampshire Insurance Company NAIC# 23841

EFFECTIVE DATE: 07/01/2019

EXPIRATION DATE: 07/01/2020

Policy Number: WC 014022184

States: AK, AZ, VA

INSURER AFFORDING COVERAGE: New Hampshire Insurance Company NAIC# 23841

EFFECTIVE DATE: 07/01/2019

EXPIRATION DATE: 07/01/2020

Policy Number: WC 014022185

States: IL, KY, NC, NH, UT, VT

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

Attachment A.
4-9-20 Draft

Conservation Easement Deed

THE NATURE CONSERVANCY, a nonprofit corporation incorporated under the laws of the District of Columbia as a tax exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code having its headquarters at 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203-1606 and a local address at 22 Bridge Street, 4th Floor, Concord, NH 03301 (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, 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 that certain parcel of land (hereinafter "Property") being unimproved land, located in the Towns of Gilsum and Surry, consisting of approximately 1,368+/- acres, situated along both sides of Old Gilsum Road in Gilsum, County of Cheshire, State of New Hampshire, more particularly described in Appendix "A" attached hereto and made a part hereof and shown on a survey plan entitled _____ prepared by Eric Mitchel and Associates, Inc. dated _____ and recorded in the Cheshire County Register of Deeds as Plan # _____ (herein referenced as "Survey").

with a right of enforcement to the LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM, a not-for-profit corporation and public instrumentality of the State of New Hampshire, with a principal place of business at 3 N Spring Street, Suite 100, City of Concord, County of Merrimack, State of New Hampshire 03301 (referred to herein as "LCHIP").

The Property was acquired, in part, with financial assistance from LCHIP. The financial assistance award is conditioned upon Grantor's recording of permanent conservation restrictions on the Property and LCHIP's right to monitor and enforce this Easement, all as set forth herein, and Grantor's acceptance of certain obligations pursuant to RSA 227-M and further described in the Grant Agreement attached hereto as Exhibit ☐.

And grants a THIRD PARTY RIGHT OF ENFORCEMENT to the TOWN OF GILSUM, (hereinafter referred to as "Third Party Holder", a New Hampshire municipal corporation duly organized, with a principal mailing address of _____, a governmental body eligible to hold a "Conservation Easement" within the meaning of NH RSA 477:45-47, as further described in Section X below, with said Third Party Right of Enforcement specifically excluding that portion of the Easement located within the Town of Surry.

1. PURPOSES

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

- A. To protect and conserve the native biological diversity and habitats on the Property, including but not limited to rare plants and animals, exemplary natural communities and significant wildlife habitats occurring on the Property; and the ecological processes that sustain these features;
- B. To conserve and compatibly manage aquatic and terrestrial habitats on the Property to maintain high ecological resilience and regional connectivity in light of climate change;
- C. The conservation and protection of open spaces, particularly the conservation of the productive forest land of which the Property consists and of the wildlife habitat thereon including wetland, upland, and waterfowl/migratory bird habitat; and
- D. The assurance that forestry activities conducted on the Property are performed in a manner that maintains or enhances wildlife habitats, including habitat for wild birds and mammals including waterfowl and neotropical migrant species; and
- E. To conserve and compatibly manage the Property for the protection of ground water, aquatic habitat, and surface water resources on the Property including seven headwater streams flowing into tributaries of the state-designated Ashuelot River including 8.7 miles of stream frontage and 16 acres of wetlands.
- F. To protect, conserve, and manage at least 50% of the Property in a manner that promotes mature forest or "old growth" characteristics, shaped primarily by natural processes and disturbance regimes over time with minimal human intervention, manipulation, or suppression.
- G. 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 (the "Service"), including but not limited to the protection, management and enhancement of wild birds and mammals and their habitats; and
- H. To protect the Property for low-impact public pedestrian access including, but not limited to hunting, fishing, hiking, cross country skiing and nature observation; and

I. The Fee Owner and Easement Holder have the common purpose of conserving the above-described Conservation Values of the Property in perpetuity; and

J. To prohibit uses of the Property that will significantly impair or interfere with these conservation values.

These significant conservation values are set forth in detail in baseline documentation on file with the Grantor, Grantee and the Third Party Holder. The baseline documentation report is an integral part of this Conservation Easement and is incorporated herein by reference, said report approved in writing by both parties. The parties agree that the report contains an accurate representation of the natural resources and physical condition of the Property at the time of this conveyance, of the current and historical uses of the Property, and a more detailed description of the Conservation Values. In case of any conflict or inconsistency between the terms of the Conservation Easement and the report, the terms of this Conservation Easement shall prevail.

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

2. USE LIMITATIONS

Subject to provisions specified in Sections 3, 4, and 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 native wildlife populations shall not be degraded by on-site activities.

i. Forestry: 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" (as defined below), but not for nursery production; and the construction of roads or other accessways for the purpose of removing forest products from the Property, all as not detrimental to the Purposes of this Easement.

ii. Wildlife Habitat Management: For the purposes hereof, "Wildlife Habitat Management" shall mean the practical application of scientific and technical principles so as to maintain native plant and animal species and their habitats. Activities may include, but shall not be limited to, cutting, pruning, girdling, mowing, brush-hogging or burning of trees or other vegetation to improve habitat conditions; establishing and maintaining firebreaks and buffer zones to reduce wildfire hazards and facilitate prescribed burning; conducting prescribed burns; installing denning or nesting structures for improving the utilization of natural resources and habitats by wildlife populations; and controlling non-native and invasive species through mechanical, chemical, or other means.

iii. Forestry and Wildlife Habitat Management shall be performed as hereinafter specified in Section 3 of this Easement and in accordance with the following stewardship goals:

- maintenance or enhancement of the Property's fish and wildlife habitat values;
- maintenance of soil productivity and protection against soil erosion;
- protection of water quality, wetlands, and riparian zones;
- protection of rare plants & animals;
- protection of unique or fragile natural areas;
- conservation of native plant and animal species;
- protection and management of at least 50% of the Property in a manner that promotes mature forest or "old growth" characteristics;
- protection of unique historic and cultural features; and
- protection of passive non-commercial recreational qualities.

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 LCHIP in writing.

C. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, parking lot, portable or composting toilet, educational building, tennis court, swimming pool, dock, athletic field, pavilion, shooting range, aircraft landing strip, 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, informational kiosks 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 not detrimental to the Purposes of this Easement; and

iii. grantor shall have the right to maintain and if needed reconstruct the existing lean-to on Lily Pond

D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:

i. are commonly necessary in the accomplishment of the Forestry, conservation, habitat management and restoration, Wildlife Habitat Management, or low-impact non-commercial 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 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;

iii. do not impact wetland vegetation, soils, hydrology, or habitat;

iv. 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 the Forestry, Wildlife Habitat Management, 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., C., D., or E. above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

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

H. There shall be no chemicals used on or applied to the Property, including fertilizers, except as provided in Section 4.N.

I. There shall be no planting, broadcasting, or intentional introduction on the Property of any genetically modified, transgenic or replicated organisms or any "invasive exotic species" which are defined as species which are not native to the northeast region of the United States and that, through their capacity to spread into native systems, demonstrably or potentially threaten native species and natural communities, except if Fee Owner and Easement Holder determine and mutually agree in writing and in advance of such planting, broadcasting, or other introduction that the action will have a beneficial ecological effect and will be consistent with the Purposes of this Conservation Easement. Any such planting, broadcasting, or other introduction shall be described in the Stewardship Plan.

J. There shall be no pollution, alteration, depletion or extraction from surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity, or which could alter natural water level and/or flow in or over the Property.

H. The 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.

I. The creation, grant or development of any new rights of way or easements of ingress or egress in

favor of any third party into, under, over, or across the Property is prohibited without LCHIP's prior written consent, except those of record as of the date of this Easement and documented in the baseline documentation report.

3. FORESTRY AND STEWARDSHIP PLANNING

A. Forestry and Wildlife Habitat Management activities shall be conducted in accordance with a stewardship plan, prepared by a licensed professional forester, a certified wildlife biologist, or 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, except that so long as the Property is under the ownership of The Nature Conservancy, its staff shall be considered approved Resource Professionals. Said stewardship plan (the "Plan") must be prepared, approved and implemented in accordance with this Easement.

B. The Plan shall have been prepared not more than 15 years prior to the date of any Forestry or Wildlife Habitat Management activity. Plans prepared more than 15 years prior to the anticipated Forestry and/or Wildlife Habitat Management activity date must be reviewed and updated for Grantee's approval in accordance with Section 3. herein.

C. Grantor shall submit the Plan to the Grantee for approval at least sixty (60) days prior to land management activities.

D. Within forty-five (45) 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 2.A.iii., 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 Forestry activities recognizing that the following paragraph applies.

E. Grantor and Grantee acknowledge that the Plan's purpose is to guide Forestry and Wildlife Habitat Management activities in compliance with this Easement and that the actual activities will determine compliance therewith.

F. The Stewardship Plan shall specifically address and include at least the following elements:

- i. The long-term protection of the Purposes for which this Easement is granted, as described in Section 1 above;
- ii. The stewardship goals set forth in Section 2.A.iii. above;
- iii. A statement of landowner management objectives consistent with the Purposes of the Easement and stewardship goals stated in Section 2.A.iii. above;
- iv. A map showing the Property's boundaries, access roads, forest stand types in those areas where forestry shall occur, known locations of historic resources, known locations of rare

species and exemplary natural communities, and identification of Special Management Areas; comprising 50% or more of the property;

v. A map showing current and proposed trails and recreational structures as they relate to forest and wildlife habitat types including wetlands, known vernal pools, and streams, and identified locations of rare and threatened plant and wildlife species, exemplary natural communities, and species of greatest conservation need and a description of how recreation infrastructure avoids detrimental impacts to said habitats, plant and wildlife species;

vi. 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;

vii. Identification of plant and wildlife species of conservation concern, and how management will enhance or avoid detrimental impacts to said plant and wildlife species;

viii. Management prescriptions and activities for Wildlife Habitat Management, Forestry, conservation, low-impact non-commercial recreation, and education; and

ix. Proposed schedule of implementation of management prescriptions, including a schedule for boundary, road and trail maintenance.

x. In the event that the Grantor proposes a new forestry activity not included in a previously approved Plan, the Grantor shall submit an amendment to the Plan for Grantee's approval in accordance with Section 3.A. herein prior to conducting any such new management activity. Such amendments shall include any changes and additions to or deletions from the approved Plan.

xi. All forestry 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: 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 Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Gullen, 2004), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (Bennett, Karen P., editor 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, 2004), or similar successor publications.

xii. Any and all recreation trail construction and maintenance shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and to the extent practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. For references on best management practices see:

- a. "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (NH Division of Parks and Recreation; Bureau of Trails, 2017); and
 - b. "Trails for People and Wildlife" (NH Fish and Game Department, 2019).
- xiii. Management of Special Management Areas (SMA) identified in map attached as Exhibit A shall be directed towards conserving the significant biological and ecological resources encompassed by mature and late-successional forest on the property and allowing them to continue to progress towards their oldest representation and shall be based on the following principles:
- a. Management should allow all natural communities within SMAs to cycle through their oldest representation and to be subject to natural ecological processes;
 - b. Management shall be ecosystem or natural community based;
 - c. Management for the characteristics identified for SMAs is a long-term process. All management decisions should advance the goal of allowing the SMAs to function as an ecosystem with minimal intervention
- xiv. The following riparian buffer zones shall apply for forestry adjacent to streams, rivers, ponds, and non-forested wetlands, hereinafter referred to collectively as "water body." Streams, ponds, and rivers shall be identified as those shown on 7.5 minute United States Geologic Survey Quadrangle maps. Non-forested wetlands shall include those emergent and shrub wetlands shown on National Wetlands Inventory maps, Town wetlands inventory maps, NH GRANIT land cover maps, and other sources mutually agreed to by the Fee Owner and the Easement Holder.

a) Riparian Buffer Zone Delineation:

Riparian-buffer zone: 200 feet from each side of USGS mapped intermittent, 1st and 2nd Order streams and along shores of ponds and non-forested wetlands less than 10 acres in size and 300 feet along 3rd order streams and shores of ponds and non-forested wetlands greater than 10 acres in size. Riparian buffer zones shall be expanded as necessary to encompass all vegetative communities subject to flooding, slopes greater than 35%, or soils classified as highly erodible that are adjacent to the water body or wetland. Areas subject to these expanded riparian buffer zones shall be delineated in the Stewardship Plan.

The distance of the riparian buffer shall be measured from the edge of normal high-water mark of the water body or wetland. In areas where there are ponds contiguous to a stream or river, or where there are wetlands contiguous to a stream, river, or pond: 1) the widest applicable riparian buffer zone shall apply; and 2) the starting point for the buffer shall be the upland edge of the normal high-water mark of the water body or wetland.

b) Activities in Riparian Buffer Zone:

Within the riparian buffer zone there shall be no tree harvesting within the first 100' from the normal high-water mark or wetland edge as defined above. Exceptions to these limitations may be granted at the sole discretion of the Easement Holder.

Within the remainder of the riparian buffer zone, forest management aimed at enhancing habitat for riparian-associated species may be permitted, such determination to be made in consultation with the easement holder.

4. 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 Easement. Without limiting the generality of the foregoing, Grantor shall have the following retained rights:

- A. The Grantor reserves the right to conduct Forestry and Wildlife Habitat Management activities, consistent with the provisions of Section 3.
- B. Transfer Ownership. The right to sell, give, mortgage, lease, or otherwise convey the Property, provided such conveyance is subject to the terms of this Conservation Easement and written notice is provided to Easement Holder in advance of the transfer in accordance with Section 18.4 below.
- C. Pedestrian Use and Trails. The right to allow public pedestrian uses including walking, hiking, running, mountain biking, cross-country skiing, snowshoeing, and wildlife observation, and in connection therewith, the right to clear, construct, and maintain new pedestrian trails, to maintain, repair, relocate, and temporarily or permanently close pedestrian trails, regardless of when they were created, and the right to erect and maintain informational kiosks. The location and construction of new pedestrian trails shall not impair or degrade any known exemplary natural communities, unique or fragile natural features, or rare or endangered plant or animal species identified on the Property. Nor shall they degrade wildlife habitat or impair the ability of wildlife to move across the Property. They shall be consistent with the Purposes of this Easement and shall be identified in the Stewardship Plan.
- D. Outdoor Education. The right to conduct or allow low-impact, non-commercial conservation or nature-oriented outdoor educational activities on the Property.
- E. Research. The right to conduct or allow scientific research on the Property that poses no threat to the Property's Conservation Values.
- F. Hunting. The right to allow hunting, trapping, and fishing on the Property, including the right to allow temporary hunting platforms and blinds in accordance with State laws and regulations.
- G. Disabled Hunters. The right to allow disabled persons to operate and hunt from a motor vehicle, as defined in, and in accordance with the requirements of, NH RSA 207:7-a.

- H. Maintenance Vehicles. The right of Fee Owner and its agents to operate motorized vehicles, bicycles, and other mechanized vehicles for purposes of maintaining and managing the Property and for other uses specifically permitted in this Conservation Easement.
- I. Road Maintenance. The right to maintain, repair, and, if necessary, relocate the designated roads and trails as described in the Stewardship Plan. This right shall include establishing and maintaining culverts, bridges, and any other ancillary structures necessary for the maintenance, repair, and relocation of the roads; the right to bring gravel onto the Property for road maintenance, repair, and relocation. Care shall be taken to prevent the introduction of invasive species with equipment and material brought on to the Property..
- J. Parking Areas. The right to construct and maintain up to two parking areas for the purpose of accommodating public outdoor recreational and educational uses of the Property; the parking area locations shall be identified in the Stewardship Plan. Each parking area will be no greater than 3,000 square feet each. Parking area location, size, substrate, and layout will be designed to minimize negative ecological impacts and shall not be detrimental to the Purposes of this Easement.
- K. Property Restoration. The right to restore to a natural and native vegetated condition any roads or other areas altered by human activity, or to conduct forest restoration in other areas for assisted migration or other purposes with native vegetation and species suitable to the site, provided that this activity shall be performed subject to and in accordance with a written Stewardship Plan developed by Fee Owner according to the specifications in Section 4.
- L. Invasive Species. The right to control or remove for ecological purposes, exotic invasive species, provided that any control other than early detection-rapid response shall be performed in accordance with a written Stewardship Plan developed by Fee Owner according to the specifications in Section 3. Fee Owner reserves the right to conduct early detection-rapid response management without a written Stewardship Plan.
- M. Signs. The right of Fee Owner to post signs required for appropriate management of the Property, such signs being consistent with similar signage on other properties of Fee Owner.
- N. Use of Chemicals. The right to use herbicides, pesticides, fungicides, or rodenticides on the Property provided that such use of chemicals is common and necessary to (a) control a pest or disease outbreak that poses a threat to the health of the forest or forest economy of the region; (b) control exotic invasive species; or (c) implement silvicultural uses of an herbicide. All such chemical applications shall be applied by a licensed applicator, be consistent with applicable statutes and regulations, utilize the narrowest spectrum, least persistent, yet effective, chemicals available, and, aside from early detection-rapid response management, be described in the Stewardship Plan.
- O. The Grantor reserves the right to erect gates and barriers and appropriate signage, for the control of motorized or wheeled vehicles and equestrian access into, on, over, or across the Property.

P. The Grantor specifically retains all protections from liability provided under New Hampshire Law to private owners of land, including, but not limited to, the protections contained in RSA 212:34, RSA 215:A34 II, or RSA 508:14 (or any successor or other statutory or regulatory provision then applicable).

Q. The right to engage in ecosystem services markets such as the sale of forest carbon credits, so long as such actions do not adversely affect the interest granted under this Easement to the Grantee or the Grantee's right of enforcement or be inconsistent with or defeat the Purposes of this Easement. Grantor will notify the Grantee of any proposed participation in ecosystem service markets deemed compatible with the Purposes and terms of this Easement at least 60 days prior to entering into any binding agreement(s) pertaining thereto.

5. AFFIRMATIVE RIGHTS OF THE GRANTEE AND LCHIP

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

- i. The Grantee and its agents shall have reasonable access to the Property and all of its parts for such inspections as are necessary to determine compliance with and enforce this Easement and to exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- ii. The Grantee shall have the right but not the obligation to mark and maintain the boundaries of the Easement, in consultation with the Grantor.

B. The Grantor shall, in accordance with applicable laws and regulations, keep the Property open for pedestrian access, in perpetuity, on and across the Property for low-impact non-commercial recreational activities including but not limited to hunting, fishing, hiking, trapping (in accordance to RSA 210:11), cross country skiing and nature observation in accordance with current laws and regulations; provided, however, that the Grantee shall cooperate with the Grantor to limit public access and use of the Property, with the prior written approval of LCHIP, if the public use is not consistent with the purposes of this Easement, and provided further, that there shall be no overnight camping, motorized access, or construction of fires on the Property by the public without the Grantor's prior written consent.

C. LCHIP shall have reasonable access to the Property and all of its parts for such inspection as it finds necessary to determine compliance with and enforce the terms contained herein. In the event of an emergency, LCHIP may enter the Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantor or Grantor's representative at the earliest practicable time.

6. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

A. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

B. The Grantor shall provide a 60-day advance notification of transfer of title to the Grantee and LCHIP.

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. Any such assignee or transferee shall have like power of assignment or transfer. The interests held by LCHIP hereunder are assignable or transferable to any party qualified by the State of New Hampshire to become LCHIP's assignee or transferee, who shall have like power upon such assignment or transfer.

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 or LCHIP, 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, undertake those actions, including but not limited to, restoration (except for injury to or change in the Property resulting from causes beyond the Grantor's control, as described in subparagraph D. below), 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 and LCHIP of its actions taken under this Section.

C. If the Grantor fails to take such proper action under the preceding paragraph, the Grantee and LCHIP 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 or LCHIP's expenses, court costs, and reasonable legal fees, shall be paid by the Grantor, if the Grantor is directly or primarily responsible for the breach.

D. Nothing contained in this Easement shall be construed to entitle the Grantee or LCHIP 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. Each party hereunder reserves 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. If circumstances arise in the future so as to render the purposes of the restrictions herein impossible or impracticable to accomplish, the restrictions can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.
- B. If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate the restrictions herein, in whole or in part, the parties shall act jointly to recover the full value of the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting there from. All expenses reasonably incurred by any party in connection with the taking or in lieu purchase shall be paid out of the amount recovered, the balance of which shall hereinafter be referred to as the "Net Proceeds".
- C. The Net Proceeds shall be divided among the parties as follows: (i) to LCHIP or its designee(s), eleven percent (11%); to NHFG or its designee(s), forty-two percent (42%); and to Grantor, forty seven percent (47%). These percentage allocations, having been derived from the amount each party contributed to the total cost of purchasing and conserving the Property, shall remain constant over time.
- D. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the Purposes set forth herein.

13. ADDITIONAL EASEMENT

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

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.

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

IN WITNESS WHEREOF, we have hereto under set our hand this _____ day of _____, 2019.

Mark Zankel, State Director
The Nature Conservancy

The State of New Hampshire
County of Merrimack

I, hereby certify that Mark Zankel, NH State Director of The Nature Conservancy, personally appeared before me on this _____ day of _____, 2019 and acknowledged the foregoing Conservation Easement.

Before me,

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

Accepted: State of New Hampshire Fish & Game Department

By: _____
Glenn Normandeau, Executive Director

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 _____, 2019, and being duly authorized acknowledged the foregoing on behalf of the State of New Hampshire.

Before me, _____
Justice of the Peace/Notary Public [seal]
My commission expires: _____

Approved by the Governor and Executive Council:
Approval Date: _____ 2019 Item #: _____

APPENDIX A
PROPERTY DESCRIPTION

DRAFT

Attachment B - Map

Surry Mtn - Keene WHPA

- Surry Mtn Proposed Conservation Lands
- Conservation Lands
- Wethead Protection Areas
- Hydrologic Areas of Concern
- Public Water Supply Wells
- Hydrography
- Town Boundaries
- Roads

Total Acres= 1287.5 Ac.
Eligible Acres= 251.9 Ac.

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

11/4/2019

0 2,050 4,100 8,200 Feet

