



The State of New Hampshire
Department of Environmental Services



Clark B. Freise, Assistant Commissioner

May 4, 2017

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

REQUESTED ACTION

Authorize the Department of Environmental Services to award a Local Source Water Protection grant to the Southeast Land Trust of New Hampshire (VC #155425) in the amount of \$20,000 to complete a project to protect public drinking water systems, effective upon Governor and Council approval through December 31, 2018. 100% Federal Funds.

Funding is available as follows:

	<u>FY2017</u>
03-44-44-441018-4718-072-500574	\$20,000
Dept. Environmental Services, DWSRF Administration, Grants- Federal	

EXPLANATION

The Department of Environmental Services issued a request for proposals for 2017 Local Source Water Protection Grants. These grants are funded by set-asides under the Drinking Water State Revolving Loan Fund. Nineteen proposals were received. The proposals were evaluated and ranked based on criteria included in the request for proposals, such as whether the project fulfills a component of a source water protection program, that the proposed project addresses appropriate threats, and that the project will deliver a valuable and useful product. Based on the available federal funding, the Department determined that it could offer grants to nine source protection planning projects and six source security projects. See attachment A for the full list of grants awarded and list of reviewers.

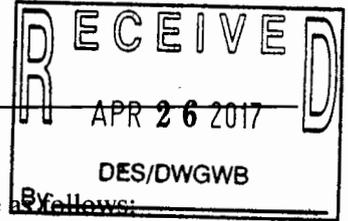
The Southeast Land Trust of NH will use grant funds to support transactional costs related to the permanent protection of a tract of land known as the Bullwinkle property through acquiring a conservation easement on the property. By permanently conserving this property, the threat of potential contamination from incompatible uses in close proximity to the City of Rochester's public water supply should be significantly reduced.

This agreement has been approved as to form, substance, and execution by the Office of the Attorney General. In the event that federal funds no longer become available, General funds will not be requested to support this program. This grant award, while less than \$25,000 threshold, requires G&C approval as the Southeast Land Trust of New Hampshire has already received funds in excess of the threshold for this fiscal year.

We respectfully request your approval.


for Clark Freise
Assistant Commissioner

Subject: Southeast Land Trust of New Hampshire



GRANT AGREEMENT

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

GENERAL PROVISIONS

I. IDENTIFICATIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302-0095	
1.3 Grantee Name: Southeast Land Trust of New Hampshire		1.4 Grantee Address 6 Center St. PO Box 675, Exeter, NH 03833	
1.5 Effective Date Upon G&C approval	1.6 Completion Date December 31, 2018	1.7 Audit Date N/A	1.8 Grant Limitation \$20,000
1.9 Grant Officer for State Agency Amy Hudnor, NH Department of Environmental Services		1.10 State Agency Telephone Number (603) 271- 2950	
1.11 Grantee Signature 		1.12 Name & Title of Grantee Signor Brian Hart, Ex. Director	
1.13 Acknowledgment: State of <u>New Hampshire</u> , County of <u>Rockingham</u> On <u>4/20/2017</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal)		BEVERLY A. SHADLEY, Notary Public State of New Hampshire My Commission Expires March 23, 2022	
1.13.2 Name & Title of Notary Public or Justice of the Peace Beverly Shadley			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) Sarah Yukas Kinn, Administrator NH Dept. of Environmental Services	
1.16 Approval by Attorney General's Office (Form, Substance and Execution) By: Attorney, On: 5/12/17			
1.17 Approval by the Governor and Council By: _____ On: / /			

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

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

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

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

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

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

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

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

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

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

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

6. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.**

In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS.**

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

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

affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

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

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

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

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

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

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

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

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

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

10. **CONDITIONAL NATURE OF AGREEMENT.**

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

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

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

11.1.1 failure to perform the Project satisfactorily or on schedule; or
11.1.2 failure to submit any report required hereunder; or
11.1.3 failure to maintain, or permit access to, the records required hereunder; or

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

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

11.2.1 give the Grantee a written notice specifying the Event of

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

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

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

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

12. TERMINATION.

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

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

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

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

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

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

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

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

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

17. INSURANCE AND BOND.

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

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

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

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

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

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

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

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

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

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

EXHIBIT A
SCOPE OF WORK

Southeast Land Trust of NH:

The Southeast Land Trust of NH (SELT) will use New Hampshire Department of Environmental Services (NHDES) grant funds to support transactional costs related to the permanent protection of an approximately 60-acre tract of land known as the Bullwinkle property through acquiring a conservation easement on the property. By permanently conserving this property, the threat of potential contamination from incompatible uses in close proximity to the City of Rochester's public water supply should be significantly reduced. Grant funds will not be used for the purchase of land or easements. Specifically, the following task, as described in the application submitted to NHDES, will be accomplished:

1. Due Diligence, Easement Stewardship and Legal Defense Fund

SELT will use funds to contribute toward due diligence/transaction costs for the Bullwinkle property such as: survey, appraisal, legal fees, title research and insurance, hazardous waste assessment and recording fees. Copies of subcontractor invoices and final materials associated with this due diligence will be provided to NHDES. SELT will also steward the conservation easement that will be placed on the Bullwinkle property. SELT will contribute grant funds to the conservation easement stewardship fund and legal defense fund for the conservation easement. SELT will demonstrate to NHDES that the amount contributed to the stewardship and legal defense funds was determined according to a written policy that complies with the applicable standards and practices of the Land Trust Alliance. A draft of the conservation easement will be provided to NHDES for review and copy of the final conservation easement for the property will be provided to NHDES.

Quarterly progress report forms must be completed by grant recipients or their subcontractor and submitted to NHDES every three months, beginning with the first full 3 month quarter after Governor and Council approval.

Grantee Initials *BVA*
Date *4/20/2017*

EXHIBIT B
BUDGET & PAYMENT METHOD

All services shall be performed to the satisfaction of the Department of Environmental Services before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of the associated invoice. **If the invoice is less than the initial estimate, only the amount on the invoice will be paid.** Payments shall be made in accordance with the following schedule, based upon completion of specific tasks:

Task Number/Description	Source Water Protection Grant
1. Contribute to the due diligence costs for the Bullwinkle project, such as a survey, appraisal, legal fees, title research and insurance, hazardous waste assessment, recording fees. Contribute to the easement stewardship and legal defense funds.	\$20,000.00
TOTAL	\$20,000.00

EXHIBIT C
SPECIAL PROVISIONS

Subparagraph 1.7 of the General Provisions shall not apply to this Agreement. The comprehensive public liability insurance against all claims of bodily injuries, death, or property damage under Subparagraph 17.1.2 of the General Provisions shall be reduced from \$2,000,000 to \$1,000,000 for bodily injury or death in any one incident. A reduction from the State's standard liability coverage is warranted in light of the minimal risk associated with the activities required under this contract.

Changes to the Scope of Work or reallocation of grant funds require NHDES approval in advance.

Work must be completed by the completion date listed on the grant agreement (section 1.6). Requests for payment along with required proof of work must be submitted no later than 90 days after the completion date or the grant will be closed out and funds will no longer be available.

If a deadline extension is requested, the grantee must make that request for approval at least two months before the completion date. Failure to do so may result in lower rankings of future grant applications.

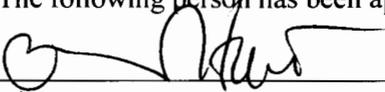
Federal Funds paid under this agreement are from a Grant to the State from the U.S. Environmental Protection Agency, Drinking Water State Revolving Fund Set-Asides under CFDA #66.468. All applicable requirements, regulations, provisions, terms and conditions of this Federal Grant are hereby adopted in full force and effect to the relationship between this Department and the grantee.

Grantee Initials *BA*
Date *4/28/2017*

CERTIFICATE of AUTHORITY

I, Roger Stephenson, President of the Southeast Land Trust of New Hampshire, do hereby certify that:

1. I am the duly elected President of the Southeast Land Trust of New Hampshire;
2. The Southeast Land Trust of New Hampshire has agreed to accept New Hampshire Department of Environmental Services Local Source Water Protection Grant funds and to enter into a contract with the New Hampshire Department of Environmental Services for the Bullwinkle project in Farmington;
3. The Board for the Southeast Land Trust of New Hampshire further authorized the Executive Director to execute any documents which may be necessary for this contract;
4. This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
5. The following person has been appointed to and now occupies the office indicated in (3) above:



 Brian Hart

 Executive Director

IN WITNESS WHEREOF, I have hereunto set my hand as the President of the Southeast Land Trust of New Hampshire, on this date 4-21-17.



 Roger Stephenson

 President

STATE OF NEW HAMPSHIRE

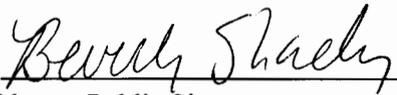
County of Rockingham

On this the 20th day of April, before me Beverly Shadley

 Notary Public

the undersigned officer, personally appeared Roger Stephenson who acknowledged him to be the President of the Organization being authorized so to do, executed the foregoing instrument for the purpose therein contained.

In witness whereof, I have set my hand and official seal.



 Notary Public Signature

Commission Expiration Date: 3/23/21
 (Seal)

BEVERLY A. SHADLEY, Notary Public
State of New Hampshire
My Commission Expires March 23, 2021

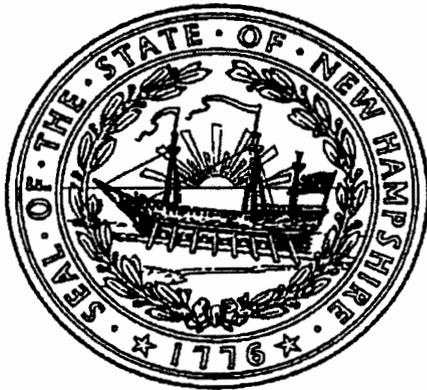
State of New Hampshire

Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that SOUTHEAST LAND TRUST OF NEW HAMPSHIRE is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on March 21, 1980. 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: 64227



IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 15th day of February A.D. 2017.

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

William M. Gardner
Secretary of State

**Attachment A
2017 Local Source Water Protection Grant Listing**

Grant Reviewer List

Name	Department	Bureau	Title	Justification (Experience)
Paul Susca	NHDES	Drinking Water & Groundwater Bureau	Administrator III	Source Water Protection Program Manager (12 years)
Pierce Rigrod	NHDES	Drinking Water & Groundwater Bureau	Supervisor VII	Grant Project Management (12 years)
Amy Hudnor	NHDES	Drinking Water & Groundwater Bureau	Program Planner I	Grant Project Management (4 years)

Applications and Status

Source Protection Planning Projects

Grant Applicant	Location	Grant Amount	Notes
Bear-Paw Regional Greenways	Deerfield	\$7,080.00	
City of Manchester	Manchester	\$20,000.00	
City of Manchester	Manchester	\$20,000.00	
Granite State Rural Water Assoc.	Walpole	\$19,563.00	
Lakes Region Planning Commission	Meredith	\$15,000.00	
Rockingham Planning Commission	Exeter	\$10,580.00	
Southeast Land Trust of NH	Exeter	\$20,000.00	
Strafford Regional Planning Commission	Rochester	\$18,722.00	
Upper Saco Valley Land Trust	North Conway	\$20,000.00	
Pennichuck Water Works	Merrimack	\$20,000.00	Unable to fund
North Haverhill Water and Light	Haverhill	\$20,000.00	Unable to fund

Source Security Projects

Grant Applicant	Location	Grant Amount	Notes
City of Claremont	Claremont	\$5,348.00	
City of Dover	Dover	\$20,000.00	
Epsom Village Water Dist.	Epsom	\$12,000.00	
Ladd Hill Cooperative	Belmont	\$3,620.00	
Newfields Village Water and Sewer	Newfields	\$5,000.00	
Town of Troy	Troy	\$15,662.00	
Newton Learning Center	Newton	\$4,831.00	Unable to fund
View Point Cooperative	Swanzey	\$10,000.00	Unable to fund