



New Hampshire Fish and Game Department

YOR 48

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November 16, 2016

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

REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG), with funding support from the New Hampshire Department of Environmental Services (NHDES), to acquire an interest in a conservation easement to 1,110+/- acres in Epping and Nottingham, New Hampshire from the Law Office of H. Alfred Casassa (Vendor Code# 276056-B001) on behalf of Applehurst Farm, LLC in the amount of \$1,384,000, effective upon Governor and Council approval through April 30, 2017. Funding is 100% Federal.

Funding for this purchase is available as follows:

<u>03 75 75 751520-2155 Wildlife Program – Wildlife Habitat Conservation</u>	<u>FY2017</u>
020-07500-21550000-033-500150 Land Acquisitions & Easements	\$385,000.00
03-44-44-442010-3642-072-500575	<u>FY2017</u>
Dept. Of Environmental Services, Coastal Zone Management, Grants-Federal	\$999,000.00

EXPLANATION

NHFG, with NHDES funding support, proposes to acquire a conservation easement on 1,110 acres in Epping and Nottingham to be held jointly with the Southeast Land Trust of New Hampshire. The total value of the easement is \$2,830,000. This project has unusual conservation significance for the southeastern New Hampshire in that it is one of the largest single contiguous tracts of land in private ownership in Rockingham County. It is also remarkably diverse in its habitat and resource values and provides habitat for a wide variety of wildlife species. It will also maintain in perpetuity the opportunity for hunting, fishing and other wildlife related activities.

Attorney Casassa will be acting a closing agent for the State and disbursing funds to the appropriate parties at the time of closing.

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Funding for this project would be provided by the U.S. Fish and Wildlife Service's (USFWS) Wildlife Restoration Program (NHFG) and the USFWS' National Coastal Wetlands Conservation Grant Program (NHDES).

Respectfully submitted,



Glenn Normandeau
Executive Director
Fish & Game Department

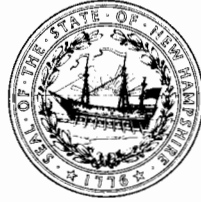


Thomas S. Burack
Commissioner
Department of Environmental Services

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

STATE OF NEW HAMPSHIRE
Inter-Department Communication

DATE November 14, 2016


FROM: Christopher G. Aslin
Assistant Attorney General

AT (OFFICE) Department of Justice
Environmental Protection Bureau

SUBJECT: Harvey, Applehurst Farm, LLC Conservation Easement

TO: Richard Cook, Land Agent
Fish and Game Department

The Office of the Attorney General has reviewed the Conservation Easement Deed and supporting documents provided in connection with the above referenced acquisition, including the Stewardship Cooperative Agreement between the New Hampshire Fish and Game Department and Southeast Land Trust of New Hampshire, and approves the acquisition for form and substance only. Following approval by Governor and Council, please return the fully-executed Conservation Easement Deed for approval of execution prior to recording the Deed in the Registry.



Christopher G. Aslin

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 CASASSA LAW OFFICE, PLLC is a New Hampshire Professional Limited Liability Company registered to transact business in New Hampshire on December 23, 2015. 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: 736415



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 18th day of November A.D. 2016.

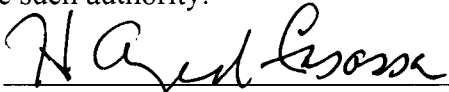
A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

SOLE PROPRIETOR CERTIFICATE OF AUTHORITY

I, H. Alfred Casassa, hereby certify that I am the sole proprietor of Casassa Law Office, which is a trade name registered with the Secretary of State under RSA 349. I certify that I am the sole owner of my business.

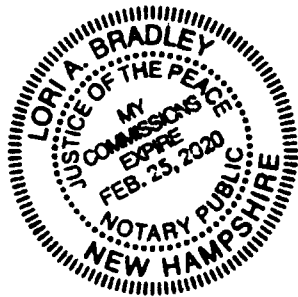
I hereby further certify and acknowledge that the State of New Hampshire will rely on this certification as evidence that I have full authority to bind my business and that no corporate resolution, shareholder vote, or other document or action is necessary to grant me such authority.

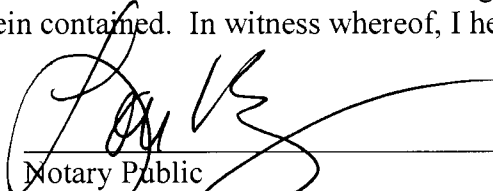
Signed: 
H. Alfred Casassa

Date: 10/25/14

State of New Hampshire, County of Rockingham

On this the 25th day of October 2016, before me, Lori A. Bradley, the undersigned officer, personally appeared H. Alfred Casassa, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.




Notary Public
Name: Lori A. Bradley
My Commission Expires: 2/25/20

THIS IS A TRANSFER TO A STATE AGENCY
AND IS THEREFORE EXEMPT FROM THE NEW
HAMPSHIRE REAL ESTATE TRANSFER TAX.
PURSUANT TO NEW HAMPSHIRE RSA 78-B:2(I)

CONSERVATION EASEMENT DEED

APPLEHURST FARM, LLC, a New Hampshire limited liability company, with a principal place of business at 50 Red Oak Hill Road, Town of Epping, County of Rockingham, State of New Hampshire, 03042 (hereinafter referred to as the “Grantor”, which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

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

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

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain area of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon, consisting of approximately one-thousand one-hundred and fourteen (1,114) acres, situated on Nottingham Square Road, Rundlett Road, French Road, and Blake Road in the Towns of Epping and Nottingham, County of Rockingham, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and shown on a survey plan entitled “_____” by _____, dated _____, last revised on _____, and recorded at the Rockingham County Registry of Deeds as Plan # _____ (herein referred to as the “Survey”),

and grants pursuant to New Hampshire RSA 227-M an **EXECUTORY INTEREST** in said Conservation Easement to the New Hampshire **LAND AND COMMUNITY HERITAGE INVESTMENT AUTHORITY**, a nonprofit corporation and public instrumentality of the State of New

Hampshire (hereinafter referred to as the “Executory Interest Holder” or “LCHIP”, which, unless the context clearly indicates otherwise, includes its successors and assigns), with a mailing address of 13 West Street, Suite 3, City of Concord, Merrimack County, State of New Hampshire, 03301, as further described in Section 11 below,

and grants a **THIRD PARTY RIGHT OF ENFORCEMENT** for that portion of the Property located within the Town of Epping, to the **TOWN OF EPPING** (hereinafter referred to as “Third Party Holder”, a New Hampshire municipal corporation duly organized, with a principal mailing address of 157 Main Street, Town of Epping, County of Rockingham, State of New Hampshire 03042, a “qualified organization” within the meaning of Section 170(b)(1) of the Internal Revenue Service Code of 1986, as amended and a governmental body eligible to hold a “Conservation Easement” within the meaning of NH RSA 477:45-47, as further described in Section 12 below,

and grants a **THIRD PARTY RIGHT OF ENFORCEMENT** for that portion of the Property located within the Town of Nottingham, to the **TOWN OF NOTTINGHAM** (hereinafter referred to as “Third Party Holder”, a New Hampshire municipal corporation duly organized, with a principal mailing address of 139 Stage Road, Town of Nottingham, County of Rockingham, State of New Hampshire 03042, a “qualified organization” within the meaning of Section 170(b)(1) of the Internal Revenue Service Code of 1986, as amended and a governmental body eligible to hold a “Conservation Easement” within the meaning of NH RSA 477:45-47, as further described in Section 12 below.

The Grantee, Grantor, Executory Interest Holder, and Third Party Holders may be sometimes hereinafter referred to collectively as the “**Parties**”.

The conservation attributes and present conditions of the Property are further described and set forth in a Baseline Documentation Report with the original on file with the Southeast Land Trust of New Hampshire and a copy provided to the Grantor and the New Hampshire Fish and Game Department and with additional copies provided to the other Parties.

1. PURPOSES

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

- A. The protection of the natural habitat of state designated, threatened, endangered and species of greatest conservation need that occur and may occur in the future on the Property, the protection of any known or potential exemplary natural communities that occur or may occur in the future on the Property, and the protection of rare or vulnerable forest and wetland communities that occur or may occur in the future on the Property; and
- B. 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 the long-term protection of the Property’s capacity to produce economically valuable forestry products; and
- C. The assurance that forestry activities conducted on the Property are performed in a manner that

maintains or enhances wildlife habitats, including habitat for waterfowl and neotropical migrant species; and

- D. The enlargement and enhancement of a block of abutting and nearby conservation land that totals approximately 1,000 acres and includes, but is not limited to the following conservation properties: the 170-acre Sweetser Wetlands Reserve Easement, 175-acre Sullos Woodlands property, the 159-acre Pawtuckaway River Reservation, the 48-acre Bell tract, and the 226-acre Parke conservation easements;
- E. The protection of the Property's diverse microtopography, habitat connectivity and moderately calcareous soils that have been documented as being part of a climate resilient landscape that is likely to continue to harbor rich biodiversity even in the face of climate change;
- F. The enjoyment by the general public of the scenic rural views of the Property as viewed from the more than _____ frontage on Nottingham Square Road, a town-maintained public road, and the views from the over _____ feet of frontage along the unmaintained French Road and _____ feet of frontage along the unmaintained Rundlett Road, and the _____ feet of frontage along the unmaintained Blake Road;
- G. The protection of the quality of ground water, aquatic habitat, and surface water resources on and under the Property which are all within the watershed of the Federally designated Wild & Scenic Lamprey River and Great Bay estuary; and the protection of the Property's over 137 acres of wetlands, vernal pools, and over 7,000 feet of frontage on Rollins Brook and over 3,500 feet of frontage on Kennard Brook; and
- H. 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;
- I. The long-term conservation of coastal wetland ecosystems, thereby preserving and protecting in perpetuity these multiple, interrelated land features which are critical to coastal fish, wildlife and their habitats; and
- J. To protect the Property for public pedestrian access including, but not limited to hunting, fishing, hiking, cross country skiing and nature observation.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 2007 Master Plan of the Town of Epping, which states "There should be a connected network of open space woven in among the developed parts of Epping. The network should build on and include existing protected areas Ideally, it would connect Pawtuckaway State Park in the northwest. . . It should include land that was prioritized in the Land Conservation Plan for New Hampshire's Coastal Estuaries. . . Such an "Epping Greenway" would provide room for hiking and horseback trails, fishing, hunting, habitat for wildlife, and would help protect the rural quality of the town" (Epping Master Plan Update, 2007, Page 4), and within the "Four Generals Greenway" conservation area designated at the 2006 Nottingham Town Meeting, and with New Hampshire RSA Chapter 79-A which states: "It is hereby declared to be in the public interest to

encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources;”

and with New Hampshire RSA 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.”

The New Hampshire Fish and Game Department has identified the Property and area around the Property as critical wildlife habitat which includes extensive wetland, and shoreland habitat, and the Property provides significant habitat for waterfowl and numerous other species of wildlife.

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

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

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

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

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

i. **Description of Agriculture and Forestry**

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

b. **Forestry:** For the purposes hereof, “Forestry” shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products, all as not detrimental to the Purposes of this Easement.

1. **Commercial Forestry:** For the purposes hereof, “Commercial Forestry” shall include all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions, or wildlife habitat improvement that includes the commercial sale of forest products.

2. **Non-commercial Forestry:** For the purposes hereof, “Non-commercial Forestry” shall include non-commercial timber stand improvement activities,

wildlife habitat improvement, and the small-scale cutting or harvesting of wood products for the domestic use of the Grantor, such as clearing trees to maintain the edge of a field, thinning the forest stand to maintain an existing view, or cutting up to twenty (20) cords of firewood per year for domestic consumption. Non-commercial Forestry shall not include activities conducted for the contemporaneous production of sale proceeds or other consideration.

- ii. **Requirements for Agriculture:** Agriculture shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement.
 - a. Agriculture shall be further limited in location and extent to only those portions of the Property shown as “ Agricultural Area [placeholder] ” on the Survey and further documented in the Easement Baseline Documentation Report signed by the Parties and on file with the Grantee.

- iii. **Requirements for Forestry:** Any and all Commercial and Non-commercial Forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. No Commercial or Non-Commercial Forestry shall occur within the “Recommended No Harvest Zones” identified in Chapter 4.3 of “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire”, or similar successor publications; and furthermore, the “Recommended No Harvest Zones” distances for first and second order streams shall also apply to forested, emergent and scrub-shrub wetlands. Exceptions to this limitation may be granted by mutual agreement in writing by the Grantor and Grantee. For references on best management practices see:
 - New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations” (N.H. Division of Forests and Lands, 2016); and
 - “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” (New Hampshire Forest Sustainability Standards Work Team, 2010), or similar successor publications.

- iv. **Requirements for Commercial Forestry:** In addition to the requirements outlined in Section 2.A.iii above, Commercial Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the ecological, wildlife, aesthetic, or other non-timber values are important components of the forest. To the extent reasonably practicable, forestry shall meet the following goals:
 - a. The goals are:
 - maintenance of soil productivity;

- protection of surficial geologic features such as, but not limited to, cliffs, talus slopes, and boulders;
 - protection of water quality, wetlands, and riparian zones;
 - maintenance or improvement of the overall quality of forest products;
 - conservation of scenic quality and recreational access and trails;
 - protection or enhancement of significant or fragile natural areas, exemplary natural communities, and threatened endangered and species of greatest conservation need, including their habitats;
 - maintain habitat connectivity by minimizing construction of new roads, log landings, stream crossings and other activities that can impair wildlife movement;
 - protection of significant historic and cultural features; and
 - conservation or enhancement of native plant and animal species populations.
- b. Forest Management Plan Required. Any and all Commercial Forestry shall be performed in accordance with a written Forest Management Plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee. Said Forest Management Plan shall have been prepared not more than ten (10) years prior to the date any commercial timber harvesting is expected to commence.
- c. Forest Management Plan Approval Process. The Grantor's licensed professional forester, or other qualified person approved in advance and in writing by the Grantee, shall draft a Forest Management Plan, prepared as outlined in Section 2.A.iv.(d) herein.
1. Prior to submitting the Forest Management Plan to Grantee for its final approval (see next paragraph), the Grantor shall submit a draft Forest Management Plan to Grantee for review and input regarding the wildlife habitat impacts, consistency with the Purposes stated in Section 1, the stewardship goals stated in Section 2.A.iv.(a), the required content stated in Section 2.A.iv.(d), and compliance with this Easement.
 2. After receiving the input from the Grantee, the Grantor shall submit the proposed Forest Management Plan to the Grantee for final approval at least sixty (60) days prior to forest management activities are proposed to be initiated.
 3. Within forty-five (45) days after Grantee's receipt of said Forest Management Plan, the Grantee shall approve or disapprove the Forest Management Plan with respect to its wildlife habitat impacts, consistency with the Purposes stated in Section 1, stewardship goals stated in Section 2.A.iv.(a), the required content stated in Section 2.A.iv.(d), 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 the Forest Management Plan within said period, Grantor may proceed with Commercial Forestry activities recognizing that the following paragraph applies.
- d. Forest Management Plan Content. Said Forest Management Plan shall include a statement of landowner objectives, and shall specifically address:
- the accomplishment of those Purposes for which this Easement is granted;

- the goals in Section 2.A.iv.(a) above;
 - the protection of the water quality and minimizing disturbance around and the crossing of ponds, streams and wetlands;
 - a map showing the Protected Property's boundaries, access roads, trails, and forest stand types;
 - a description of the Property's low-impact noncommercial recreational and educational uses and the boundary conditions;
 - a description and mapping of the Property's existing conditions and natural features including land cover, topography, soils, geology, wetlands, streams and ponds, and wildlife habitat features;
 - the identification of rare and threatened plant and wildlife species and species of greatest conservation need, and how management will enhance habitat for said plant or wildlife species or avoid detrimental impacts to said plant and wildlife species;
 - a description and mapping of any proposed structures as described in Section 2.C. below;
 - the proposed management prescriptions for wildlife habitat management, forestry, conservation, low-impact non-commercial recreation, and education; and
 - the proposed schedule of implementation of management prescriptions, including a schedule for boundary, road and trail maintenance.
- e. Forest Management Plan Updates. The Grantor shall submit an updated or revised Forest Management plan to the Grantee for approval if said Forest Management Plan is more than ten (10) years old or the Grantor proposes Commercial Forestry Activities that are not as described in the Forest Management Plan previously approved by the Grantee.
- f. Forest Management Plan Approval Required. Prior to the Grantor conducting Commercial Forestry activities on the Property, the Grantor shall have a Forest Management Plan, or an updated or revised Forest Management Plan, that has been approved by the Grantee.
- g. Forestry Compliance. The Grantor and Grantee acknowledge that the Forest Management Plan's purpose is to guide Commercial Forestry in compliance with this Easement and that the actual activities will determine compliance therewith.
- h. Notification of Harvest. At least fifteen (15) days prior to any commercial timber harvest, the Grantee shall have received from the Grantor a written certification, signed by a licensed professional forester, or other qualified person approved in advance and in writing by the Grantee, that a commercial timber harvest will occur on the Property and that the proposed harvest is in compliance with the Forest Management Plan and the terms of this Easement.
- i. Supervision of Harvest. Timber harvesting with respect to any Commercial Forestry shall be conducted in accordance with said Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- j. Harvest in Visible Areas. In areas used by, or visible to the general public, such forestry

shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in “A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners” (Jones 1993), or similar successor publications.

- B. The Property shall not be subdivided and none of the individual tracts which together comprise the Property shall be conveyed separately from one another, except that a lease for a period of ten (10) years or less of any portion of the Property for any use permitted by this Easement shall not violate this provision. Notwithstanding the foregoing, the involuntary division of the Property into two separate parcels along the town line between Epping and Nottingham as the result of the exceptional case when one town takes the land for failure or pay property taxes shall not constitute a violation of this provision. However, in this case, the Easement will remain in full force on both parcels, and the Grantor shall make every reasonable effort to reunify the Property into a single ownership.
- C. The following provisions shall apply to structures or improvements on the Property:
- i. No structure or improvement shall be constructed, placed, introduced, enlarged, relocated, used, maintained, repaired, replaced rebuilt, or improved on, above, or below the Property, except for structures and improvements which meet all the following conditions and which:
 - a. Assist in the accomplishment of the forestry, conservation, habitat management, or low-impact noncommercial outdoor recreational uses of the Property and which may include but shall not be limited to a road, fence, bridge, culvert, portable or temporary blinds or tree stands; or
 - b. Assist in the accomplishment of agriculture and said agricultural structures, with the exception of maple sugar houses, are located only within the portion of the Property identified as the Agricultural Area and said agricultural structures may include but shall not be limited to a road, fence, bridge, culvert, or maple sugar house; and
 - c. Do not cause the total impervious surface coverage of the Property to exceed two percent (2%) of the overall size of the Property, or [insert calculated number of square feet or acreage] _____ [square feet/acres]; for the purposes of this restriction, impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property. Impervious surfaces include, but are not limited to buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs, but shall specifically exclude bridges; boardwalks; culverts; impervious surfaces not in place year-round such as covers for agricultural crops, tents and awnings; and roadways, or other improvements established on the Property by third parties exercising lawful rights obtained prior to the date of this Easement; and
 - d. Are not detrimental to the Purposes of this Easement; and
 - e. Are included in the Forest Management Plan if they are structures for forestry, conservation, habitat management or low-impact noncommercial outdoor recreational uses.

- ii. Prior to the Grantor's construction, placement, introduction, enlargement, or relocation of any structure or improvement with a footprint exceeding one hundred and forty-four (144) square feet, the Grantor must obtain written approval of the same from the Grantee. For any structure or improvement containing a roof, said footprint shall include the area within the dripline.
 - a. At least thirty (30) days prior to the commencement of any such construction, installation, or on-site preparation therefor including but not limited to land clearing, the Grantor shall provide the Grantee with written notice with details of said structure or improvement including but not limited to scope, size, and location, and method and timing of said construction/installation. Within thirty (30) days after Grantee's receipt of such notice, the Grantee shall inform the Grantor in writing of its approval or disapproval of the proposed structure or improvement, such approval not to be unreasonably withheld. Any disapproval shall specify the reasons therefor.
 - iii. Notwithstanding the above provisions of this Section 2.C., there shall not be constructed, placed, introduced, enlarged, relocated, used, maintained, repaired, replaced, rebuilt, or improved on, under, or above the Property any of the following structures or improvements: dwelling, mobile home, barn, shed, indoor or outdoor riding ring, cabin, residential driveway, any portion of a septic system, tennis court, swimming pool, dock, athletic field, golf course, tower, or aircraft landing area.
- D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surficial geology, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
- i. are commonly necessary in the accomplishment of the agricultural uses within the portion of the Property identified as the Agricultural Area, forestry, conservation, habitat management, or low-impact noncommercial outdoor recreational uses of the Property; and
 - ii. do not harm state or federally recognized threatened, endangered or species of greatest conservation need, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and
 - iii. are not detrimental to the Purposes of this Easement.
- Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.
- E. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed twenty-four (24) square feet in size, and no sign shall be artificially illuminated.
- F. There shall be no mining, quarrying, excavation, or removal (hereinafter referred to as

“extractive activities”) of surface or subsurface materials including but not limited to hydrocarbons, rocks, minerals, gravel, sand, topsoil, or other similar materials (hereinafter referred to as “extractive materials”) on under, or from the Property, unless all of the following conditions are met:

- i. Said extractive activities are undertaken in furtherance of improvements made pursuant to and consistent with the provisions of Sections 2.A., C., D., and/or E., above, and Sections 3.B., 4.A., D., E., and/or F., below, and in accordance with relevant Best Management Practices;
- ii. No extractive materials shall be removed from the Property, except with advance written approval of the Grantee after the Grantee has determined, in its sole discretion, that said removal is not detrimental to the Purposes of this Easement;
- iii. Said extractive activities shall be limited to the “_____[insert name of zone(s)]____” as shown on the map entitled “_____” in the Baseline Documentation Report”, with opportunity for said zone(s) to be relocated from time to time by mutual agreement of the Grantor and the Grantee, only after a finding by the Grantee that the proposed new location and configuration of said zone(s) are no more detrimental to the Purposes of this Easement than the established zone(s) proposed to be relocated, and, further, if said relocation does not convey impermissible private benefit;
- iv. The maximum cumulative footprint of the extractive zones with exposed soil at any one time shall not exceed _____ square feet;
- v. Said extractive activities shall not significantly diminish the Property’s productive capacity, including soil productivity, to yield forest and/or agricultural products, nor the Property’s potential future uses for forestry or agriculture, or other permitted uses;
- vi. Said extractive activities shall not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities;
- vii. Following the cessation of extractive activities at any given extractive zone on the Property, the Grantor shall restore such zone(s) to a natural vegetated condition and appearance in conformance with all governmental laws, ordinances, rules, and regulations, including but not limited to the requirements of U.S. Treasury Regulations at 1.170A-14(g)(4)(i), as may be amended from time to time;
- viii. At least thirty (30) days prior to the initial commencement or site preparation for extractive activities in any extractive zone the Grantor shall give the Grantee written notice of the commencement of said activities. Said notice shall include a detailed description of the proposed activities (hereinafter the “extraction plan”) including but not limited to the type(s) and volume(s) of said extractive materials to be mined, quarried, excavated, and/or removed from the Property; the proposed uses of said materials; the source and location of said extractive materials within the Property; the timing, duration, and frequency of said extractive

activities; and a plan for restoring the extraction zone following the cessation of extractive activities. The Grantee shall have thirty (30) days from receipt of the Grantor's extraction plan to evaluate the plan and approve or disapprove the plan, at the Grantee's sole discretion. Said approval or disapproval shall be based on whether the proposed extraction plan meets all of the above conditions of this Section 2.F., and said approval shall not to be unreasonably withheld. Any disapproval shall specify the reasons therefor. Once an extraction plan is approved by the Grantee, the Grantor does not need to notify the Grantee of individual instances of extraction activities within said zone so long as the activities are within the parameters of the extraction plan.

- G. There shall be no dumping, injection, burning, or burial on the Property of man-made materials or materials then known to be environmentally hazardous or the dumping, injection, burning, or burial on the Property of natural materials, including but not limited to rocks, dirt, and stumps, that did not originate from the Property. Notwithstanding the foregoing, the application and use of man-made materials and natural materials for agriculture within the Agricultural Area shall be permitted so long as it is conducted in accordance with Section 2(A)(ii).
- H. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee and Executory Interest Holder, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.
- I. The Property shall in no way be used to satisfy the density, frontage, or setback requirements of any applicable zoning ordinance or land use regulation with respect to the development of any other property.
- J. The Grantor shall not operate or grant permission to operate motorized vehicles on the Property, except as allowed in Section 3.A., 3.B., and 4.B. below.

3. RESERVED RIGHTS

Subject to and notwithstanding the Affirmative Rights of the Grantee in Section 4:

- A. Motorized Vehicles. The Grantor reserves the right to operate motorized vehicles, and permit others to operate said vehicles, for the purposes of maintaining and managing the Property, including but not limited to emergency rescue operations, forestry, agriculture, conservation, habitat management, and to control or remove non-native or invasive species. This provision is an exception to Section 2.J., above.
- B. Trails. The Grantor, subject to the review and approval of the Grantee, said approval not to be unreasonably withheld, shall have the right to clear, construct and maintain trails for walking, cross country skiing, snowmobiles, horseback riding, mountain biking, and low impact non-commercial outdoor recreational activities within and across the Property. Said trails shall comply with the other paragraphs of this Section 3 as applicable and said trails shall consistent with and not detrimental to the Purposes of this Easement. All trails shall conform to best practices recommended by the State of New Hampshire and Appalachian Mountain Club or similar trail-maintaining organization (For reference, see Appalachian Mountain Club, The

Complete Guide to Trail Building and Maintenance, 4th edition; and State of New Hampshire, Best Management Practices for Erosion Control During Trail Maintenance and Construction, 2004, or similar successor publications). The Grantor shall notify the Grantee in writing at least thirty (30) days before constructing new trails or relocating existing trails. The Grantor shall bear the cost of constructing, maintaining and repairing said trails.

- C. Snowmobiles. The Grantor reserves the right to allow the use of snowmobiles on trails and on snow for non-commercial recreational uses; however, the use of snowmobiles on the Snowmobile Corridor shall be governed by Section 4.B, below. The Grantee, at its sole discretion, can deny said use or require closures or partial closure if the Grantee finds the use inconsistent with this Easement or detrimental to the Purposes of the Easement. This provision is an exception to Section 2.J., above.
- D. Horses and Mountain Bikes. The Grantor reserves the right to use, and invite guests to use, the Property on a non-commercial basis for the riding of horses and mountain bikes on trails on the Property subject to the following: said trails shall be approved by the Grantee for said use and shall be designed, constructed and maintained to support the proposed use. The Grantee, at its sole discretion, can deny said uses or require trail closures if the Grantee finds the use and/or trail conditions inconsistent with this Easement or detrimental to the Purposes of the Easement.
- E. Camping. Nothing contained herein shall be construed to prohibit the Grantor, and Grantor's invited guests, from having the right to camp on the Property with tents or similar, temporary, low-impact enclosures, but not with trailers, recreational vehicles or other similar mobile structures, and all as not detrimental to the Purposes of the Easement. As part of this reserved right, the Grantor shall have the right to have campfires associated with camping.

4. AFFIRMATIVE RIGHTS OF GRANTEE

- A. Public Access. Through the auspices of the Grantee and the Executory Interest Holder, the public has the right of pedestrian access, in perpetuity, on and across the Property for low-impact, non-commercial recreational activities including but not limited to hunting, fishing, trapping in accordance to RSA 210:11, hiking, cross country skiing, horseback riding, mountain biking and nature observation. The public right for mountain bike use and horseback riding shall be only on those trails constructed by the Grantee in accordance with Section 4.F. below and designated and marked for such use by the Grantee. The right of overnight camping, non-recreational motorized access or construction of fires on the Property by the public is not hereby conveyed. The Grantee agrees to cooperate with the Grantor, with prior approval of the Executory Interest Holder, to limit allowed public access and use of the Property if the public use is not consistent with the Purposes or Stewardship Goals listed in Sections 1 and 2.A.iv.(a) of this Easement, or when public safety may be at risk. The Grantor reserves the right to post the Property against public access to agricultural cropland during the planting and growing season, to lands while be grazed by livestock, and to forestland during harvesting or other forest management activities that puts public safety at risk.
- B. Snowmobile Corridor. Through the auspices of the Grantee and the Executory Interest Holder, the public has the right to use and operate snowmobiles on the snow on the trails shown as "Snowmobile Corridor" on the Survey. The location of the Snowmobile Corridor or the addition

of new Snowmobile Corridors may occur at the mutual written agreement of the Grantor and the Grantee. The Grantee agrees to cooperate with the Grantor to limit or prohibit snowmobiles on all or a portion of the Snowmobile Corridor if the use is not consistent with the Easement or detrimental to the Purposes of this Easement, or when public safety may be at risk. The Grantor reserves the right to post the Snowmobile Corridor against access during harvesting or other forest management activities that puts public safety at risk.

- C. Grantee Access. The Grantee, Third Party Holders, and Executory Interest Holder shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- D. Signs and Kiosks. The Grantee shall have the right to place, maintain, and replace signs and kiosks on the Property as follows:
- i. Signs to facilitate such inspection of the Property and to identify the Property as conservation land protected by the Grantee, said signs located along the Property's boundaries with each sign not to exceed thirty (30) square inches in size.
 - ii. Signs to identify to the public that the Property is conserved land and to recognize funding entities who contributed funding toward the conservation of the Property, as may be required. Said signs shall be located at a visible location on the Property, said location to be mutually agreed upon by the Grantor and Grantee. The Grantee shall be responsible for ensuring that said sign(s) conform with applicable local, state, and federal regulations and shall bear the cost of installation.
 - iii. Up to five (5) informational kiosks that are no more than ___ feet wide by ___ feet high within which the Grantee can display information related to its missions, the Property, the effort to conserve the Property and the conservation context of the Property. The Grantor and Grantee shall work together on mutually agreeable locations for said kiosks.
- E. Parking. The Grantee shall have the right to construct, use, repair and maintain up to four (4) permeable-surface parking areas on the Property. The Grantor and Grantee shall work together on mutually agreeable locations and sizes for said parking areas. The maintenance of said parking areas shall be the responsibility of the Grantee.
- F. Trails. The Grantee shall have the right to construct and permit the public to use trails for, low-impact non-commercial recreational uses such as hiking, cross-country skiing, and snowshoeing as well as for mountain biking and horseback riding, or any combination of the above. The Grantor and Grantee shall work together on mutually agreeable locations for said trails. All trails shall conform to best practices recommended by the State of New Hampshire and Appalachian Mountain Club or similar trail-maintaining organization (For reference, see Appalachian Mountain Club, *The Complete Guide to Trail Building and Maintenance*, 4th edition; and State of New Hampshire, *Best Management Practices for Erosion Control During Trail Maintenance and Construction*, 2004, or similar successor publications). The Grantee shall notify the Grantor in writing at least thirty (30) days before constructing new trails or relocating existing trails. The Grantee shall bear the cost of constructing, maintaining and repairing said trails.

5. STEWARDSHIP RESPONSIBILITIES OF GRANTEE

To comply with its obligations under this Easement, Grantee shall:

- A.** Ensure an on-the-ground annual monitoring inspection sufficient to confirm that Property is being protected and maintained according to the terms of the Easement.
- B.** Communicate with Grantor annually to insure Grantor understanding and familiarity with their obligations under the terms of this Easement.
- C.** Ensure a report summarizing the scope, scale and findings of the annual monitoring inspection is submitted to the Executory Interest Holder, Third Party Holders and the U.S. Fish and Wildlife Service on or before December 31st each year, or promptly upon discovery of any violation with the terms of this Easement. The annual monitoring report shall contain the following minimum components:
 - i. a description of route taken during the inspection, and
 - ii. a description of the physical conditions and uses of the Property as observed.
- D.** Promptly following the sale, conveyance or transfer of the Property, Grantee shall forthwith contact the successor Grantor and inform them of the Easement provisions and obligations.

6. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A.** The Grantor agrees to notify the Grantee, Third Party Holders, and the Executory Interest Holder in writing at least ten (10) days before the transfer of title to the Property.
- B.** The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon. The Grantee may, in its sole discretion, pay property taxes to avoid a tax sale of the Property by either municipality.

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, agrees to and is capable of protecting 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 and the National Coastal Wetland Grant from the U.S. Fish and Wildlife Service for purchase of this Easement, and the provisions set forth in the Notices of Grant Agreement recorded herewith and attached hereto as Appendix B, the Easement may not be assigned, transferred, conveyed or encumbered, in whole or in part, to any other party or for any other use, whatsoever, without the written consent of the Regional Director of the U.S. Fish and Wildlife Service. Any such assignee or transferee shall have like power of assignment or transfer.

8. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, the Grantee may pursue its remedies in accordance with Section 9.
- C. If the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

9. BREACH OF EASEMENT – GRANTEE’S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor’s name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section, "Breach of Easement..." without prior notice to the Grantor or without waiting for the period provided for cure to expire.

- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor's liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee's rights under this Section, "Breach of Easement...", apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, "Resolution of Disagreements," which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.
- G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement...", both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.
- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantor reserve the right,

separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

10. 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

11. EXECUTORY INTEREST

- A. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Executory Interest Holder, a qualified organization as specified in the Section "Benefits and Burdens" above, to the Grantee requesting such enforcement delivered in hand or by certified mail, return receipt requested, then the Executory Interest Holder shall have the right to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Grantee. In such circumstance, or in the event the Grantee acquires the underlying fee interest in the Property, the Executory Interest Holder shall, having first obtained the approval of the Regional Director of the U.S. Fish and Wildlife Service as specified in the Notice of Grant Agreement, recorded herewith, have the right to terminate the Easement interest of the Grantee in the Property by recording a notice to that effect in the Registry of Deeds referring hereto and shall thereupon assume and thereafter have all interests, rights, responsibilities and duties granted to and incumbent upon the Grantee in this Easement.
- B. The interests held by the Executory Interest Holder are assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified in the Section "Benefits and Burdens" above. Any such assignee or transferee shall have like power of assignment or transfer.

12. 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 a Third Party Holder, a qualified organization as specified in the Section "Benefits and Burdens" above, to the Grantee and the Executory Interest Holder requesting such enforcement delivered in hand or by certified mail, return receipt requested, then the Third Party Holder giving notice shall have the right to enforce this Easement.

13. 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.

14. 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.

15. EXTINGUISHMENT & CONDEMNATION

- A. Extinguishment. If circumstances arise in the future such as render the Purposes of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment, shall be determined in accordance with Section 15.C. below. In making this grant of Easement, Grantor has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Grantor pursuant to this Easement. It is the intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.
- B. Condemnation. 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 this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Grantee shall be entitled, after payment of any expenses, shall be determined in accordance with Section 15.C. below.
- C. Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Sections 15.A and 15.B above, shall have a fair market value which shall be determined by an appraisal prepared by a qualified appraiser as of the time of said extinguishment or condemnation. The balance of the amount recovered, after payment of any expenses, shall be divided between the Grantor and the Grantee in proportion to the fair market value, as determined by the appraisal, of their respective interests in that part of the Property extinguished or condemned.
- D. Service Proceeds. By virtue of the Wildlife Restoration Program Grant received by NH Department of Fish and Game (Grantee) and the National Coastal Wetlands Conservation Program Grant received by the NH Department of Environmental Services (NHDES) from the U.S. Fish and Wildlife Service (the "Service") for purchase of this Conservation Easement, and of the provisions set forth in the Notice of Grant Agreements (attached hereto as Appendix B and

C), the Service shall be entitled to 49% percent of the portion of the proceeds payable to the Grantee and NHDES pursuant to this Section 15 unless the Regional Director of the Service consents to or requires the Grantee's and NHDES's use of the Service's portion of the proceeds to acquire other land or interests in land of equal or greater monetary and resource value.

- E. LCHIP Proceeds. By virtue of the Grant from LCHIP for purchase of this Conservation Easement, LCHIP shall be entitled to 14% of the portion of the proceeds payable to the Grantee pursuant to this Section 15.
- F. Third Party Proceeds. By virtue of the funding from the Town of Nottingham as Third Party Holder for purchase of this Conservation Easement, the Town of Nottingham Third Party Holder shall be entitled to 2% of the portion of proceeds payable to the Grantee pursuant to this Section 15. By virtue of the funding from the Town of Epping as Third Party Holder for purchase of this Conservation Easement, the Town of Epping Third Party Holder shall be entitled to 9% of the portion of proceeds payable to the Grantee pursuant to this Section 15.
- G. Use of Proceeds. The Grantee, NHDES, LCHIP and Third Party Interest Holders 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.

16. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in the Section "Benefits and Burdens," above, accepts and records the additional easement.

17. AMENDMENT

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

18. GENERAL DISCLAIMER

The State of New Hampshire and its employees, agents, and assigns disclaim and will not be held responsible for negligent acts or omissions or breach of any representation, warranty, covenant, or agreements contained in this Easement by the other parties to this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the State of New Hampshire acting through its interest in this Easement may be subject or incur relating to the Property.

19. ENVIRONMENTAL WARRANTY

Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law. Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee, Third Party Holders, and Executory Interest Holder against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation will not be affected by any authorizations or approvals provided by Grantee, Third Party Holders, or Executory Interest Holder to Grantor with respect to the Property. "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect. "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

20. TITLE WARRANTY

Grantor warrants that it has good title to the Property and shall defend against all claims that may be made against it; that they have the right to convey this Easement; and that the Property is free and clear of any encumbrances, other than those of record.

21. FEDERAL GRANT

The conservation easement on the above-described Property is acquired, in part, with funding received by the Grantee from Grant Agreement Number F14AF01270 NH-W-108-L-1 between the Service and the State of New Hampshire Fish and Game Department as Grantee and Grant Number Agreement F16AP01004 between the Service and the State of New Hampshire Department of Environmental Services 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 Grant Agreements (attached hereto as Appendix B & C), and to the other administrative requirements of the applicable grant funding program of the Service.

22. LCHIP GRANT

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 LCHIP to uses or purposes not consistent with the purposes of RSA 227-M shall be permitted. "The sale, transfer, conveyance, or release of any resource asset from the public trust is prohibited, except as provided in RSA 227-M:13.

The Grantee, 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 of New Hampshire's sovereign immunity.

IN WITNESS WHEREOF, We have hereunto set our hands this ____ day of _____, 2016.

GRANTOR
APPLEHURST FARM LLC

Daniel W. Harvey, Co-Manager

Carolyn Louise Harvey, Co-Manager

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this ____ day of _____, 2016, before me personally appeared **Daniel W. Harvey and Carolyn Louise Harvey, Co-Managers of the Applehurst Farm LLC**, known to me, or satisfactorily proven, to be the people whose names are subscribed to the foregoing instrument, and acknowledged that they executed the same as their free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
My commission expires:

ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE

By: _____

Title: _____
Duly Authorized

Date: _____

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, ss.

On this ____ day of _____, 2016, before me personally appeared _____, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained.

Notary Public/Justice of the Peace
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 _____, 2016 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: _____, Item #: _____

Accepted: Executory Interest
LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM AUTHORITY

By _____
Dorothy T. Taylor, Executive Director
Its duly authorized agent

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this _____ day of _____, 2016, before me the undersigned officer, personally appeared Dorothy T. Taylor known to me (or satisfactorily proven) to be the authorized agent of the Land and Community Heritage Investment Program Authority and that being authorized so to do on behalf of such entity, executed the foregoing instrument for the purposes therein contained.

In witness whereof I set my hand and seal.

Justice of the Peace/Notary Public
My commission expires: _____

Accepted: Third Party Right of Enforcement
TOWN OF EPPING

By: _____
 , Chair

By: _____
 , Vice Chair

By: _____

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing Conservation Easement Deed was acknowledged before me this _____ day of _____, 2016 by _____ duly authorized Selectmen of the Town of Epping Board of Selectmen, on behalf of the Town of Epping.

Notary Public/Justice of the Peace
My commission expires:

Accepted: Third Party Right of Enforcement
TOWN OF NOTTINGHAM

By: _____
 , Chair

By: _____
 , Vice Chair

By: _____

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing Conservation Easement Deed was acknowledged before me this _____ day of _____, 2016 by _____ duly authorized Selectmen of the Town of Nottingham Board of Selectmen, on behalf of the Town of Nottingham.

Notary Public/Justice of the Peace
My commission expires:

APPENDIX A

The "Property" subject to this Easement is that tract of land with any and all structures and improvements thereon situated on Road, so-called, in the Town of , County of , State of New Hampshire, consisting of approximately acres, shown on a plan entitled ", " by , last revised , recorded at _____ at the County Registry of Deeds (hereafter "Plan"), and more particularly bounded and described as follows:

Beginning at on the side of Road, at the corner of the Property, at land now or formerly of ;

Thence proceeding a distance of feet, more or less, along said land to at land now or formerly of ;

Thence proceeding xxx a distance of xxx feet, more or less, along said xxx land to a at land now or formerly of ;

Thence the following courses and distances along said xxx land:

Thence xxx feet along the arc of a curve to the left/right having a radius of xxx feet to a ;

to (point), which is on a tie course of (bearing) xxx feet from (point)

EXCEPTING AND RESERVING THEREFROM

SUBJECT TO

TOGETHER WITH

MEANING AND INTENDING to describe all and the same/a portion of the premises conveyed by Deed from , to , dated , recorded at said Registry at Book, Page .

[Not homestead property of the Grantor.]

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 above described Conservation Easement (hereinafter "EASEMENT") is acquired in part with federal funds received from the Wildlife Restoration Program administered by the U.S. Fish and Wildlife Service, Division of Federal Assistance and its successors and assigns (hereinafter "SERVICE") and that the Easement is subject to all the terms and conditions of Grant Agreement Number F14AF01270, NH-W-108-L-1 (hereinafter "GRANT AGREEMENT" between the Service and the Department). A copy of the Grant Agreement is kept on file at the offices of the Service, 300 Westgate Center Drive, Hadley, MA 01035-9589 and at the offices of the Department, 11 Hazen Drive, Concord, NH 03301.

The Department acknowledges that the Easement, which is the subject of this Grant Agreement, is acquired for the approved purpose of wild birds and mammals and their habitats and the long-term conservation of coastal wetland ecosystems, thereby preserving and protecting in perpetuity these multiple, interrelated land features which are critical to coastal fish, wildlife and their habitats. The Department further acknowledges that the EASEMENT will be used for the long-term conservation of said lands and waters and the hydrology, water quality and fish and wildlife dependent thereon. The Department, as the Grant Recipient hereby acknowledge that they are responsible for ensuring that the Easement is used and will continue to be used for the approved purpose for which it is acquired and that the Easement may not be conveyed or encumbered, in whole or in part, to any other party or for any other use, whatsoever, without the written consent of the Regional Director of the U.S. Fish and Wildlife Service.

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

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

The Department, as Grant Recipient hereby confirms its obligations and responsibilities with regards to the acquired property pursuant to terms and conditions associated with Grant Agreement F14AF01270, NH-W-108-L-1.

By: _____

Glenn Normandeau, Executive Director

Date: _____, 2016

APPENDIX C

Notice of Grant Agreement

The State of New Hampshire, Department of Environmental Services and its successors and assigns (hereinafter DEPARTMENT) acknowledges that the above described Conservation Easement (hereinafter "EASEMENT") is acquired in part with federal funds received from the National Coastal Wetlands Conservation Grant Program administered by the U.S. Fish and Wildlife Service, Division of Federal Assistance and its successors and assigns (hereinafter "SERVICE") and that the Easement is subject to all the terms and conditions of Grant Agreement Number F16AP01004 (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 as the grant recipient and their sub-recipient the Southeast Land Trust of New Hampshire (hereafter SELT) acknowledges that the Easement, which is the subject of this Grant Agreement, is acquired for the approved purpose of wild birds and mammals and their habitats and the long-term conservation of coastal wetland ecosystems, thereby preserving and protecting in perpetuity these multiple, interrelated land features which are critical to coastal fish, wildlife and their habitats. The Department and the SELT further acknowledges that the EASEMENT will be used for the long-term conservation of said lands and waters and the hydrology, water quality and fish and wildlife dependent thereon. The Department, as the Grant Recipient and SELT as sub-recipient hereby acknowledge that they are responsible for ensuring that the Easement is used and will continue to be used for the approved purpose for which it is acquired and that the Easement may not be conveyed or encumbered, in whole or in part, to any other party or for any other use, whatsoever, without the written consent of the Regional Director of the U.S. Fish and Wildlife Service.

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

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

The Department, as Grant Recipient and SELT as sub-recipient hereby confirms its obligations and responsibilities with regards to the acquired property pursuant to terms and conditions associated with Grant Agreement F16AP01004.

By: _____

Commissioner, NH Department of Environmental Services

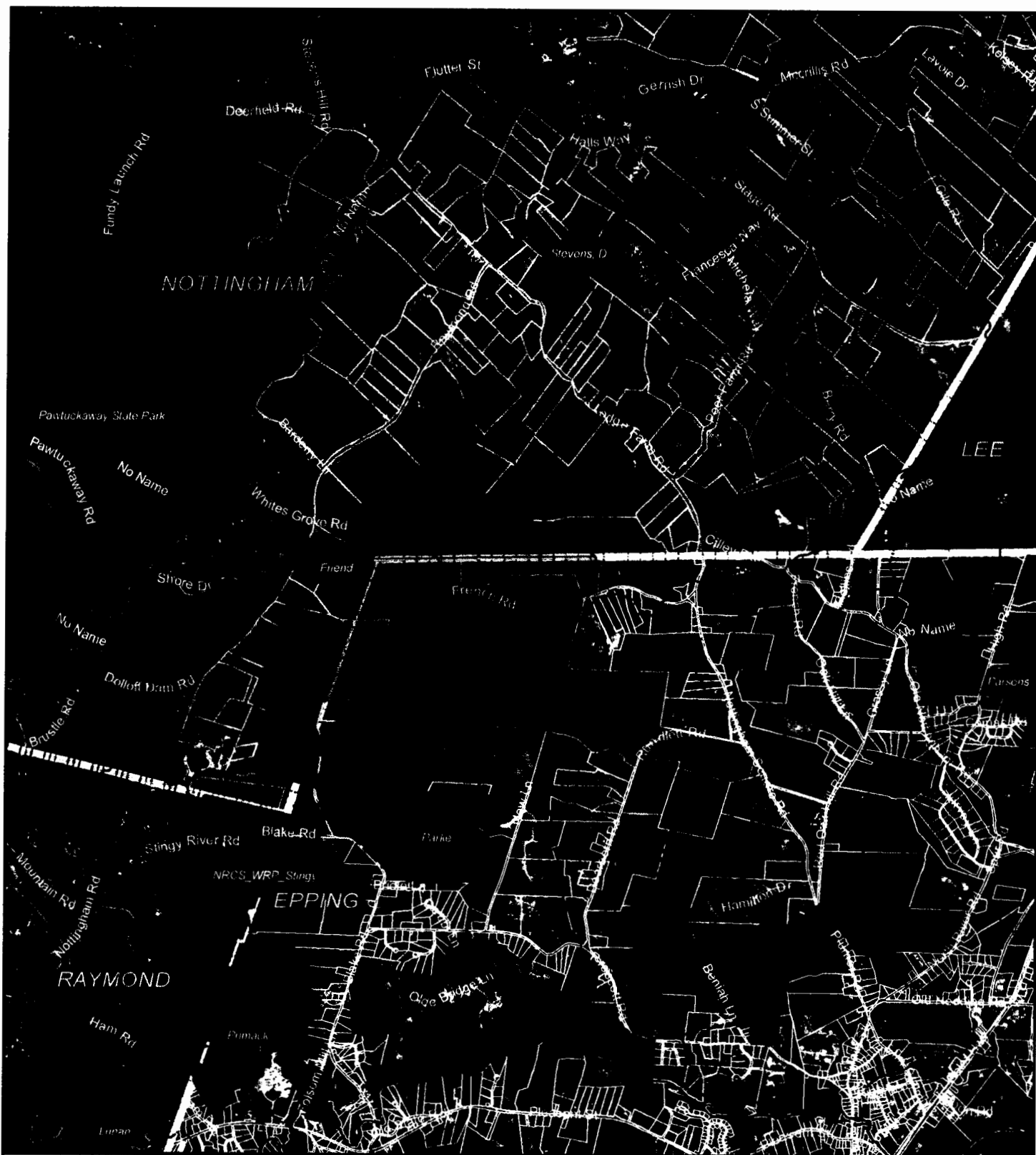
Date: _____, 2016

By: _____

SELT Executive Director, Duly Authorized

Date: _____, 2016

4842-1084-1394, v. 1



- Kennard Hill Area
- Conserved Land
- Forest Roads/Trails
- Town Boundary

Aerial Locus Map
Harvey/Applehurst Farm
Kennard Hill Area (~1,114 acres)
Epping & Nottingham, NH



0 4,000 8,000 Feet

Boundary and feature locations are approximate. Boundaries are based on tax maps. 1-foot resolution orthophoto taken [Spring 2010 for NHDOT].

Map prepared by
 Southeast Land Trust of NH
 December, 2013

