



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

MAY 31 '22 PM 1:24 RCVD



May 11, 2022

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

REQUESTED ACTION

Authorize the Department of Environmental Services to award a grant to the Town of Barrington, NH (VC#177234 B006) in the amount of \$166,412.50, to protect approximately 130 acres of land within the source water protection area of the Bellamy Reservoir, a water supply source for the City of Portsmouth, effective upon Governor and Council approval through December 31, 2022. 100% Drinking Water and Groundwater Trust Fund.

Funding is available in the following account:

03-44-44-444010-7428-073-500580

Dept Environmental Services, DWGW Trust, Grants Non-Federal

FY 2022

\$166,412.50

EXPLANATION

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

In November 2018, the Advisory Commission voted to authorize grants for fifteen drinking water source protection projects. The Town of Barrington's request for \$166,412.50 was selected for grant funding from the Trust Fund. The project encountered multiple delays. The most significant setback being one of the properties dropping out late in the application process, requiring that all supporting documents be revised and resubmitted.

The Town of Barrington will use the grant funds towards the purchase of three parcels in fee and acquisition of conservation easements on approximately 130 acres of land within the source water protection area of the Bellamy Reservoir, a water supply source for the City of Portsmouth. The easements will be held by the Southeast Land Trust and added to the existing easement on the abutting

DES Website: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

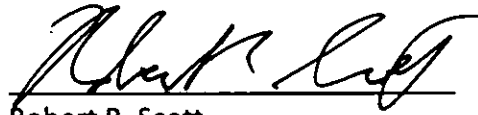
Telephone: (603) 271-2513 • Fax: (603) 271-5171 • TDD Access: Relay NH 1-800-735-2964

Goodwill Conservation Area. The fee interest in these three properties will be given to the Town of Barrington, which also owns the abutting Goodwill land.

The total project cost for the Town of Barrington towards the purchase and acquisition of conservation easements is \$332,825.02. The Trust Fund will provide \$166,412.50 with \$166,412.52 in match provided by the Town of Barrington. The purchase price of the property and value of conservation easements are based on a recent appraisal of fair market value.

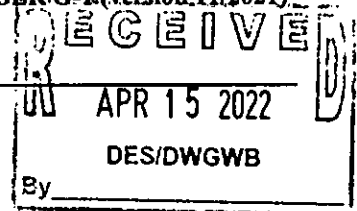
Exhibit A contains any special provisions. Exhibit B describes the scope of the grant. Exhibit C contains the grant amount and payment terms. Attachment A contains a map of the land, which shows the land's relationship to the water supply source being protected. The Attorney General's office has approved the agreement as to form and substance.

We respectfully request your approval.


Robert R. Scott
Commissioner

GRANT AGREEMENT

The State of New Hampshire and the Grantee hereby
Mutually agree as follows:
GENERAL PROVISIONS



1. Identification and Definitions.

1.1. State Agency Name New Hampshire Department of Environmental Services		1.2. State Agency Address 29 Hazen Drive, Concord, NH 03302-0095	
1.3. Grantee Name Town of Barrington		1.4. Grantee Address 333 Calef Hwy, Barrington NH 03825	
1.5 Grantee Phone # (603) 664-9007	1.6. Account Number 03-44-44-444010-7428-073	1.7. Completion Date 12/31/2022	1.8. Grant Limitation \$ 166,412.50
1.9. Grant Officer for State Agency Paul Susca (paul.a.susca@des.nh.gov)		1.10. State Agency Telephone Number 603-271-7061	
If Grantee is a municipality or village district: "By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
1.11. Grantee Signature 1 		1.12. Name & Title of Grantee Signor 1 Corner MacIver, Town Administrator duly authorized	
Grantee Signature 2		Name & Title of Grantee Signor 2	
Grantee Signature 3		Name & Title of Grantee Signor 3	
1.13 State Agency Signature(s) 		1.14. Name & Title of State Agency Signor(s) Robert R. Scott, Commissioner	
1.15. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required) By: Assistant Attorney General, On: 5/16/2022			
1.16. Approval by Governor and Council (if applicable) By: _____ On: ____ / ____ / ____			

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

3. AREA COVERED. Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the State of New Hampshire.
4. EFFECTIVE DATE: COMPLETION OF PROJECT.
- 4.1. This Agreement, and all obligations of the parties hereunder, shall become effective on the date on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.16), or upon signature by the State Agency as shown in block 1.14 ("the Effective Date").
- 4.2. Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (hereinafter referred to as "the Completion Date").
5. GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT.
- 5.1. The Grant Amount is identified and more particularly described in EXHIBIT C, attached hereto.
- 5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT C.
- 5.3. In accordance with the provisions set forth in EXHIBIT C, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.
- 5.4. The payment by the State of the Grant amount shall be the only, and the complete payment to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.
- 5.5. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.
6. COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Grantee shall comply with all statutes, laws regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits and RSA 31-95-b.
7. RECORDS and ACCOUNTS.
- 7.1. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency, the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.
- 7.2. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency pursuant to subparagraph 7.1, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these provisions
8. PERSONNEL.
- 8.1. The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.
- 8.2. The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.
- 8.3. The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.
9. DATA: RETENTION OF DATA: ACCESS.
- 9.1. As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, paper, and documents, all whether finished or unfinished.
- 9.2. Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.
- 9.3. No data shall be subject to copyright in the United States or any other country by anyone other than the State.
- 9.4. On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.
- 9.5. The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.
10. CONDITIONAL NATURE OR AGREEMENT. Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.
11. EVENT OF DEFAULT: REMEDIES.
- 11.1. Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):
- 11.1.1 Failure to perform the Project satisfactorily or on schedule; or
- 11.1.2 Failure to submit any report required hereunder; or
- 11.1.3 Failure to maintain, or permit access to, the records required hereunder; or
- 11.1.4 Failure to perform any of the other covenants and conditions of this Agreement.
- 11.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
- 11.2.1 Give the Grantee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and
- 11.2.2 Give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the Grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and
- 11.2.3 Set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and
- 11.2.4 Treat the agreement as breached and pursue any of its remedies at law or in equity, or both.
12. TERMINATION.
- 12.1. In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.
- 12.2. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.
- 12.3. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.
- 12.4. Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.
13. CONFLICT OF INTEREST. No officer, member of employee of the Grantee, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or

- approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
14. **GRANTEE'S RELATION TO THE STATE.** In the performance of this Agreement the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.
15. **ASSIGNMENT AND SUBCONTRACTS.** The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit B without the prior written consent of the State.
16. **INDEMNIFICATION.** The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.
17. **INSURANCE.**
- 17.1 The Grantee shall, at its own expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:
- 17.1.1 Statutory workers' compensation and employees liability insurance for all employees engaged in the performance of the Project, and
- 17.1.2 General liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and
- 17.2. The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Grantee shall furnish to the State, certificates of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy.
18. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.
19. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.
20. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire, if required or by the signing State Agency.
21. **CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.
22. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.
23. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.
24. **SPECIAL PROVISIONS.** The additional or modifying provisions set forth in Exhibit A hereto are incorporated as part of this agreement.

EXHIBIT A

Town of Barrington

SPECIAL PROVISIONS

1. Section 17.1.2. is amended so that the required comprehensive general liability insurance per occurrence is \$1,000,000 for bodily injury or death in any one incident as no construction or other similar activities will be performed by the grantee. Any subcontractor will remain obligated to carry comprehensive general liability insurance in amounts not less than \$250,000 per claim and \$2,000,000 per occurrence.

Grantee Initials CDW
Date 4/13/2022

EXHIBIT B

SCOPE OF SERVICES

Town of Barrington

The Town of Barrington will use the grant to protect approximately 132³/₄ acres of land located in Barrington within the source water protection area of the Bellamy Reservoir, a water supply source for the City of Portsmouth. The four parcels of land designated on current Town of Barrington Tax Map 240, Lots 6 (Rubenstein, 37 ac) and 7 (Haley2, 77.2 ac) and Map 249, and Lot 18 (Haley 1, 18 acres) are to be protected in perpetuity with a conservation easement.

This Agreement consists of the following documents: Exhibits A, B, and C which are all incorporated herein by reference as if fully set forth herein.

Grantee Initials CDW
Date 4/13/2022

EXHIBIT C

Town of Barrington

METHOD OF PAYMENT

Payment in the amount up to \$166,412.50 shall be made to the Town of Barrington upon receipt of the following:

1. Survey of the parcels of land.
2. Copies of the appraisals as specified in Env-Dw 1002.22.
3. Title examinations as specified in Env-Dw 1002.23.
4. Acceptable stewardship plan for the properties that ensures the permanent protection of the water supplies.
5. Completed baseline documentation report, which indicates the current condition of the properties.
6. Documentation of match provided by grantee in the final Budget.
7. The final deed with restrictions to protect the source meeting the requirements of NH Drinking Water and Groundwater Trust Fund "Rules for Source Water Protection Grants," adopted March 9, 2020.

Grantee Initials CDW
Date 4/13/2022

CERTIFICATION OF VOTE

I, Kimberly Kerekes, do hereby certify that I am the Town Clerk of the Town of Barrington, a municipality in the State of New Hampshire, County of Strafford, in the United States of America.

I do further certify that the Barrington Select Board voted to enter into a grant agreement with the NH Department of Environmental Services, and Conner MacIver is the Town Administrator of the municipality and is duly authorized by the by-laws and laws of the State of New Hampshire to execute and deliver on behalf of the municipality any documents which may be necessary for this grant agreement with the State of New Hampshire for the purpose of acquiring land and conservation easements in order to further the protection of the Bellamy Reservoir, a source of drinking water for the City of Portsmouth.

This authority was given during an official meeting of the Barrington Board of Selectmen on March 14, 2022.

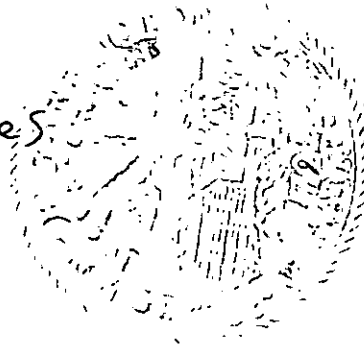
I further certify that such authority has not been repealed, rescinded, or amended.

In witness where, I have hereunto set my hand and attached the seal of the Town of Barrington on this 15th day of March, 2022.

TOWN OF BARRINGTON

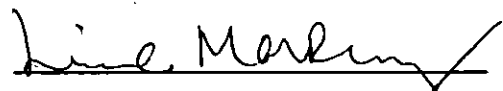
 Kimberly Kerekes

State of New Hampshire
County of Strafford



Dated this 15th day of March, 2022 personally appeared Kimberly Kerekes who subscribed and sworn to the above statement.





Justice of the Peace/Notary Public

My Commission Expires 5.17.22





CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex³) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex³ is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex³ is entitled to the categories of coverage set forth below. In addition, Primex³ may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex³, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex³ Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only. Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex³. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

Participating Member: Town of Barrington 333 Calef Highway PO Box 660 Barrington, NH 03825		Member Number: 113	Company Affording Coverage: NH Public Risk Management Exchange - Primex ³ Bow Brook Place 46 Donovan Street Concord, NH 03301-2624	
---	--	------------------------------	--	--

Type of Coverage	Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not:	
<input checked="" type="checkbox"/> General Liability (Occurrence Form) Professional Liability (describe) <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence </div>	7/1/2021	7/1/2022	Each Occurrence	\$ 5,000,000
			General Aggregate	\$ 5,000,000
			Fire Damage (Any one fire)	
			Med Exp (Any one person)	
<input type="checkbox"/> Automobile Liability Deductible Comp and Coll: <div style="border: 1px solid black; width: 40px; height: 20px; margin-top: 5px; display: flex; align-items: center; justify-content: center;"> Any auto </div>			Combined Single Limit (Each Accident) Aggregate	
<input checked="" type="checkbox"/> Workers' Compensation & Employers' Liability	1/1/2022	1/1/2023	<input checked="" type="checkbox"/> Statutory	\$ 2,000,000
			Each Accident	\$ 2,000,000
			Disease - Each Employee	
			Disease - Policy Limit	
<input type="checkbox"/> Property (Special Risk Includes Fire and Theft)			Blanket Limit, Replacement Cost (unless otherwise stated)	

Description: Proof of Primex Member coverage only.

CERTIFICATE HOLDER: State of New Hampshire, Department of Environmental Services 29 Hazen Drive Concord, NH 03302	Additional Covered Party 	Loss Payee 	Primex³ - NH Public Risk Management Exchange By: Mary Beth Purcell Date: 4/14/2022 mpurcell@nhprimex.org Please direct inquiries to: Primex ³ Claims/Coverage Services 603-225-2841 phone 603-228-3833 fax
---	---	---------------------------	--

Barrington - Haley/Rubenstein

- Source Water Protection Area
- Public Water Supply
- Barrington - Haley/Rubenstein
- Wellhead Protection Areas
- Hydrologic Areas of Concern
- Hydrography
- Town Boundaries
- Conservation Lands

Total Acres= 129.8
Eligible Acres= 129.8

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



0 260 520 1,040 Feet

NHDES 4/21/2022

