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# New Hampshire Fish and Game Department

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December 28, 2017

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

### REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG) to amend and combine two conservation easements known as Popov III & IV, approved by Governor and Executive Council on November 17, 2010, Item #105, into a single conservation easement deed covering the same land area with the same use restrictions. No funding is involved in this request.

### EXPLANATION

NHFG currently holds two abutting conservation easements in Newmarket totaling 91.3 acres granted by Peter N. Popov (now deceased) and Lela Love, husband and wife. Both of the conservation easements contained the same use limitations and each allowed for the withdrawal of a house lot that would meet local zoning requirements. Ms. Love has exercised that right on one of the conservation easement properties (Popov III) and created a two acre building lot.

Ms. Love, and the Fish and Game Department, wish to restate and amend these grants of conservation easement into a single document to permanently eliminate all references to the previously exercised reserved right to withdraw a portion of the protected property.

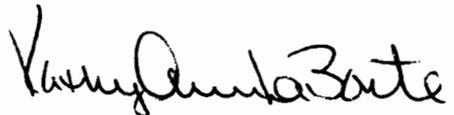
The amended conservation easement will cover all of the area included in the original two easements, minus the withdrawn house lot and will contain all of the same use limitations. Ms. Love will retain the right to withdraw a single house lot on the newly described easement property.

This action will benefit the State by ensuring that the easement property will remain as a single parcel while simplifying future easement stewardship responsibilities.

The request has been reviewed and approved by the project's funders, The National Oceanic and Atmospheric Administration, Environmental Protection Bureau and the Charitable Trust Division of the Attorney General's Office have also reviewed the proposed amendment.

Respectfully submitted,

  
Glenn Normandeau  
Executive Director

  
Kathy Ann LaBonte  
Chief, Business Division

# STATE OF NEW HAMPSHIRE

Inter-Department Communication

**DATE** December 27, 2017

**FROM:** Christopher G. Aslin  
Assistant Attorney General

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

**SUBJECT:** Amended and Restated Popov Conservation Easement, Newmarket, NH

**TO:** Rich Cook, Land Agent  
New Hampshire Fish and Game Department

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The Office of the Attorney General has reviewed the Restated and Amended Conservation Easement Deed and Limited Right of First Refusal, and related documentation, for the Popov conservation easements on property located in the Town of Newmarket, New Hampshire and approves the Restated and Amended Conservation Easement Deed for form and substance only. Following execution by the parties, the Deed should be submitted to this office for approval of execution.

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

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD  
ATTORNEY GENERAL



ANN M. RICE  
DEPUTY ATTORNEY GENERAL

May 25, 2017

Richard A. Cook  
Land Agent  
Fish and Game Department  
2 Hazen Drive  
Concord, NH 03301

Re: Popov Conservation Easement Amendment Requested by Fish & Game

Dear Mr. Cook:

Thank you for your letters and attachments of January 9, 2017 and May 11, 2017.

We have completed our analysis of the above-captioned proposed amendment to the Popov Conservation Easement in Newmarket and Durham, New Hampshire.

The request constitutes a low risk amendment.

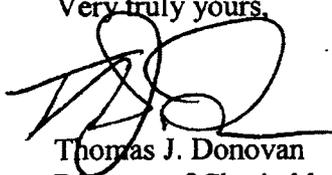
The Charitable Trusts Unit hereby issues a no action letter, effective May 25, 2017, relative to the requested amendment as follows:

The amendment will have a beneficial effect on the relevant conservation values and attributes protected by the current easement by consolidating two individual easement areas into a single conservation easement area thereby ensuring in the future there will be a single landowner. This will simplify stewardship and reduce the chances of future conflicts.

The New Hampshire Department of Fish and Game has provided documentation of its compliance with the seven principles contained in the publication Amending or Terminating Conservation Easements.

If you have any questions, please do not hesitate to contact either me or Assistant Director Terry Knowles.

Very truly yours,

A handwritten signature in black ink, appearing to read 'TJ Donovan', with a large, stylized flourish at the end.

Thomas J. Donovan  
Director of Charitable Trusts  
Charitable Trusts Unit  
(603) 271-3591  
thomas.donovan@doj.nh.gov



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**Office for Coastal Management**  
Silver Spring Metro Center, Building 4  
1305 East-West Highway  
Silver Spring, Maryland 20910

**MAY - 8 2017**

**MEMORANDUM FOR:** New Hampshire Fish and Game Department

**FROM:** Erica Seiden, Program Manager *Erica Seiden*  
Ecosystems and National Estuarine Research Reserve Program

**SUBJECT:** Acknowledgement of Information Received Related to the  
Restated and Amended Popov Conservation Deed

This memo confirms that the National Oceanic and Atmospheric Administration's Office for Coastal Management (NOAA-OCM) received an information packet and documentation of the planned consolidation of two conservations easements from New Hampshire's Fish and Game Department, dated February 22, 2017.

NOAA-OCM acknowledges that the original conservation deeds (known as Popov 3 & 4) funded, in part, through NOAA Award #NA09NOS4630123 will be consolidated and amended according to the reserved rights. NOAA-OCM also acknowledges that the resulting amended conservation deed will prohibit further subdivision of lot R1-4-1 and that the amended conservation deed does not affect the resources for which these easements were purchased.

**Restated and Amended Conservation Easement Deed and Limited Right of First Refusal  
For recording in Rockingham County Registry of Deeds**

THIS RESTATED AND AMENDED DEED OF CONSERVATION EASEMENT AND LIMITED RIGHT OF FIRST REFUSAL IS MADE THIS 28<sup>th</sup> DAY OF DECEMBER, 2017.

WITNESSETH:

Whereas, Peter N. Popov granted a Conservation Easement and Limited Right of First Refusal to The Nature Conservancy, recorded in the Rockingham County Registry of Deeds on December 28, 2009 at Book 5078, Page 0854 ("Easement A"), over certain property shown as "Easement Area A" on a plan entitled "Conservation Easement Plan for The Nature Conservancy of Tax Map RI, Lots 3 & 4-1 (Newmarket) & Tax Map 19, Lot 23-0 (Durham) owned by Peter N. Popov and Lela P. Love" dated November 12, 2009 and revised through December 22, 2009, prepared by Doucet Survey, Inc., recorded at the Rockingham County Registry of Deeds D36216 (the "SURVEY"); and

Whereas, certain funds used by The Nature Conservancy in connection with its acquisition of Easement A were provided by the National Oceanic and Atmospheric Administration ("NOAA"), as more particularly described in a Notice of Grant Agreement recorded at the Rockingham County Registry of Deeds on December 28, 2009, Book 5078, Page 0898, for the purposes cited and subject to the conditions set forth in a Grant Agreements between NOAA and The Nature Conservancy, Award Number NA09NOS4630123 (the "NOAA Award"); and

Whereas, The Nature Conservancy assigned to the State of New Hampshire acting by and through the Fish and Game Department, all rights, title and interest in said Easement A, by an Assignment of Conservation Easement recorded at the Rockingham County Registry of Deeds on December 8, 2010, Book 5173, Page 1370; and

Whereas, on June 29, 2014 Peter N. Popov, the owner and original Grantor of Easement A, died, and the ownership of the said real estate has been passed by inheritance or devised from the deceased to his widow, Lela Love; and

Whereas Lela Love, the Grantor, has requested to exercise the right to remove “the House Lot” as described in Section 3E of said Easement A. Said lot, not to exceed two acres, will contain the areas identified as Exclusion Area “A” and a portion of the Agricultural Area as shown on the SURVEY. Except that a strip of land leading in a northerly direction from Bay Road to a stone wall adjacent to the eastern boundary of Newmarket Tax Map R-1, Lot 2 will be included in the conservation easement here recorded; and;

Whereas, Peter N. Popov and Lela Love, husband and wife granted a Conservation Easement and Limited Right of First Refusal to The Nature Conservancy, recorded on December 28, 2009 in the Rockingham County Registry of Deeds at Book 5078, Page 0876 and the Strafford County Registry of Deeds at Book 3801, Page 0918 (“Easement B”), over certain property shown as "Easement Area B" on said SURVEY; and

Whereas, certain funds used by The Nature Conservancy in connection with its acquisition of Easement B were provided by the National Oceanic and Atmospheric Administration ("NOAA"), as more particularly described in a Notice of Grant Agreement recorded at the Rockingham County Registry of Deeds on December 28, 2009, Book 5078, Page 0903 and the Stafford County Registry of Deeds on Book 3801, Page 0940, for the purposes cited and subject to the conditions set forth in a Grant Agreement between *NOAA* and The Nature Conservancy, Award Number NA09NOS4630123 (the "NOAA Award"); and

Whereas, The Nature Conservancy assigned to the State of New Hampshire acting by and through the Fish and Game Department all rights, title and interest in said Easement B, by an Assignment of Conservation Easement recorded on December 8, 2010 at the Rockingham County Registry of Deeds, Book 5173, Page 1384 and the Strafford County Registry of Deeds, Book 3887, Page 0784; and

Whereas, the Town of Newmarket has approved a boundary line adjustment creating the House Lot and merging the remaining land of Easement Area A of Newmarket Tax Map R1, Lot 3 (27.324 acres) with the 64.178 acres Easement Area B of Newmarket Tax Map R1, Lot 4-1 including Easement Area B and Durham Tax Map 19, Lot 23-0, all as shown on a plan entitled “Boundary Line Adjustment Plan for Lela P. Love between Tax Map R1, Lot 3 (Newmarket) & Tax Map R1, Lot 4-1 (Newmarket), Tax Map 19, Lot 23-0 (Durham)”, dated April 6, 2016 and recorded at the Rockingham County Registry of Deeds on July 13, 2016, Plan #D-39567.

Now Therefore:

The Grantor, Lela Love, and the Grantee, the State of New Hampshire acting by and through the Fish and Game Department, located at 11 Hazen Drive, Concord, NH 03301, wish to restate and amend this grant of conservation easement to permanently eliminate all references to the previously exercised reserved right to withdraw and subdivide a portion of the protected property with frontage on Bay Road and the Agricultural Area, consolidate Easement Areas A & B as described on the Survey (hereinafter the “Protected Property”) in a single conservation easement deed, and modify the right of first refusal to remove all reference to Exclusion Area “A” and “the House Lot”.

## 1. PURPOSES

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

- A. The assurance that the Protected Property will be retained in perpetuity in its scenic, forested, wetland and open space condition;
- B. The protection and conservation of the native biological diversity of the Great Bay watershed, including any rare plants and animals, exemplary natural communities, and significant wildlife habitats on the Protected Property, and more particularly the wetlands, beaver flowages, waterfowl habitat, and deer wintering habitat found on the Protected Property;
- C. The conservation and management of the Protected Property for the protection of water quality and aquatic habitat in the Great Bay estuary and its watershed;
- D. The protection and conservation of open spaces, particularly the wetlands and productive forest lands of which the Protected Property consists and of the wildlife habitat thereon; and
- E. The prevention of any use of the Protected Property that will significantly impair or interfere with any of the Purposes.

The Grantor intends that the Easement will encumber the Protected Property and confine the use of the Protected Property to such activities as are consistent with the Purposes of the Easement.

The Purposes are consistent with the clearly delineated open space conservation goals as stated in the Master Plan of the Town of Newmarket, amended 2002 which states: "The Town of Newmarket will promote the preservation of habitat for wildlife and humans whenever possible. The loss or degradation of habitat is a risk to Newmarket's residents and to wildlife. Those areas that are already established or best suited for forest and wildlife habitat, and only marginally suited for residential development, should be protected and managed for forest and wildlife." 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 land, water, forest, agricultural and wildlife resources." All of the Purposes are consistent with and in accordance with the U.S. Internal Revenue Code, Section 170(h).

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

## 2. USE LIMITATIONS (Subject to the Reserved Rights and Affirmative Rights set forth in Sections 3 and 4 respectively)

Any activity on or use of the Protected Property inconsistent with the Purposes is prohibited. Without limiting the generality of the foregoing, the following use limitations shall apply to the Protected

Property except as otherwise specifically provided in this Easement:

A. The Protected Property shall be maintained in perpetuity as open space without there being conducted thereon any residential, industrial or commercial activities except the sale of forest products that are an indirect tangential result of wildlife habitat management activities as provided for herein.

- i. For the purposes hereof, "wildlife habitat management" includes the establishment and maintenance of wildlife habitats that provide for game and non-game wildlife species native to the Seacoast Region of New Hampshire, with: (1) consideration given to the landscape context and habitat availability existing outside the boundaries of the Protected Property; and (2) emphasis on those species considered by the New Hampshire Fish and Game Department or the New Hampshire Natural Heritage Bureau to be rare or of conservation concern.
- ii. Wildlife Habitat Management shall be performed, if at all, as hereinafter specified in Section 3 hereof.

B. There shall be no removal, destruction or cutting of trees, shrubs or plants, planting of trees, shrubs or plants, use of fertilizers, or disturbance or change in the natural habitat in any manner except as provided for in this Section and Section 3 hereof.

C. The Protected Property shall not be subdivided except as provided for in Section 3 hereof.

D. No structure or improvement including, but not limited to, a dwelling, any portion of a septic system, portable or composting toilet, educational building, tennis court, swimming pool, dock, athletic field, pavilion, shooting range, aircraft landing strip, tower or mobile home, shall be constructed, placed, or introduced onto the Protected Property. However, ancillary structures and improvements including, but not limited to, a road, dam, fence, bridge, or culvert may be constructed, placed, or introduced onto the Protected Property only as necessary in the accomplishment of the conservation, or wildlife habitat management uses of the Protected Property and provided that they are not detrimental to the Purposes. Unpaved pedestrian trails and horse trails and wildlife blinds and nesting structures may be constructed, placed, or introduced onto the Protected Property only as necessary in the accomplishment of the limited noncommercial outdoor recreational or educational uses of the Protected Property and provided that they are not detrimental to the Purposes.

E. No removal, filling, or other disturbances of soil surface, or 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 conservation, wildlife habitat management or limited noncommercial outdoor recreation use of the Protected Property;
- ii. do not harm state or federally recognized rare, threatened, or endangered species or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species;
- iii. are not detrimental to the Purposes of the Easement; and

iv. have received all necessary federal, state, local, and other governmental permits and approvals.

F. No outdoor advertising structures such as signs and billboards shall be displayed on the Protected Property except as desirable or necessary in the accomplishment of the wildlife habitat management, conservation, outdoor education, or limited noncommercial outdoor recreational uses of the Protected Property, and provided such signs are not detrimental to the Purposes of the Easement. No sign shall exceed 32 square feet in size and no sign shall be artificially illuminated.

G. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil or other similar materials on the Protected Property, except in connection with any improvements made pursuant to the provisions of Sections 2.A., B., D., or E. above.

H. There shall be no dumping, injection, burning, or burial of biosolids, man-made materials or materials then known to be environmentally hazardous on, in or upon the Protected Property.

I. There shall be no intentional introduction of invasive non-native plants or animals to the Protected Property.

J. Except as provided for in Sections 3.B. and 3.C. below, no party shall be given permission to ride or use snowmobiles, ride or use horses, operate bicycles, or to operate motorized all-terrain vehicles or other off highway recreational vehicles (as defined in RSA 215-A: 1 as of the date of execution of this Easement) in or upon the Protected Property.

K. There shall be no pollution, alteration, depletion, or extraction of surface or subsurface water, natural water courses, ponds, marshes or any other water bodies located within the Protected Property, nor shall there be activities conducted on the Protected Property which would be detrimental to water purity, or which could alter natural water level and/or flow in or over the Protected Property. Alteration of natural water courses, water level or flow shall be permitted only to the extent necessary to accomplish the permitted uses of the Protected Property and shall be, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations " (NH Division of Forest & Lands, 2016).

### 3. RESERVED RIGHTS

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

i. The stewardship goals are:

- Protection of fragile or highly erodible soils and maintenance of soil productivity;
- Protection of water quality, aquatic habitat, and the ecological integrity of wetlands and riparian zones;

- Maintenance or enhancement of native biological diversity and natural habitat values found on the Protected Property and representative of the Seacoast Region;
- Identification, protection, and conservation of exemplary natural communities, unique or fragile natural areas, and rare plant and animal species on the Protected Property, particularly those unique to or concentrated in the Seacoast Region as identified by the Nongame and Endangered Wildlife Program, the New Hampshire Natural Heritage Bureau, or their successor entities; and
- Protection of unique historic and cultural features.

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

- To maintain or improve current distributions of waterfowl and other migratory bird populations and to help maintain optimum population levels, distributions and patterns of migration
- To protect, enhance, restore and manage an appropriate distribution and diversity of wetland ecosystems and other habitats essential and significant for migratory birds, fish, shellfish and other wildlife.
- • To protect, enhance, restore and manage exemplary and characteristic coastal natural communities and habitats for rare, threatened and endangered species of animals and plants and natural communities.
- To protect natural areas that are important for aesthetic purposes and provide for quality public recreation and outdoor educational opportunities that are compatible with the waterfowl and wildlife resources and their management, and rare, threatened and endangered species and natural communities and their protection. To manage in consideration of a landscape perspective that respects the integrity of the ecosystem of the entire surrounding area. iii. Such land and wildlife habitat management shall be performed in accordance with a written Stewardship Plan consistent with the Easement, prepared by a licensed professional forester, a certified wildlife biologist, or by other qualified person and approved by the Grantee and the Grantor. Any person other than a licensed professional forester or a certified wildlife biologist shall only be considered qualified under the Easement if approved in advance and in writing by the Grantee and the Grantor.

Said plan shall have been prepared not more than ten years prior to the date any management is expected to commence. Plans prepared more than 10 years prior to the anticipated management date must be reviewed and updated by a licensed professional forester, certified wildlife biologist or other qualified person to be consistent with the Easement.

In the event that the Grantor proposes a land use, land management or wildlife habitat management activity not included in a previously submitted Stewardship Plan, the Grantor shall submit amendments to the Stewardship Plan for the Grantee's approval prior to conducting any alternative use or activity. Such amendments need not include all Stewardship Plan elements described above.

iv. Prior to commencing wildlife habitat management activities, if any, or other significant land management activities, the Grantor shall submit an initial draft Stewardship Plan, update or amendment, prepared as outlined in this Easement, to the Grantee for review and input

regarding the Stewardship Plan's compliance with the Easement. After considering the review and input from the Grantee, and at least sixty (60) days prior to commencing wildlife habitat management activities, if any, or other significant land management activities, the Grantor shall submit the final draft Stewardship Plan to the Grantee for approval. Within forty-five (45) days after the Grantee's receipt of the draft submission, the Grantee shall approve or disapprove the draft Stewardship Plan based upon the degree to which it complies with the Easement and so inform the Grantor in writing. Any disapproval shall specify in detail the reasons therefore. The Grantee's failure to respond within forty-five (45) days shall constitute an approval. The Grantee acknowledges that the plan's purpose is to guide wildlife habitat management activities in compliance with this Easement and that the actual activities will determine compliance herewith.

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

- The long-term protection of the Purposes of the Easement;
- The goals in Section 3.A. above; A statement of landowner management objectives consistent with the Purposes of the Easement and the stewardship goals stated above;
- A boundary map with access roads and either land cover types or natural communities delineated and a map or maps which delineate significant wildlife habitat, topography, soils, wetlands, streams, and ponds;
- A description of the Protected Property's conditions and natural features including land cover, topography, soils, geology, wetlands, streams and ponds, and wildlife habitat features;
- Identification of plant and wildlife species and natural communities of conservation concern, and how management shall enhance said plants, wildlife and natural communities;
- Public access locations and allowed outdoor educational and recreational uses;
- Recommended management prescriptions; and a recommended schedule of implementation of management prescriptions, including a schedule for boundary, road and trail maintenance.

vi. Wildlife habitat management and land management shall be conducted in accordance with said Stewardship Plan and be supervised by a certified wildlife biologist, licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.

vii. Wildlife habitat management and land management shall be carried out in accordance with all applicable local, state, federal, and other governmental 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 Protected Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations" (NH Division of Forests & Lands, 2016) and "Good Forestry in the Granite State: Recommended Voluntary Forestry Management Practices for New Hampshire" (Bennett, Karen P. editor, 2010), or similar successor publications.

B. The Grantor reserves the right to operate and permit the operation of motorized vehicles, tractors and motorized all-terrain vehicles or other off-highway recreational vehicles (as defined in RSA 215-A:1

as of the date of execution of this Easement) solely for the purposes of conducting the Grantor's maintenance and management of the Protected Property, and for emergency or law enforcement purposes.

- C. The Grantor or any member of the Grantor's family or the Grantor's guests, but not the public, shall have the right to ride or use horses on the Protected Property for low impact non-commercial recreational purposes. Any trail construction and maintenance associated with this right shall be performed in accordance with "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (Bureau of Trails, 2004), or similar successor publication. The Grantor shall clearly post at the entrance(s) to any trails constructed by the Grantor pursuant to this right that the trails are not open to the public for the riding or use of horses.
- D. The Grantor reserves the right to: (a) cut and remove hazard trees, shrubs, or plants; and (b) cut trees for the sole purpose of providing firewood to the Grantor for the Grantor's sole non-commercial use. Both (a) and (b) do not require the Grantor to prepare a Stewardship Plan and can be conducted without notification to the Grantee.
- E. Notwithstanding the provisions of Section 2, the members of the Love-Popov-Doppelt Family as defined in Section 13.B shall have the right as further described in paragraph ii below to withdraw land from the Protected Property for the purpose and use of constructing a single family residence with buildings customarily accessory to residential use, subject to all of the following conditions:
  - i. Before exercising the reserved right to withdraw the House Lot from the Protected Property, the Love-Popov-Doppelt Family member(s) exercising the right must notify the Grantee of the proposed action;
  - ii. The House Lot withdrawal from the Protected Property shall not be greater than two (2) acres when combined with the area shown as "Excluded Area B" on the Survey unless the minimum lot size required by the then current zoning regulations of the Town of Newmarket for a single family residence is larger than two (2) acres (such minimum lot size required by the then current zoning regulations of the Town of Newmarket, the "Minimum **Required Lot Size**"), provided, however, that: (a) in no event shall the House Lot exceed the Minimum Required Lot Size; and (b) in the event that the Minimum Required Lot Size is more than three (3) acres, the Grantee may, at its option, require that the Love-Popov-Doppelt Family member(s) exercising the right clearly delineate on the survey described in the following paragraph a three (3) acre portion of the House Lot that includes Exclusion Area B. If the House Lot is greater than (3) acres, at the sole option of the Grantee, that portion of the House Lot outside of the three (3) acres designated by the Love-Popov-Doppelt Family member(s) may remain subject to the terms and conditions of this Easement;
  - iii. The member(s) of the Love-Popov-Doppelt Family exercising the above-described right shall, at his, her or their own expense, at the time of the exercise of this right, obtain a survey plan prepared by a licensed New Hampshire surveyor, showing the House Lot and, if applicable, the delineated three (3) acres, and shall record said

survey at the Rockingham County Registry of Deeds;

- iv. All necessary permits and approvals shall be secured at the expense of the Love-Popov-Doppelt Family member exercising the right;
- v. The Grantor understands and agrees that until such time as the survey plan described in subparagraph "iii" above is recorded, if at all, the entire Protected Property described in Exhibit A shall remain subject to all of the provisions of this Easement; and
- vi. The rights set forth in this Section for the benefit of the Grantor and members of the Love-Popov-Doppelt Family shall expire upon the transfer of the Protected Property to anyone other than one or more members of the Love-Popov-Doppelt Family.

#### 4. AFFIRMATIVE RIGHTS

To accomplish the Purposes of the Easement, the following rights are hereby conveyed to the Grantee:

A. Through the auspices of the Grantee, the public has the right of non-motorized, non-wheeled, non-commercial pedestrian access, in perpetuity, on and across the Protected Property for pedestrian uses such as hunting, fishing, trapping, hiking, and nature observation, in accordance with current laws and regulations, provided, however, that such hunting shall be limited to: (1) waterfowl hunting; (2) falconry; (3) wild turkey hunting; and (4) ruffed grouse and woodcock hunting during those times when such hunting is permitted by the State of New Hampshire. The right of overnight camping, motorized access or construction of fires on the Protected Property by the public is not hereby conveyed. After obtaining written permission from the Grantee, such permission not to be unreasonably withheld, the Grantor may post:

- i. any portion of the Protected Property should it deem such posting to be necessary to protect the Purposes of the Easement,
- ii. any portion of the Protected Property against public use during active wildlife habitat management activities.

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

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

A. The Grantor agrees to notify the Grantee in writing at least thirty (30) days before the transfer of title to the Protected Property or any part of Excluded Area B including, without limitation, the House Lot.

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

## 6. BENEFITS, BURDENS, AND ACCESS

A. The burden of the Easement conveyed hereby shall run with the Protected Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of the 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 Easement and the Purposes of the Easement. Any such assignee or transferee shall have like power of assignment or transfer.

B. The Grantee shall have reasonable access to the Protected Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce the Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.

## 7. DISCRETIONARY CONSENT

The Grantee's consent for activities otherwise prohibited under Section 2 above, or for any activities requiring the Grantee's consent under Section 3 above, may be given under the following conditions and circumstances. If owing to unforeseen or changed circumstances, any of the activities listed in Section 2 are deemed desirable by the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission and permission for activities requiring the Grantee's consent under Section 3, shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the Purposes of the Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the Purposes of the Easement and (2) either enhance or do not impair any significant conservation interests associated with the Protected Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any such activities that would result in the termination of the Easement or to allow any residential, commercial or industrial structures or any commercial or industrial activities not provided for above.

## 8. BREACH OF EASEMENT

A. When a breach of the Easement or conduct by anyone inconsistent with the Easement comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach or conduct, delivered in hand or by certified mail, return receipt requested.

B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this subsection.

C. If the Grantor fails to take proper action under the preceding subsection, the Grantee shall, consistent with the Purposes of the Easement, undertake any actions that are reasonably necessary to

cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs, and legal fees, shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.

D. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Protected 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 Protected Property resulting from such causes.

E. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the Purposes of this Easement.

## 9. 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 below 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 delivered or so mailed to the addresses below:

The Grantor: Lela P. Love  
205 West 76<sup>th</sup> Street  
New York, NY 10023

The Grantee: New Hampshire Fish and Game Department  
11 Hazen Drive  
Concord, NH 03301

## 10. 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.

## 11. CONDEMNATION EXTINGUISHMENT

A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages

recovered.

B. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Property condemned. The values of the Grantor's and Grantee's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.

C. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation Purposes set forth herein.

## 12. ADDITIONAL EASEMENT

Should the Grantor determine that the Purposes of the 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 Purposes of the Easement are not diminished thereby and that a public agency or qualified organization described in Section 6.A. above, accepts and records the additional easement.

## 13. GRANT OF LIMITED RIGHT OF FIRST REFUSAL

A. Grant of Limited Right of First Refusal. In the event that the Grantor receives a bona fide written offer to purchase the Protected Property or any part thereof including, without limitation, Exclusion Area B, from any party who is not a member of the Love-Popov-Doppelt Family (as such capitalized terms are defined herein), which offer the Grantor has determined not to reject, the Grantor hereby: (a) agrees to deliver to the Grantee, by certified mail, return receipt requested, a duplicate original of the written offer, together with such other instruments as may be required to show the offer is made in good faith; and (b) grants the Grantee a one-time Right of First Refusal to purchase the Protected Property or all or any part of Exclusion Area B that is subject to such offer. The Grantee may elect to purchase the Protected Property or all or any part of Excluded Area B, at the offered price and upon such other terms and conditions not less favorable to the Grantor than those contained in the offer by giving to the Grantor by certified mail, return receipt requested, written notice of such election within ninety (90) days after delivery of the offer to the Grantee. If the Grantee fails to elect to exercise its right to purchase the Protected Property or any part thereof including Exclusion Area B, within the time period specified in the preceding sentence, or if the Grantee, after having made such election, fails to complete its purchase of the Protected Property (or part thereof including Exclusion Area B, without limitation, as the case may be), then the Grantor shall be free thereafter to accept the original bona fide offer and any resulting transfer of the Protected Property (or part thereof including Exclusion Area B, as the case may be), which acceptance shall extinguish the Grantee's Right of First Refusal pertaining thereto. If the transfer to such other party does not occur, then the provisions of this Section 13 shall apply to each subsequent bona fide offer to purchase the Protected Property or any part thereof including, without limitation Exclusion Area B.

B. For purposes of this Easement, the Love-Popov-Doppelt family (the "Love-Popov-Doppelt Family") includes Lela P. Love, any family member or lineal descendent of Lela P. Love and Peter N. Popov, or any individual married to any such lineal descendent, or any domestic partner of any such lineal

descendent or any adopted child of any such lineal descendent, or any entity, including but not limited to corporations, partnerships, limited liability companies, or trusts in which a Love-Popov-Doppelt Family member or lineal descendent of Peter N. Popov or Lela P. Love owns or has any equitable or beneficial interest in the Protected Property or the Excluded Area B.

#### 14. STANDING

By virtue of the Grantee's acquisition of rights under this Easement, it shall be entitled, at its option, to standing before appropriate courts of law to pursue remedies or other matters which are necessary or incidental to the protection of the Protected Property.

#### 15. PARTIES SUBJECT TO EASEMENT

The covenants agreed to and the terms, conditions, and restrictions imposed by the Easement shall not only be binding upon the Grantor but also upon its lessees, agents, personal representatives, successors and assigns, and all other successors in interest to the Grantor including, without limitation, members of the Love-Popov-Doppelt Family, and shall continue as a servitude running in perpetuity with the Protected Property.

#### 16. SUBSEQUENT TRANSFERS

The Grantor agrees that the terms, conditions, restrictions and Purposes of the Easement or reference thereto will be inserted by the Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or any possessory interest in the Protected Property.

#### 17. MERGER

The Grantor and the Grantee agree that the terms of the Easement shall: (a) survive any merger of the fee simple interest of the Grantor in the Protected Property and the easement interest in the Protected Property conveyed by this Easement; and (b) continue in perpetuity notwithstanding any such merger.

#### 18. EXTINGUISHMENT

The Grantor hereby agrees that at the time of the conveyance of the Easement to the Grantee, the Easement gives rise to a real property right, immediately vested in the Grantee, with a fair market value as of the date of the conveyance that is at least equal to that portion of the fair market value of the Protected Property which, as a result of this Easement, has been conveyed by the Grantor to the Grantee (such portion the "**Proportionate Value**"). That Proportionate Value conveyed hereby shall remain constant. If, despite the best efforts of the Grantee or any of its permitted assigns, a change in conditions takes place which makes it impossible or impractical to continue to protect the Protected Property in accordance with this Easement, and the restrictions contained herein are extinguished by judicial proceeding (which judicial proceeding shall include the exhaustion of all appeals undertaken to maintain the Easement), the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall use any share of the proceeds it may receive in a manner consistent with the conservation purpose set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or

similar ecosystem' as that phrase is used in and defined under P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder.

## 19. MISCELLANEOUS PROVISIONS

A. Successors and Assigns. The term "Grantor" includes the Grantor and the Grantor's heirs, executors, administrators, successors and assigns including, without limitation, members of the Love-Popov-Doppelt Family, and also means the masculine, feminine, corporate, singular or plural form of the word as needed in the context in which it may be used. The term "Grantee" includes the Grantee and its permitted successors and assigns.

B. Re-recording. The Grantee is authorized to record or file any notices or instruments appropriate to assure the perpetual enforceability of this Easement. For such purpose, the Grantor appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

C. Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon its construction or interpretation.

D. Counterparts. The Grantor and the Grantee may execute this Easement in two or more counterparts which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

## 20. MEDIATION.

A. Notwithstanding anything to the contrary contained herein, if a dispute arises between Grantor and Grantee concerning the consistency of any proposed use or activity with the Purposes of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request the dispute be referred to non-binding mediation by request made in writing upon the other party. The other party shall give its written consent or rejection of mediation within fourteen (14) days of receipt of the mediation request. Within thirty (30) days of any consent for mediation, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to the American Arbitration Association for the appointment of a trained and impartial mediator with relevant experience in real estate and conservation easements. Mediation shall then proceed in accordance with the following guidelines:

i. The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning issues in the dispute; and (iii) assist the parties to develop proposals that will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this Easement.

ii. The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement

authority will attend mediation sessions as requested by the mediator.

iii. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

iv. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of the selection or appointment of a mediator or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in mutually agreeable resolution of the dispute.

v. The cost of the mediator shall be shared equally by the Grantor and the Grantee. The parties shall bear their own expenses, including attorney's fees, individually.

The Grantee, by accepting and recording this Easement, agrees to (a) 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 Purposes for which this Easement is delivered, and (b) adhere to the requirements in the NOAA Award and the Notice of Grant Agreement recorded herewith.

TO HAVE AND TO HOLD this Easement unto the said Grantee forever.

IN WITNESS WHEREOF, the Grantor has executed and sealed this document the day and year first above -written.

GRANTOR:

\_\_\_\_\_  
Lela P. Love

STATE OF NEW HAMPSHIRE,  
COUNTY OF ROCKINGHAM, ss.

On this \_\_\_\_ day of December, 2018, before me personally appeared Lela P. Love, to me personally known, who, being by me duly sworn, did depose and say that she is the person named in the foregoing instrument, and acknowledged said instrument to be his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

ACCEPTED: STATE OF NEW HAMPSHIRE, FISH AND GAME DEPARTMENT

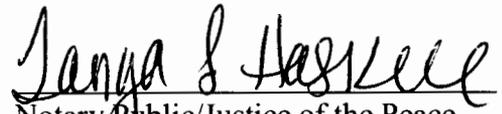
The State of New Hampshire, acting through its Fish and Game Department  
on this day 9 of Jan, 2018.

  
Glenn Normandeau, Executive Director

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK, ss.

Personally appeared before me on this 9th day of January, 2018, Glenn Normandeau who  
acknowledges himself to be the Executive Director for the New Hampshire Fish and Game Department,  
and as such is duly authorized to executed the foregoing instrument for the purposes therein contained,  
by signing his name on behalf of the ~~State of~~ New Hampshire.



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

Approved by the Governor and Executive Council:

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

## EXHIBIT A DESCRIPTION OF PROTECTED PROPERTY

An area of land shown as Easement Area "A" and Easement Area "B" on a plan entitled "Boundary Line Adjustment Plan for Lela P. Love between Tax Map R1, Lot 3 (Newmarket) & Tax Map R1, Lot 4-1 (Newmarket), Tax Map 19, Lot 23-0 (Durham)", dated April 6, 2016 and recorded at the Rockingham County Registry of Deeds on July 13, 2016, Plan #D-39567

Beginning at a drill hole at the intersection of stone walls on the northerly side of Bay Road in the Town of Newmarket, County of Rockingham, State of New Hampshire, said point being the southeasterly corner of land of Larry J. & Margaret A. Nay and the southwesterly corner of the easement area herein described;

Thence along said stone wall and land of said Nay the following courses:

N 11°19'13" W a distance of 85.18' to a drill hole;

thence N 09°37'28" W a distance of 59.45' to a drill hole at the end of said stone wall;

thence N 12°15'32.11" W a distance of 8.45' to a drill hole at the beginning of a stone wall;

thence along said stone wall N 10° 16'37" W a distance of 86.93' to a drill hole at the end of said stone wall;

thence N 12°54'05" W a distance of 12.73' to a 5/8" re-bar at the beginning of a stone wall;

thence along said stone wall N 10°29'10" W a distance of 6.05' to a drill hole at a corner in said stone wall;

thence turning away from said stone wall and running S 79°53'05" W a distance of 159.91' to an iron pipe at land of David M. & Joan R. Deyoreo;

thence along land of said Deyoreo S 79°55'40" W a distance of 121.65' to a drill hole in a stone wall at land of the Frederick C. Pearson III 2003 Trust;

thence along said stone wall and land of said Pearson Trust the following courses:

N 05°59'29" W a distance of 59.76' to a drill hole;

thence N 05°34'25" W a distance of 123.82' to a drill hole;

thence N 76°09'20" E a distance of 100.83' to a drill hole;

thence N 07°49'51" W a distance of 123.88' to a drill hole;

thence N 06°56'23" W a distance of 119.15' to a drill hole at the end of said stone wall in a swamp;

thence N 07°27'12" W a distance of 1572.86' through said swamp to a point on the town line between Newmarket and Durham at Easement Area "B", as shown on the Plan;

thence N 07°27'12" W a distance of 343.91' to a tree;

thence N 03°31'29" W a distance of 63.46' to a tree;  
thence N 11°14'19" W a distance of 114.04' to a tree;  
thence N 06°15'32" W a distance of 69.76' to a tree;  
thence N 03°48'43" W a distance of 63.21' to a tree;  
thence N 08°20'08" W a distance of 74.08' to a stump;  
thence N 03°20'46" W a distance of 88.77' to a tree;  
thence N 79°02'18" E a distance of 24.00' to a tree;  
thence N 84°48'41" E a distance of 45.71' to a tree;  
thence N 89°04'20" E a distance of 64.46' to a tree;  
thence N 86°04'36" E a distance of 148.73' to a tree;  
thence S 89°56'10" E a distance of 74.61' to a tree;  
thence N 87°20'01" E a distance of 41.51' to a tree;  
thence N 85°37'48" E a distance of 16.71' to a stump;  
thence N 89°36'40" E a distance of 78.50' to a tree;  
thence N 74°31'37" E a distance of 55.20' to a tree;  
thence N 59°24'38" E a distance of 66.86' to a tree;  
thence N 57°58'51" E a distance of 30.95' to a tree;  
thence N 39°54'32" E a distance of 42.91' to a tree;  
thence N 75°31'56" E a distance of 62.71' to a tree;  
thence N 54°55'05" E a distance of 118.36' to a tree;  
thence N 55°39'25" E a distance of 111.08' to a tree;  
thence N 48°17'05" E a distance of 69.43' to a tree;  
thence N 63°27'27" E a distance of 44.65' to a tree;  
thence N 51°12'57" E a distance of 28.22' to a tree;  
thence N 55°28'10" E a distance of 36.76' to a drill hole at the beginning of a stone wall;  
thence along said stone wall the following courses: N 61°12'15" E a distance of 68.02' to a drill hole;  
thence N 69°28'23" E a distance of 43.32' to a drill hole;  
thence N 80°50'25" E a distance of 32.47' to a drill hole;  
thence N 75°45'39" E a distance of 25.13' to a drill hole at the end of said stone wall;  
thence N 80°36'03" E a distance of 81.64' to a tree;  
thence S 77°17'39" E a distance of 313.92' to a tree at land of Lela Love;  
thence along land of said Love the following courses: S 8°07'33" E a distance of 805.21' to a stump;  
thence S 02°03'13" W a distance of 96.14' to a stump;  
thence S 00°06'21" E a distance of 56.46' to a stump;

thence S 05°23'41" W a distance of 118.26' to a stump;  
thence S 13°52'14" W a distance of 13.97' to a stump;  
thence S 00°17'34" W a distance of 62.92' to a tree;  
thence S 15°27'40" W a distance of 34.46' to a stump;  
thence S 23°00'04" W a distance of 15.49' to a stump;  
thence S 00°25'34" E a distance of 63.78' to a stump;  
thence S 04°32'47" W a distance of 17.09' to a stump;  
thence S 15°09'53" E a distance of 20.01' to a stump;  
thence S 49°07'53" E a distance of 45.23' to a tree;  
thence S 06°07'21" E a distance of 121.14' to a stump;  
thence S 04°43'31" W a distance of 121.63' to a stump;  
thence S 09°02'36" E a distance of 13.22' to a stump;  
thence S 00°24'31" W a distance of 19.90' to a tree;  
thence S 06°44'56" W a distance of 23.22' to a tree;  
thence S 03°54'07" E a distance of 29.99' to a tree;  
thence S 08°55'35" E a distance of 20.97' to a stump;  
thence S 02°46'55" E a distance of 19.43' to a tree;  
thence S 02°32'18" E a distance of 109.61' to a tree;  
  
thence S 03°22'11" E a distance of 73.88' to a tree;  
thence S 20°05'44" W a distance of 17.06' to a tree;  
thence S 02°02'28" E a distance of 92.25' to a 5/8" pin in ledge at land of Rachel Love & Per Lorentzen;  
thence along land of said Love & Lorentzen S 88°59'11" W a distance of 334.47' to a 5/8" re-bar at land  
of Three Birds Revocable Trust;  
thence along land of said Three Birds Revocable Trust the following courses: S 88°58'57" W a distance  
of 209.46' to a 5/8" re-bar;  
thence S 00°59'55" E a distance of 690.99' to a 5/8" re-bar;  
thence S 03°58'56" E a distance of 341.48' to a 5/8" rebar;  
thence along Exclusion Area "B" S 78°07'32" W a distance of 227.58' to a drill hole at an intersection of  
stone walls at Easement Area "A";  
thence S 78°44'53" W a distance of 134.28' along a stone wall to a drill hole;  
thence S 81°28'40" W a distance of 121.74' along a stone wall to a drill hole;  
thence S 78°47'34" W a distance 13.24' along a stone wall to a drill hole;  
thence S 81°06'43" W a distance of 31.33' along a stone wall to a drill hole;

thence S 16°00'57" W a distance of 36.90' along a stone wall;  
thence S82°07'42" W a distance of 14.03' along a stone wall;  
thence N 72°33'08" W a distance of 19.45' along a stone wall;  
thence N 59°22'20" W a distance of 35.62' along a stone wall;  
thence S 80°54'51" W a distance of 48.05' along a stone wall;  
thence N 09°36'16" W a distance of 255.75 feet to the northerly side of Bay Road to a drill hole found;  
thence S 72°12'52" W a distance of 12.25 feet along the northerly side of Bay Road to a drill hole found;  
thence S 68°07'34" W a distance of 4.81 feet to the point of beginning.

Said area contains Easement Area A (27.324 acres) and Easement Area B (63.365 acres) totaling 90.689 acres.