



# New Hampshire Fish and Game Department

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

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 FAX (603) 271-1438  
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December 18, 2014

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

## REQUESTED ACTION

1. Authorize the New Hampshire Fish and Game Department (NHFG) to acquire conservation easements on 1321+/- acres in Conway from The Nature Conservancy (Vendor Code 177785) in the amount of \$234,000, effective upon Governor and Council approval through June 30, 2015. Funding is 100% Federal.

Funding for this purchase is available as follows:

03 75 75 751520-2155 Wildlife Program – Wildlife Habitat Conservation

	<u>FY2015</u>
020-07500-21550000-305-500845 Habitat Acquisition and Management	\$234,000.00

2. Authorize the New Hampshire Fish and Game Department to deposit \$22,000 in the New Hampshire Land Conservation Endowment held by the Department of Treasury for conservation easement monitoring and stewardship by the Office of Energy and Planning, Conservation Stewardship Program on behalf of NHFG pursuant to RSA 162-C:8 and enabled by an MOA approved by Governor and Executive Council on July 24, 2013, Item 37. Funding is 100% other (Wildlife Habitat Funds).

Funding for this expense is available as follows:

03 75 75 751520-2155 Wildlife Program – Wildlife Habitat Conservation

	<u>FY2015</u>
020-07500-21550000-305-500845 Habitat Acquisition and Management	\$22,000.00

## EXPLANATION

NHFG proposes to acquire 2 conservation easements on 1,321+/- acres in the Green Hills of Conway from The Nature Conservancy for a total cost of \$234,000. Funding is available from the U.S. Fish and Wildlife Service's Wildlife Restoration Program. The conservation easements will ensure the long term

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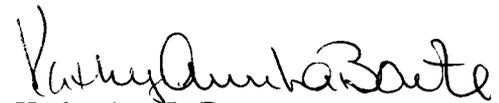
protection of the wildlife habitat on the properties including extensive areas of deer wintering habitat. It will also ensure the permanent availability of the property for hunting, fishing and other wildlife related activities.

The Department also seeks authorization to deposit \$22,000 in the State's Land Conservation Endowment fund to permanently endow monitoring and stewardship responsibilities for the conservation easements. Proceeds from the investment of these funds will be provided to the Land Conservation Stewardship Program at the Office of Energy and Planning to accept responsibility for the monitoring and stewardship of the properties.

Respectfully submitted,



Glenn Normandeau  
Executive Director



Kathy Ann LaBonte  
Chief, Business Division





The within conveyance is a transfer to the State of New Hampshire and pursuant to RSA 78-B:2(I) it is exempt from the New Hampshire Real Estate Transfer Tax

### **Conservation Easement Deed**

THE NATURE CONSERVANCY, a nonprofit corporation incorporated under the laws of the District of Columbia as a tax exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (the "Code"), having its headquarters at 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203-1606 and a local address at 22 Bridge Street, 4th Floor, Concord, NH 03301 (hereinafter referred to as the "Grantor", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's successors and assigns),

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

the STATE OF NEW HAMPSHIRE, acting by and through the FISH AND GAME DEPARTMENT, with a principal office at 11 Hazen Drive, City of Concord, New Hampshire 03301 (hereinafter referred to as the "Grantee", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

a CONSERVATION EASEMENT hereinafter (hereinafter "Easement") described with respect to that certain parcel of land (hereinafter "Property") being unimproved land, consisting of approximately 308.41 acres, accessible by a right of way located off of East Conway Road in the Town of Conway, County of Carroll State of New Hampshire, more particularly bounded and described in Appendix A attached hereto and made a part hereof and as shown on a Plan entitled \_\_\_\_\_.

The Grantee has identified the area as critical wildlife habitat which is part of a large unfragmented forest tract and includes an extensive deer yard, and the Property provides significant habitat for numerous species of wildlife.

#### **1. PURPOSES**

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

A. To retain the PROPERTY forever in its undeveloped state for significant wildlife habitat including wetlands and uplands, and to prevent any use of the Property that will impair or interfere with its conservation values;

B. To protect the Property from future development, to conserve and manage the natural vegetation, soils, hydrology, natural habitats, wildlife habitats, wetlands, uplands, and open spaces of which the Property consists, and to conserve and maintain its unique characteristics substantially in its present scenic and open space condition, the preservation of which is important to the public and will serve the public interest in a manner consistent with New Hampshire RSA 477:45-47;

C. To further the goals of the NH Wildlife Action Plan, including but not limited to the protection, management and enhancement of wildlife habitats and to provide the public access to those resources;

D. To provide for low-impact non-commercial outdoor recreation by the general public for such activities as hiking, bird watching, cross-country skiing, hunting, fishing and trapping as defined in NH RSA 210:11.

The above purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the \_\_\_\_\_ Master Plan of the Town of Conway, which states " \_\_\_\_\_ " 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."

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

All of these Purposes are consistent and in accordance with the Section 170(h) of the Code.

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

## **2. USE LIMITATIONS**

Subject to provisions specified in Sections 3, 4, and 5 below:

Any activity on or use of the Property inconsistent with the Purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following use limitations shall apply to the Property except as otherwise specifically provided by the Easement:

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except forestry, including timber harvesting in accordance with a stewardship plan approved by Grantee as described in Section 3 herein and provided that the productive capacity of the Property to support native wildlife populations shall not be degraded by on-site activities.

i. For the purposes hereof, "Forestry" shall include the growing, stocking, cutting, and sale of forest trees of any size for forest products or "Wildlife Habitat Management" (as defined below) but not for nursery production; and the construction of roads or other access-ways for the purpose of removing forest products from the Property, all as not detrimental to the Purposes of this Easement.

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

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

- maintenance or enhancement of the Property's fish and wildlife habitat values;
- maintenance of soil productivity and protection against soil erosion;
- protection of water quality, wetlands, and riparian zones;
- protection of rare plants & animals;
- protection of unique or fragile natural areas;
- conservation of native plant and animal species;
- protection of unique historic and cultural features; and
- protection of passive non-commercial recreational qualities.

B. The Property shall not be subdivided or otherwise divided into parcels of separate distinct ownership and none of the individual tracts, which together comprise the Property, shall be conveyed separately from one another, unless approved by the Grantee in writing.

C. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, parking lot, portable or composting toilet, educational building, tennis court, swimming pool, dock, athletic field, pavilion, shooting range, aircraft landing strip, tower or mobile home, shall be constructed, placed, or introduced onto the Property, provided, however, that -

i. ancillary structures and improvements including, but not limited to, an unpaved road, dam, gate, fence, bridge, culvert or wildlife nest structure may be constructed, placed, or introduced onto the Property only to the extent necessary to accomplish the Forestry, conservation or Wildlife Habitat Management uses of the Property and provided that they are not detrimental to the Purposes of this Easement; and

ii. unpaved pedestrian trails, informational kiosks and wildlife blinds may be constructed, placed, or introduced onto the Property only to the extent necessary to accomplish the low-impact non-commercial outdoor recreational or educational uses of the Property and provided that they are not detrimental to the Purposes of this Easement.

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

- i. are commonly necessary in the accomplishment of the Forestry, conservation, habitat management and restoration, Wildlife Habitat Management, or low-impact non-commercial outdoor recreational uses of the Property as permitted by this Easement;
- ii. do not harm state or federally recognized rare, threatened, or endangered species or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Fish and Game Department, Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species;
- iii. do not impact wetland vegetation, soils, hydrology, or habitat;
- iv. are not detrimental to the Purposes of this Easement; and
- iv. are permitted and approved by all federal, state, local, and other governmental entities, as necessary before said activities take place.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the Forestry, Wildlife Habitat Management, conservation, education, or low-impact non-commercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the Purposes of this Easement. No sign shall exceed sixteen (16) square feet in size and no sign shall be artificially illuminated.

F. There shall be no mining, quarrying, or excavation of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of Sections 2.A., C, D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

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

H. The Property shall in no way be used to satisfy the density, frontage, or setback requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other property.

### **3. FORESTRY AND STEWARDSHIP PLANNING**

Plan Preparation and Approval:

A. Forestry activities shall be conducted in accordance with a stewardship plan, prepared by a licensed professional forester, a certified wildlife biologist, or other qualified person (the "Resource Professional"). Any person other than a licensed professional forester or a certified wildlife biologist shall be considered a Resource Professional under this Easement only if approved in advance and in

writing by the Grantee. Said stewardship plan (the "Plan") must be prepared, approved and implemented in accordance with this Easement.

B. The Plan shall have been prepared not more than 10 years prior to the date of any Forestry activity. Plans prepared more than 10 years prior to the anticipated Forestry activity date must be reviewed and updated for Grantee's approval in accordance with Section 3.A. herein.

C. Prior to the Grantor conducting Forestry activities on the Property, and if there is no existing plan that meets all the requirements of Section 3 herein, the Grantor shall prepare the Plan as follows:

The Grantor's Resource Professional shall draft a Plan, prepared as outlined in Section 3.G herein. Prior to submitting the Plan to Grantee for its approval (see next paragraph), the Grantor shall submit said 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.iii., and compliance with this Easement.

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

E. Within forty-five (45) days after Grantee's receipt of said Plan, the Grantee shall approve or disapprove the same with respect to its wildlife habitat impacts, consistency with the Purposes stated in Section 1, stewardship goals stated in Section 2.A.iii., and compliance with this Easement, and so inform the Grantor in writing. Any disapproval shall specify in detail the reasons therefore. If the Grantee fails to so approve or disapprove within said period, Grantor may proceed with Forestry activities recognizing that the following paragraph applies.

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

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

i. The long-term protection of the Purposes for which this Easement is granted, as described in Section 1 above;

ii. The stewardship goals set forth in Section 2.A.iii. above;

iii. A statement of landowner management objectives consistent with the Purposes of the Easement and stewardship goals stated in Section 2.A.iii. above;

iv. A map showing the Property's boundaries, access roads, and forest stand types;

v. A description of the Property's existing conditions and natural features including land cover, topography, soils, geology, wetlands, streams and ponds, wildlife habitat features, low-impact non-commercial recreational and educational uses, and boundary conditions;

vi. Identification of plant and wildlife species of conservation concern, and how management

will enhance or avoid detrimental impacts to said plant and wildlife species;

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

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

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

x. Timber harvesting with respect to such Forestry activities shall be conducted in accordance with the approved Plan and be supervised by a Resource Professional and shall be subject to the following additional requirements: Harvesting shall be carried out in accordance with all applicable local, state, federal, and other laws and regulations, and in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Cullen, 2004), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (Bennett, Karen P., editor 2010), and "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau, 2004), or similar successor publications.

#### **4. RESERVED RIGHTS**

A. Grantor retains the right to undertake or continue any activity or use of the Property consistent with the Purposes of this Easement as defined in Section 1 above and not otherwise prohibited by this Easement. Without limiting the generality of the foregoing, Grantor shall have the following retained rights:

B. The Grantor reserves the right to conduct Forestry and Wildlife Habitat Management activities as defined in Section 2.A and subject to the Use Limitations in Section 2.

C. The Grantor reserves the right to erect gates and barriers and appropriate signage, except as may otherwise be provided in Section 5.A, for the control of motorized or wheeled vehicles and equestrian access into, on, over, or across the Property.

D. The Grantor reserves the right to use of motor vehicles as reasonably necessary for the practice of Forestry, conservation, and Wildlife Habitat Management activities and for exercising any of the Grantor's reserved rights.

E. The Grantor reserves the right to construct, maintain and close the hiking and biking trails on the

property, and to erect and maintain informational kiosks.

F. The Grantor reserves the right to use and maintain the existing snowmobile trail(s) on the Property, and to allow third parties to use and maintain the snowmobile trails, along with associated improvements including, but not limited to, fences, bridges, culverts and signs. Said right to use and maintain the snowmobile trail(s) shall not include the construction of any buildings.

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

## **6. AFFIRMATIVE RIGHTS OF THE GRANTEE**

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

A. Through the auspices of the Grantee, the public has the right of pedestrian access, in perpetuity, on and across the Property for low-impact non-commercial recreational activities including but not limited to hunting, fishing, hiking, trapping (in accordance to RSA 210:11), cross country skiing and nature observation in accordance with current laws and regulations; provided, however, that the Grantee shall cooperate with the Grantor to limit public access and use of the Property if the public use is not consistent with the purposes of this Easement, and provided further, that the right of overnight camping, motorized access, and construction of fires on the Property by the public is not hereby conveyed.

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

Grantee shall have the right but not the obligation to mark and maintain the boundaries of the Easement, in consultation with the Grantor.

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

The Grantor agrees to notify the Grantee in writing at least 30 days before the transfer of title to the Property.

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

## **8. 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 Code, or to any qualified organization within the meaning of Section 170(h)(3) of the Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement

#### **9. 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.

#### **10. BREACH OF EASEMENT**

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

B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including but not limited to restoration (except for injury to or change in the Property resulting from causes beyond the Grantor's control, as described in subparagraph D. below), which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this Section.

C. If the Grantor fails to take such proper action under the preceding paragraph, the Grantee shall, as appropriate to the Purposes of this Easement, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs, and reasonable legal fees, shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.

D. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

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

#### **11. 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.

## **12. 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.

## **13. 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.

## **14. ADDITIONAL EASEMENT**

Any additional conservation easement on the Property shall require prior approval of the Grantee, and shall not diminish the conservation purposes for which the Property was originally protected. Any future conservation easement shall be conveyed to and accepted and recorded by either the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(I) of the Code or any qualified organization within the meaning of Section 170(h)(3) of the Code, which organization has among its purposes the conservation and preservation of land and water areas, and agrees to and is capable of enforcing the conservation purposes of the easement. Any such assignee or transferee shall have like power of assignment or transfer.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

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

IN WITNESS WHEREOF, we have hereto under set our hand this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mark Zankel, State Director  
The Nature Conservancy

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared Mark Zankel, New Hampshire State Director of The Nature Conservancy (a corporation), to me personally known or otherwise proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that he signed such document voluntarily for its stated purpose.

Before me,

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

Accepted: State Of New Hampshire Fish & Game Department

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

The State of New Hampshire  
County of Merrimack

Personally appeared Glenn Normandeau, Executive Director of the New Hampshire Fish and Game Department, this \_\_\_\_\_ day of \_\_\_\_\_, 2014 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 as to form, substance and execution by the Office of the Attorney General:

\_\_\_\_\_  
Christopher Aslin, Assistant Attorney General

Approved by the Governor and Executive Council:  
Approval Date: \_\_\_\_\_, Item #: \_\_\_\_\_

**APPENDIX A  
PROPERTY DESCRIPTION**



© Conservation, Aerial Photo, and Topographic Data provided by the New Hampshire Department of Transportation, Middlebury College, Dartmouth College, and the University of New Hampshire.

**Legend**

-  Proposed Acquisition
-  Internal Property Boundary
-  Green Hills Preserve (TNC) Conservation/Public Land
-  Stream/River
-  Surface Water
-  Stratified Drift Aquifer

**Significant Habitats:**

-  Pitch Pine Rocky Ridge Community (NIIB Preliminary)
-  Red Oak - Pine Rocky Ridge Community (NHB Preliminary)
-  Red Pine Rocky Ridge Exemplary Community (NIIB)
-  Oak/Oak-Pine/Red Spruce Woodland
-  Deer Wintering Habitat
-  Wetland

**LET'S GROW GREEN HILLS**  
Conservation Project

**ECOLOGICAL FEATURES MAP**

Created: February 18, 2014 by  
**The Nature Conservancy**  
 Protecting nature. Preserving life.  
**CONWAY, NEW HAMPSHIRE**  
 Data Source: TNC & NH GRANIT

Aerial Photo Captured in 2011 by NHDOT, distributed by NH GRANIT. Contours at 200' intervals, derived from a 30m DEM.



# State of New Hampshire Department of State

## CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that THE NATURE CONSERVANCY, a(n) District of Columbia nonprofit corporation, registered to do business in New Hampshire on July 17, 2006. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 25<sup>th</sup> day of September, A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State



**CERTIFICATE of AUTHORITY**

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

1. I am a duly appointed, Assistant Secretary of The Nature Conservancy;
2. The Nature Conservancy has agreed to transfer conservation easements on 1,321+/- acres in Conway, NH to the State of New Hampshire, acting by and through its Fish and Game Department;
3. The Nature Conservancy further authorized the Executive Director of The Nature Conservancy's New Hampshire Chapter to execute any documents which may be necessary for the transfer of the conservation easements;
4. This authorization has not been revoked, annulled or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
5. The following person has been appointed to and now occupies the office indicated in (3) above:

Mark Zankel  
(Authorized to Sign)

Executive Director- NH Chapter  
(Title)

IN WITNESS WHEREOF, I have hereunto set my hand as Assistant Secretary of The Nature Conservancy on this date: OCTOBER 1, 2014.

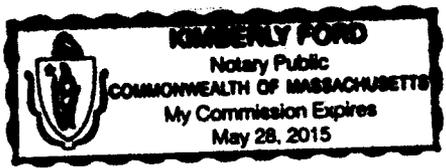
*Kate Turner*  
Kate Turner

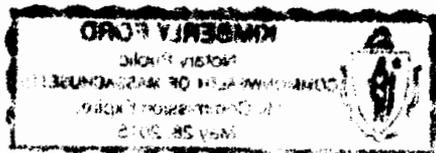
Title: Assistant Secretary

COMMONWEALTH OF MASSACHUSETTS)  
COUNTY OF SUFFOLK) SS.

On this 1<sup>st</sup> day of OCTOBER, 2014, before me, the undersigned notary public, personally appeared Kate Turner, Assistant Secretary of The Nature Conservancy (a corporation), to me personally known or otherwise proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that she signed such document voluntarily for its stated purpose.

*Kimberly Ford*  
Notary Public (Seal)  
My Commission Expires:







# New Hampshire Fish and Game Department

HEADQUARTERS: 11 Hazen Drive, Concord, NH 03301-6500  
(603) 271-3421  
FAX (603) 271-1438

Governor & Council Approved

Date: 7-24-13

Item #: 37

www.wildlife.nh.gov  
e-mail: info@wildlife.nh.gov  
TDD Access: Relay NH 1-800-735-2964

July 8, 2013

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

## REQUESTED ACTION

The New Hampshire Fish and Game Department (NHFG) respectfully requests authorization to enter into a Memorandum of Agreement (MOA) with the Council on Resources and Development (CORD) and the Office of Energy and Planning (OEP) relative to stewardship and funding of conservation easement monitoring, pursuant to RSA 162-C:8, for a term of ten (10) years time period from the date of Governor and Council approval through June 30, 2023. **No Cost.**

## EXPLANATION

The NHFG periodically receives gifts, donations, or grants to provide for long-term stewardship monitoring of certain conservation easements held by the NHFG. RSA 162-C:8 authorizes such funds to be deposited into the Land Conservation Endowment, which is administered by CORD, for this purpose.

The proposed MOA enables NHFG to deposit funds into the Land Conservation Endowment so that they will generate interest and provide the OEP Conservation Land Stewardship Program with funding for long-term monitoring and stewardship support of NHFG conservation easements that receive endowments for those purposes.

Providing monitoring and stewardship support for other state-held easement interests through the Conservation Land Stewardship Program, minimizes duplication of effort and enables cost-saving efficiencies since many of these additional state-held easements are contiguous with properties that the program is already responsible for. It allows the same stewardship standards for all easement lands, provides staff expertise to appropriately represent the State's interests, and helps to provide a consistent interpretation of easement language. One of the primary goals of the Conservation Land Stewardship Program is to educate and work with landowners to resolve conflicts with easement restrictions that may arise, thereby avoiding costly litigation. A complete background of the Conservation Land Stewardship Program is provided in Exhibit A.

**REGION 1**  
629B Main Street  
Lancaster, NH 03584-3612  
(603) 788-3164  
FAX (603) 788-4823  
email: reg1@wildlife.nh.gov

**REGION 2**  
PO Box 417  
New Hampton, NH 03256  
(603) 744-5470  
FAX (603) 744-6302  
email: reg2@wildlife.nh.gov

**REGION 3**  
225 Main Street  
Durham, NH 03824-4732  
(603) 868-1095  
FAX (603) 868-3305  
email: reg3@wildlife.nh.gov

**REGION 4**  
15 Ash Brook Court  
Keene, NH 03431  
(603) 352-9669  
FAX (603) 352-8798  
email: reg4@wildlife.nh.gov

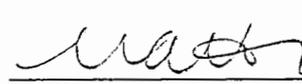
Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Executive Council  
July 8, 2013  
Page 2 of 2

The NHFG will seek Governor and Council approval prior to accepting future gifts, donations and grants subject to this MOA.

Respectfully submitted,

Concurred,

  
\_\_\_\_\_  
Glenn Normandeau, Executive Director  
Fish and Game Department

  
\_\_\_\_\_  
Meredith Hatfield, Director  
Office of Energy and Planning

**MEMORANDUM OF AGREEMENT**  
**Between the**  
**COUNCIL ON RESOURCES AND DEVELOPMENT**  
**and the**  
**OFFICE OF ENERGY AND PLANNING - Conservation Land Stewardship Program**  
**and the**  
**NEW HAMPSHIRE DEPARTMENT OF FISH AND GAME**  
**for the**  
**Monitoring of Conservation Easements under Endowment**

This Memorandum of Agreement (MOA) is entered into by the Council on Resources and Development (CORD), Office of Energy and Planning, Conservation Land Stewardship Program (OEP-CLS), and New Hampshire Fish and Game Department (NHFG).

**Whereas**, NHFG is mandated by RSA 206:4-a to conserve, protect and manage fish, wildlife, and marine resources and to acquire, develop and manage lands and waters for recreational purposes; and

**Whereas**, NHFG acquire conservation easements in perpetuity to protect fish and wildlife habitat and to provide public access to said lands; and

**Whereas**, NHFG periodically receives gifts, donations and grants as endowment to ensure that stewardship monitoring and enforcement will occur in perpetuity on said lands; and

**Whereas**, CORD is authorized under RSA 162-C:8 to accept gifts, donations, and grants to the Land Conservation Endowment to be utilized for monitoring and enforcing land conservation interests that may be acquired by the state; and

**Whereas**, CORD, through the OEP-CLS, has the technical expertise to efficiently carry out easement stewardship, monitoring, and enforcement activities and currently carries out these activities pursuant to RSA 162-C for conservation interests acquired through the Land Conservation Investment Program (LCIP) ;

**Now Therefore**, all parties agree as follows:

- 1) This Agreement applies to all gifts, donations and grants deposited into the Land Conservation Endowment by NHFG pursuant to RSA 162-C:8, and to stewardship of the associated non-LCIP conservation easements held by NHFG for which the funds were received.
- 2) This Agreement covers a ten (10) year time period commencing on the date of Governor and Council approval through June 30, 2023. It is the intention however of the parties to continue the long-term stewardship of conservation lands through timely renewal of this Agreement. This Agreement may be amended in writing if necessary with the consent of all parties.
- 3) CORD, OEP-CLS, and NHFG agree to cooperate as follows:

NHFG agrees to:

- 1) at NHFG's discretion, deposit funds into the Land Conservation Endowment in accordance with RSA 162-C:8 for the purpose of providing conservation easement stewardship support for the

specific easement lands for which the funds were received. The donated amount shall be agreed upon by NHFG and OEP/CLS prior to deposit into the endowment and shall be deemed to be sufficient to generate interest in the long-term to support stewardship efforts for the easement land in perpetuity; and

- 2) provide technical and enforcement support to OEP-CLS regarding the prevention or enforcement of violations or diminution of the terms of any conservation easement deed which is part of this Agreement. NHFG shall have final determination of the disposition or enforcement of the terms of any easement; and
- 3) review and approve/disapprove actions of the Grantor as required by any conservation easement deed which is part of this Agreement; and
- 4) assign responsible staff to serve as the contact person with OEP-CLS regarding any provision of the Agreement.

CORD agrees to:

- 1) at CORD's discretion, in consultation with OEP-CLS, accept endowment contributions from NHFG into the Land Conservation Endowment and allow expenditures from the endowment in accordance RSA 162-C:8 for the purpose of providing conservation easement stewardship support for each of the specific easement lands for which the funds were received; and
- 2) authorize OEP-CLS to carry out stewardship support responsibilities as stated herein.

OEP-CLS agrees to:

- 1) conduct easement monitoring on each of the easement lands associated with the endowment contribution which generally will include:
  - a. conducting easement monitoring to ensure that conditions of the conservation easement are being met annually (every 12 – 14 months) on each parcel. This shall include, when practical, a personal contact/visit with the landowner(s) or their representative(s) to discuss the easement and any proposed or undertaken activities related to it; and
  - b. maintaining hard and electronic copies of all correspondence, monitoring reports and information regarding changes of address, changes in land management that may affect wildlife habitat, other land management issues etc. for each parcel; and
  - c. developing and maintaining a database to track parcels, landowners, status, etc. and
  - d. conducting aerial monitoring and photography as necessary or desirable to document the condition of the parcels; and
  - e. resolving, to the extent practicable, any and all conflicts which arise from the enforcement of the conditions of the easement
- 2) provide NHFG with copies of all monitoring reports and correspondence for each parcel; and
- 3) meet with NHFG as necessary to resolve any problems which may arise; and

4) serve as the point of contact for requests by the Grantor of activities requiring prior Grantee approval and coordinate with NHFG as necessary to insure that review and approval/disapproval is conducted as required by any conservation easement deed that is part of this Agreement;

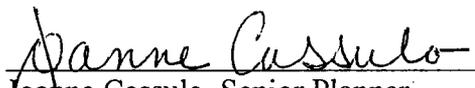
5) report annually to CORD on stewardship responsibilities under agreement.

In witness whereof, the respective parties hereunto set their hands on the dates indicated.

Approved By:

  
\_\_\_\_\_  
Glenn Normandeau, Executive Director  
NH Fish and Game Department

6/18/13  
Date

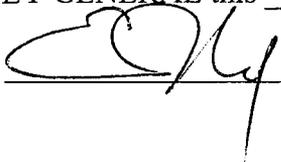
  
\_\_\_\_\_  
Joanne Cassulo, Senior Planner  
NH Office of Energy and Planning

6/24/13  
Date

  
\_\_\_\_\_  
Meredith A. Hatfield, Chair  
Council on Resources and Development

6/21/13  
Date

Approved by the ATTORNEY GENERAL this 25 day of June, 2013.

Assistant Attorney General   
\_\_\_\_\_

Info to go w/ Tabled F+G item  
from -14-15

The within conveyance is a transfer to the State of New Hampshire and pursuant to RSA 78-B:2(I) it is exempt from the New Hampshire Real Estate Transfer Tax

**CONSERVATION EASEMENT #1**  
1,013.03 ACRES

### **Conservation Easement Deed**

THE NATURE CONSERVANCY, a nonprofit corporation incorporated under the laws of the District of Columbia as a tax exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (the "Code"), having its headquarters at 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203-1606 and a local address at 22 Bridge Street, 4th Floor, Concord, NH 03301 (hereinafter referred to as the "Grantor", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's successors and assigns),

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

the STATE OF NEW HAMPSHIRE, acting by and through the FISH AND GAME DEPARTMENT, with a principal office at 11 Hazen Drive, City of Concord, New Hampshire 03301 (hereinafter referred to as the "Grantee", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

a CONSERVATION EASEMENT hereinafter (hereinafter "Easement") described with respect to that certain parcel of land (hereinafter "Property") being unimproved land, consisting of approximately 1,013.03 acres, accessible by a right of way located off of East Conway Road in the Town of Conway, County of Carroll State of New Hampshire, more particularly bounded and described in Appendix A attached hereto and made a part hereof and shown as the property of Charles Sutton Marshall and Margaret Louise Marshall Revocable Trusts on a Plan entitled Boundary Plan of land being conveyed to The Nature Conservancy located in Conway New Hampshire by HEB Engineers, dated August 21, 2014, and recorded in the Carroll County Registry of Deeds at Plan Book 234, Page 6.

This Easement has been acquired, in part, with funds from a financial assistance award from the New Hampshire Aquatic Resource Mitigation Fund. This award placed certain continuing obligations on the Grantee in a Grant Agreement of or near even date.

The Grantee has identified the area as critical wildlife habitat which is part of a large unfragmented forest tract and includes an extensive deer yard, and the Property provides significant habitat for numerous species of wildlife.

#### **1. PURPOSES**

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following

conservation purposes ("Purposes"):

- A. To retain the PROPERTY forever in its undeveloped state for significant wildlife habitat including wetlands and uplands, and to prevent any use of the Property that will impair or interfere with its conservation values;
- B. To protect the Property from future development, to conserve and manage the natural vegetation, soils, hydrology, natural habitats, wildlife habitats, wetlands, uplands, and open spaces of which the Property consists, and to conserve and maintain its unique characteristics substantially in its present scenic and open space condition, the preservation of which is important to the public and will serve the public interest in a manner consistent with New Hampshire RSA 477:45-47;
- C. To further the goals of the NH Wildlife Action Plan and the Wildlife Restoration Program administered by the Department of Interior, U.S. Fish and Wildlife Service (the "Service"), including but not limited to the protection, management and enhancement of wild birds and mammals and their habitats and to provide the public access to those resources;
- D. To provide the public with pedestrian access, in perpetuity, on and across the Property for low-impact non-commercial recreational activities including but not limited to hunting, fishing, hiking, trapping (in accordance to RSA 210:11), cross country skiing and nature observation in accordance with current laws and regulations; provided, however, that the Grantee shall cooperate with the Grantor to limit public access and use of the Property if the public use is not consistent with the purposes of this Easement, and provided further, that the right of overnight camping, motorized access, and construction of fires on the Property by the public is not hereby conveyed.

The above purposes are consistent 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."

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

All of these Purposes are consistent and in accordance with the Section 170(h) of the Code.

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

## **2. USE LIMITATIONS**

Subject to provisions specified in Sections 3, 4, and 5 below:

Any activity on or use of the Property inconsistent with the Purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following use limitations shall apply to the Property except as otherwise specifically provided by the Easement:

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except forestry, including timber harvesting in accordance with a stewardship plan approved by Grantee as described in Section 3 herein and provided that the productive capacity of the Property to support native wildlife populations shall not be degraded by on-site activities.

i. For the purposes hereof, "Forestry" shall include the growing, stocking, cutting, and sale of forest trees of any size for forest products or "Wildlife Habitat Management" (as defined below) but not for nursery production; and the construction of roads or other access-ways for the purpose of removing forest products from the Property, all as not detrimental to the Purposes of this Easement.

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

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

- maintenance or enhancement of the Property's fish and wildlife habitat values;
- maintenance of soil productivity and protection against soil erosion;
- protection of water quality, wetlands, and riparian zones;
- protection of rare plants & animals;
- protection of unique or fragile natural areas;
- conservation of native plant and animal species;
- protection of unique historic and cultural features; and
- protection of passive non-commercial recreational qualities.

B. The Property shall not be subdivided or otherwise divided into parcels of separate distinct ownership and none of the individual tracts, which together comprise the Property, shall be conveyed separately from one another, unless approved by the Grantee in writing.

C. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, parking lot, portable or composting toilet, educational building, tennis court, swimming pool, dock, athletic field, pavilion, shooting range, aircraft landing strip, tower or mobile home, shall be constructed, placed, or introduced onto the Property, provided, however, that -

- i. ancillary structures and improvements including, but not limited to, an unpaved road, dam,

gate, fence, bridge, culvert or wildlife nest structure may be constructed, placed, or introduced onto the Property only to the extent necessary to accomplish the Forestry, conservation or Wildlife Habitat Management uses of the Property and provided that they are not detrimental to the Purposes of this Easement; and

ii. unpaved pedestrian trails, informational kiosks and wildlife blinds may be constructed, placed, or introduced onto the Property only to the extent necessary to accomplish the low-impact non-commercial outdoor recreational or educational uses of the Property and provided that they are not detrimental to the Purposes of this Easement.

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

i. are commonly necessary in the accomplishment of the Forestry, conservation, habitat management and restoration, Wildlife Habitat Management, or low-impact non-commercial outdoor recreational uses of the Property as permitted by this Easement;

ii. do not harm state or federally recognized rare, threatened, or endangered species or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Fish and Game Department, Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species;

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

iv. are not detrimental to the Purposes of this Easement; and

iv. are permitted and approved by all federal, state, local, and other governmental entities, as necessary before said activities take place.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the Forestry, Wildlife Habitat Management, conservation, education, or low-impact non-commercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the Purposes of this Easement. No sign shall exceed sixteen (16) square feet in size and no sign shall be artificially illuminated.

F. There shall be no mining, quarrying, or excavation of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of Sections 2.A., C, D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

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

H. The Property shall in no way be used to satisfy the density, frontage, or setback requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other

property.

### **3. FORESTRY AND STEWARDSHIP PLANNING**

#### **Plan Preparation and Approval:**

A. Forestry activities shall be conducted in accordance with a stewardship plan, prepared by a licensed professional forester, a certified wildlife biologist, or other qualified person (the "Resource Professional"). Any person other than a licensed professional forester or a certified wildlife biologist shall be considered a Resource Professional under this Easement only if approved in advance and in writing by the Grantee. Said stewardship plan (the "Plan") must be prepared, approved and implemented in accordance with this Easement.

B. The Plan shall have been prepared not more than 10 years prior to the date of any Forestry activity. Plans prepared more than 10 years prior to the anticipated Forestry activity date must be reviewed and updated for Grantee's approval in accordance with Section 3.A. herein.

C. Prior to the Grantor conducting Forestry activities on the Property, and if there is no existing plan that meets all the requirements of Section 3 herein, the Grantor shall prepare the Plan as follows:

The Grantor's Resource Professional shall draft a Plan, prepared as outlined in Section 3.G herein. Prior to submitting the Plan to Grantee for its approval (see next paragraph), the Grantor shall submit said 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.iii., and compliance with this Easement.

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

E. Within forty-five (45) days after Grantee's receipt of said Plan, the Grantee shall approve or disapprove the same with respect to its wildlife habitat impacts, consistency with the Purposes stated in Section 1, stewardship goals stated in Section 2.A.iii., and compliance with this Easement, and so inform the Grantor in writing. Any disapproval shall specify in detail the reasons therefore. If the Grantee fails to so approve or disapprove within said period, Grantor may proceed with Forestry activities recognizing that the following paragraph applies.

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

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

- i. The long-term protection of the Purposes for which this Easement is granted, as described in Section 1 above;
- ii. The stewardship goals set forth in Section 2.A.iii. above;

- iii. A statement of landowner management objectives consistent with the Purposes of the Easement and stewardship goals stated in Section 2.A.iii. above;
- iv. A map showing the Property's boundaries, access roads, and forest stand types;
- v. A description of the Property's existing conditions and natural features including land cover, topography, soils, geology, wetlands, streams and ponds, wildlife habitat features, low-impact non-commercial recreational and educational uses, and boundary conditions;
- vi. Identification of plant and wildlife species of conservation concern, and how management will enhance or avoid detrimental impacts to said plant and wildlife species;
- vii. Proposed management prescriptions and activities for Wildlife Habitat Management, Forestry, conservation, low-impact non-commercial recreation, and education; and
- viii. Proposed schedule of implementation of management prescriptions, including a schedule for boundary, road and trail maintenance.
- ix. In the event that the Grantor proposes a new Forestry activity not included in a previously approved Plan, the Grantor shall submit an amendment to the Plan for Grantee's approval in accordance with Section 3.A. herein prior to conducting any such new management activity. Such amendments shall include any changes and additions to or deletions from the approved Plan.
- x. Timber harvesting with respect to such Forestry activities shall be conducted in accordance with the approved Plan and be supervised by a Resource Professional and shall be subject to the following additional requirements: Harvesting shall be carried out in accordance with all applicable local, state, federal, and other laws and regulations, and in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Cullen, 2004), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (Bennett, Karen P., editor 2010), and "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau, 2004), or similar successor publications.

#### **4. RESERVED RIGHTS**

Grantor retains the right to undertake or continue any activity or use of the Property consistent with the Purposes of this Easement as defined in Section 1 above and not otherwise prohibited by this Easement. Without limiting the generality of the foregoing, Grantor shall have the following retained rights:

A. The Grantor reserves the right to conduct Forestry and Wildlife Habitat Management activities as defined in Section 2.A and subject to the Use Limitations in Section 2.

B. The Grantor reserves the right to erect gates and barriers and appropriate signage, except as may otherwise be provided in Section 5.A, for the control of motorized or wheeled vehicles and equestrian access into, on, over, or across the Property.

C. The Grantor reserves the right to use of motor vehicles as reasonably necessary for the practice of Forestry, conservation, and Wildlife Habitat Management activities and for exercising any of the Grantor's reserved rights.

D. The Grantor reserves the right to construct, maintain and close the hiking and biking trails on the property, and to erect and maintain informational kiosks.

E. Grantor retains the right, but not the obligation, to construct, use, repair and maintain a permeable-surface parking area on the Property. The size and location of such area must be approved in advance by the Grantee.

F. The Grantor reserves the right to use and maintain the existing snowmobile trail(s) on the Property, and to allow third parties to use and maintain the snowmobile trails, along with associated improvements including, but not limited to, fences, bridges, culverts and signs. Said right to use and maintain the snowmobile trail(s) shall not include the construction of any buildings.

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

## **5. AFFIRMATIVE RIGHTS OF THE GRANTEE**

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

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

B. Grantee shall have the right but not the obligation to mark and maintain the boundaries of the Easement, in consultation with the Grantor.

C. Grantee shall the right, but not the obligation, to construct, use, repair and maintain a permeable-surface parking area on the Property. The size and location of such area must be approved in advance by the Grantor.

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

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

The Grantor shall provide a 60-day advance notification of transfer of title to the Grantee, New Hampshire Department of Environmental Services, and the Army Corps of Engineers pursuant to the New Hampshire Aquatic Resource Mitigation Fund Final In-Lieu Fee Program Instrument signed May 17, 2012, Corps of Engineers File Number NAE-2005-1142.

## **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 Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of the Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Provided that by virtue of the Wildlife Restoration Program Grant from the Service for purchase of this Easement, and the provisions set forth in the Notice 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. MERGER**

The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assign shall be deemed to eliminate the Easement or any portion thereof granted hereunder under the doctrine of "merger" or any other legal doctrine.

## **9. BREACH OF EASEMENT**

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

B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including but not limited to restoration (except for injury to or change in the Property resulting from causes beyond the Grantor's control, as described in subparagraph D. below), which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this Section.

C. If the Grantor fails to take such proper action under the preceding paragraph, the Grantee shall, as

appropriate to the Purposes of this Easement, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs, and reasonable legal fees, shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.

D. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

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

## **10. NOTICES**

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

## **11. SEVERABILITY**

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

## **12. CONDEMNATION/EXTINGUISHMENT**

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

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

C. By virtue of the Wildlife Restoration Program Grant from the Service for purchase of this

Conservation Easement, and of the provisions set forth in the Notice of Grant Agreement (attached hereto as Appendix B), the Service shall be entitled to 42.3 percent of the portion of the proceeds payable to the Grantee pursuant to this Section 13 unless the Regional Director of the Service consents to or requires the Grantee's use of the Service's portion of the proceeds to acquire other land or interests in land of equal or greater monetary and resource value.

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

### **13. ADDITIONAL EASEMENT**

Any additional conservation easement on the Property shall require prior approval of the Grantee and the written consent of the Regional Director of the U.S. Fish and Wildlife Service and shall not diminish the conservation purposes for which the Property was originally protected. Any future conservation easement shall be conveyed to and accepted and recorded by either the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(I) of the Code or any qualified organization within the meaning of Section 170(h)(3) of the Code, which organization has among its purposes the conservation and preservation of land and water areas, and agrees to and is capable of enforcing the conservation purposes of the easement. Any such assignee or transferee shall have like power of assignment or transfer.

### **14. FEDERAL GRANT**

The conservation easement on the above-described Property is acquired, in part, with funding received by the Grantee from Grant Agreement Number (add Federal Grant #) **NH-W-103-L-1** between the Service and the State of New Hampshire Fish and Game Department as Grantee. All present and future terms and conditions of the Property are and shall remain subject to the terms and conditions described in the Notice of Grant Agreement (attached hereto as Appendix B), and to the other administrative requirements of the applicable grant funding program of the Service.

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

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

- A. Provide an annual on-ground monitoring inspection that confirms that the interest acquired as part of a is being protected and maintained according to the terms of the Easement;
- B. Provide annual contact with the Property owner to inform them of their obligations under the terms of this Easement;
- C. Prepare and submit an annual monitoring report to the Grantor, NH Department of Environmental Services, and U.S. Fish and Wildlife Service, which shall contain the following:
  - i. Description of the inspection conducted;
  - ii. Description of any physical changes to the Property;

- iii. Description of any contacts made with Property owners, including their current name and address information;
- iv. Description of any conditions or activities on the Property, including those which violate or may violate the intent of this Easement;
- v. Explanation of the current status of any previously identified violations and any remedial steps taken; and
- vi. Any steps to be taken by Property owners to bring the Property into compliance with the terms of the Easement (if necessary).

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

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

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

IN WITNESS WHEREOF, we have hereto under set our hand this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
 Mark Zankel, State Director  
 The Nature Conservancy

STATE OF NEW HAMPSHIRE  
 COUNTY OF MERRIMACK

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned notary public, personally appeared Mark Zankel, New Hampshire State Director of The Nature Conservancy (a corporation), to me personally known or otherwise proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that he signed such document voluntarily for its stated purpose.

Before me,

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

Accepted: State of New Hampshire Fish & Game Department

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

The State of New Hampshire  
County of Merrimack

Personally appeared Glenn Normandeau, Executive Director of the New Hampshire Fish and Game Department, this \_\_\_\_\_ day of \_\_\_\_\_, 2015 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 #: \_\_\_\_\_

**APPENDIX A  
PROPERTY DESCRIPTION**

## 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 (insert federal number) W-103-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 permanent protection of wild birds and mammals and their habitats. The Department further acknowledges that the Easement will be administered for the long-term protection of these habitats and species 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 (insert federal number) W-103-L-1.

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

Glenn Normandeau, Executive Director

Date: \_\_\_\_\_, 2015

The within conveyance is a transfer to the State of New Hampshire and pursuant to RSA 78-B:2(I) it is exempt from the New Hampshire Real Estate Transfer Tax

**CONSERVATION EASEMENT #2**  
308.41 ACRES

### Conservation Easement Deed

THE NATURE CONSERVANCY, a nonprofit corporation incorporated under the laws of the District of Columbia as a tax exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code having its headquarters at 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203-1606 and a local address at 22 Bridge Street, 4th Floor, Concord, NH 03301 (hereinafter referred to as the "Grantor", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's successors and assigns),

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

the STATE OF NEW HAMPSHIRE, acting by and through the FISH AND GAME DEPARTMENT, with a principal office at 11 Hazen Drive, City of Concord, New Hampshire 03301 (hereinafter referred to as the "Grantee", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

a CONSERVATION EASEMENT hereinafter (hereinafter "Easement") described with respect to that certain parcel of land (hereinafter "Property") being unimproved land, consisting of approximately 308+/- acres, accessible by a right of way located off of East Conway Road in the Town of Conway, County of Carroll State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and shown as the property of Redstone Properties Inc., Audubon Society of NH, and Marshall & Saunders, LLC on a Plan entitled Boundary Plan of land being conveyed to The Nature Conservancy located in Conway New Hampshire by HEB Engineers, dated August 21, 2014, and recorded in the Carroll County Registry of Deeds at Plan Book 234, Page 6.

The Grantee has identified the area as critical wildlife habitat which is part of a large unfragmented forest tract and includes an extensive deer yard, and the Property provides significant habitat for numerous species of wildlife.

#### **1. PURPOSES**

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

A. To retain the PROPERTY forever in its undeveloped state for significant wildlife habitat including

wetlands and uplands, and to prevent any use of the Property that will impair or interfere with its conservation values;

B. To protect the Property from future development, to conserve and manage the natural vegetation, soils, hydrology, natural habitats, wildlife habitats, wetlands, uplands, and open spaces of which the Property consists, and to conserve and maintain its unique characteristics substantially in its present scenic and open space condition, the preservation of which is important to the public and will serve the public interest in a manner consistent with New Hampshire RSA 477:45-47;

C. To further the goals of the NH Wildlife Action Plan including but not limited to the protection, management and enhancement of its wildlife habitats and to provide the public access to those resources;

D. To provide the public with pedestrian access, in perpetuity, on and across the Property for low-impact non-commercial recreational activities including, but not limited, to hunting, fishing, hiking, trapping (in accordance to RSA 210:11), cross country skiing and nature observation in accordance with current laws and regulations; provided, however, that the Grantee shall cooperate with the Grantor to limit public access and use of the Property if the public use is not consistent with the purposes of this Easement, and provided further, that the right of overnight camping, motorized access, and construction of fires on the Property by the public is not hereby conveyed.

The above purposes are consistent 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."

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

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

## **2. USE LIMITATIONS**

Subject to provisions specified in Sections 3, 4, and 5 below:

Any activity on or use of the Property inconsistent with the Purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following use limitations shall apply to the Property except as otherwise specifically provided by the Easement:

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon

any industrial or commercial activities, except forestry, including timber harvesting in accordance with a stewardship plan approved by Grantee as described in Section 3 herein and provided that the productive capacity of the Property to support native wildlife populations shall not be degraded by on-site activities.

i. For the purposes hereof, "Forestry" shall include the growing, stocking, cutting, and sale of forest trees of any size for forest products or "Wildlife Habitat Management" (as defined below) but not for nursery production; and the construction of roads or other access-ways for the purpose of removing forest products from the Property, all as not detrimental to the Purposes of this Easement.

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

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

- maintenance or enhancement of the Property's fish and wildlife habitat values;
- maintenance of soil productivity and protection against soil erosion;
- protection of water quality, wetlands, and riparian zones;
- protection of rare plants & animals;
- protection of unique or fragile natural areas;
- conservation of native plant and animal species;
- protection of unique historic and cultural features; and
- protection of passive non-commercial recreational qualities.

B. The Property shall not be subdivided or otherwise divided into parcels of separate distinct ownership and none of the individual tracts, which together comprise the Property, shall be conveyed separately from one another, unless approved by the Grantee in writing.

C. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, parking lot, portable or composting toilet, educational building, tennis court, swimming pool, dock, athletic field, pavilion, shooting range, aircraft landing strip, tower or mobile home, shall be constructed, placed, or introduced onto the Property. However,

i. ancillary structures and improvements including, but not limited to, an unpaved road, dam, gate, fence, bridge, culvert or wildlife nest structure may be constructed, placed, or introduced onto the Property only to the extent necessary to accomplish the Forestry, conservation or Wildlife Habitat Management uses of the Property and provided that they are not detrimental to the Purposes of this Easement; and

ii. unpaved pedestrian trails, informational kiosks and wildlife blinds may be constructed,

placed, or introduced onto the Property only to the extent necessary to accomplish the low-impact noncommercial outdoor recreational or educational uses of the Property and provided that they are not detrimental to the Purposes of this Easement.

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

i. are commonly necessary in the accomplishment of the Forestry, conservation, habitat management and restoration, Wildlife Habitat Management, or low-impact non-commercial outdoor recreational uses of the Property as permitted by this Easement;

ii. do not harm state or federally recognized rare, threatened, or endangered species or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Fish and Game Department, Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species;

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

iv. are not detrimental to the Purposes of this Easement; and

iv. are permitted and approved by all federal, state, local, and other governmental entities, as necessary before said activities take place.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as desirable or necessary in the accomplishment of the Forestry, Wildlife Habitat Management, conservation, education, or low-impact noncommercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the Purposes of this Easement. No sign shall exceed sixteen (16) square feet in size and no sign shall be artificially illuminated.

F. There shall be no mining, quarrying, or excavation of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of Sections 2.A., C, D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

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

H. The Property shall in no way be used to satisfy the density, frontage, or setback requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other property.

### **3. FORESTRY AND STEWARDSHIP PLANNING**

#### **Plan Preparation and Approval**

A. Forestry activities shall be conducted in accordance with a stewardship plan, prepared by a licensed professional forester, a certified wildlife biologist, or other qualified person (the "Resource Professional"). Any person other than a licensed professional forester or a certified wildlife biologist shall be considered a Resource Professional under this Easement only if approved in advance and in writing by the Grantee. Said stewardship plan (the "Plan") must be prepared, approved and implemented in accordance with this Easement.

B. The Plan shall have been prepared not more than 10 years prior to the date of any Forestry activity. Plans prepared more than 10 years prior to the anticipated Forestry activity date must be reviewed and updated for Grantee's approval in accordance with Section 3. herein.

C. Prior to the Grantor conducting Forestry activities on the Property, and if there is no existing plan that meets all the requirements of Section 3 herein, the Grantor shall prepare the Plan as follows:

The Grantor's Resource Professional shall draft a Plan, prepared as outlined in Section 3.G herein. Prior to submitting the Plan to Grantee for its approval (see next paragraph), the Grantor shall submit said 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.iii., and compliance with this Easement.

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

E. Within forty-five (45) days after Grantee's receipt of said Plan, the Grantee shall approve or disapprove the same with respect to its wildlife habitat impacts, consistency with the Purposes stated in Section 1, stewardship goals stated in Section 2.A.iii., and compliance with this Easement, and so inform the Grantor in writing. Any disapproval shall specify in detail the reasons therefore. If the Grantee fails to so approve or disapprove within said period, Grantor may proceed with Forestry activities recognizing that the following paragraph applies.

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

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

- i. The long-term protection of the Purposes for which this Easement is granted, as described in Section 1 above;
- ii. The stewardship goals set forth in Section 2.A.iii. above;
- iii. A statement of landowner management objectives consistent with the Purposes of the Easement and stewardship goals stated in Section 2.A.iii. above;
- iv. A map showing the Property's boundaries, access roads, and forest stand types;
- v. A description of the Property's existing conditions and natural features including land cover,

topography, soils, geology, wetlands, streams and ponds, wildlife habitat features, low-impact non-commercial recreational and educational uses, and boundary conditions;

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

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

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

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

x. Timber harvesting with respect to such Forestry activities shall be conducted in accordance with the approved Plan and be supervised by a Resource Professional and shall be subject to the following additional requirements: Harvesting shall be carried out in accordance with all applicable local, state, federal, and other laws and regulations, and in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Cullen, 2004), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (Bennett, Karen P., editor 2010), and "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau, 2004), or similar successor publications.

#### **4. RESERVED RIGHTS**

Grantor retains the right to undertake or continue any activity or use of the Property consistent with the Purposes of this Easement as defined in Section 1 above and not otherwise prohibited by this Easement. Without limiting the generality of the foregoing, Grantor shall have the following retained rights:

A. The Grantor reserves the right to conduct Forestry and Wildlife Habitat Management activities as defined in Section 2.A and subject to the Use Limitations in Section 2.

B. The Grantor reserves the right to erect gates and barriers and appropriate signage, except as may otherwise be provided in Section 5.A, for the control of motorized or wheeled vehicles and equestrian access into, on, over, or across the Property.

C. The Grantor reserves the right to use of motor vehicles as reasonably necessary for the practice of

Forestry, conservation, and Wildlife Habitat Management activities and for exercising any of the Grantor's reserved rights.

D. The Grantor reserves the right to construct, maintain and close the hiking and biking trails on the property, and to erect and maintain informational kiosks.

E. The Grantor reserves the right to use and maintain the existing snowmobile trail(s) on the Property, and to allow third parties to use and maintain the snowmobile trails, along with associated improvements including, but not limited to, fences, bridges, culverts and signs. Said right to use and maintain the snowmobile trail(s) shall not include the construction of any buildings.

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

#### **5. AFFIRMATIVE RIGHTS OF THE GRANTEE**

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

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

B. Grantee shall have the right but not the obligation to mark and maintain the boundaries of the Easement, in consultation with the Grantor.

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

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

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

#### **7. BENEFITS AND BURDENS**

The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its

purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

## **8. MERGER**

The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assign shall be deemed to eliminate the Easement or any portion thereof granted hereunder under the doctrine of "merger" or any other legal doctrine.

## **9. BREACH OF EASEMENT**

- A. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach or conduct, delivered in hand or by certified mail, postage prepaid, return receipt requested.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including but not limited to restoration (except for injury to or change in the Property resulting from causes beyond the Grantor's control, as described in subparagraph D. below), which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this Section.
- C. If the Grantor fails to take such proper action under the preceding paragraph, the Grantee shall, as appropriate to the Purposes of this Easement, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs, and reasonable legal fees, shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.
- D. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- E. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the Purposes of this Easement.

## **10. NOTICES**

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other

address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

## **11. SEVERABILITY**

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

## **12. CONDEMNATION/EXTINGUISHMENT**

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

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

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.

## **13. ADDITIONAL EASEMENT**

Any additional conservation easement on the Property shall require prior approval of the Grantee, and shall not diminish the conservation purposes for which the Property was originally protected. Any future conservation easement shall be conveyed to and accepted and recorded by either the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, or any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas, and agrees to and is capable of enforcing the conservation purposes of the easement. Any such assignee or transferee shall have like power of assignment or transfer.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

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

IN WITNESS WHEREOF, we have hereto under set our hand this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Mark Zankel, State Director  
The Nature Conservancy

The State of New Hampshire  
County of Merrimack

I, hereby certify that Mark Zankel, NH State Director of The Nature Conservancy, personally appeared before me on this \_\_\_\_ day of \_\_\_\_\_, 2015 and acknowledged the foregoing Conservation Easement.

Before me,

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

Accepted: State of New Hampshire Fish & Game Department

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

The State of New Hampshire  
County of Merrimack

Personally appeared Glenn Normandeau, Executive Director of the New Hampshire Fish and Game Department, this \_\_\_\_\_ day of \_\_\_\_\_, 2015 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 #: \_\_\_\_\_

APPENDIX A  
PROPERTY DESCRIPTION



**Legend**

-  Conservation Easement Boundary
-  Green Hills Preserve (TNC)
-  Conservation/Public Land
-  Stream/River
-  Surface Water

**LET'S GROW GREEN HILLS**  
Conservation Project

**CONSERVATION EASEMENT  
MAP**

CONWAY,  
NEW HAMPSHIRE

Created: January 16, 2015 by  
**The Nature Conservancy**   
 Protecting nature. Preserving life.  
 Data Source: TNC & NH GRANIT

Aerial Photo Captured  
 in 2011 by NHDOT, distributed by NH GRANIT.  
 Contours at 200' intervals, derived from a 30m DEM.