

JR
103

New Hampshire Fish and Game Department

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

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

May 1, 2020

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

REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NH FGD) to enter into a Memorandum of Agreement with the Great Bay Stewards allowing the Great Bay Stewards to support the Great Bay National Estuarine Research Reserve and allowing the Great Bay Stewards use of facilities effective upon Governor and Council approval through June 30, 2025.

EXPLANATION

The Great Bay National Estuarine Research Reserve (GBNERR) is one of 28 state-federal partnership programs around the country that are dedicated to estuarine science and education. GBNERR is a program of the New Hampshire Fish and Game Department (NHFG) and receive federal funding and NHFG funds each year to conduct research, community technical assistance, land stewardship and public and school education programs at our visitor's center, the Discovery Center. As with many National Estuarine Research Reserves around the nation, GBNERR is fortunate to have a non-profit community group that helps support our activities. The Great Bay Stewards are a legal non-profit entity created in 1996 with a mission to support the Great Bay Discovery Center and GBNERR. Since that time, the Department has had a Memorandum of Agreement (MOA) with the non-profit to allow fundraising, soliciting donations to help GBNERR programs, assistance with recruiting volunteers, and assistance in communicating with the public about GBNERR programs and allowing the Great Bay Stewards to designate the Discovery Center as their place of business. The attached MOA is an updated version, to replace the one that was approved and signed in 2011. This MOA was created through discussions between the Great Bay Stewards, NHFG staff, and the Attorney General's office.

Respectfully submitted,

Glenn Normandeau
Executive Director

Kathy Ann LaBonte

REGION 1

629B Main Street
Lancaster, NH 03584-3812
(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

AGREEMENT RELATING TO GBNERR SUPPORT AND USE OF PREMISES

This AGREEMENT (“Agreement”) is made and entered into as of the Effective Date, as defined herein, by and between the State of New Hampshire Fish and Game Department (“Department” or “State”) and Great Bay Stewards, Inc. (“Great Bay Stewards” or “GBS”) (collectively, the “Parties”).

WHEREAS, the State of New Hampshire and the National Oceanic and Atmospheric Administration (“NOAA”) have established the Great Bay National Estuarine Research Reserve (“GBNERR”) pursuant to Section 315 of the Coastal Zone Management Act (“CZMA”) of 1972, 16 U.S.C §1641, as amended, and the implementing regulations found at 15 CFR Part 921.

WHEREAS, the State of New Hampshire has assigned management responsibility of GBNERR to the Department to be administered by the Department’s Marine Fisheries Division. The Department also assumed management authority for the Great Bay Discovery Center at Sandy Point from the Office of State Planning with the stipulation that this facility serve as the educational headquarters for GBNERR (see Appendix C – Memorandums of Understanding, 1989 Great Bay National Estuarine Research Reserve Management Plan).

WHEREAS, in accordance with RSA 206:33-c, the Fish and Game Commission, in consultation with the Executive Director, may designate one or more nonprofit foundations as an official nonprofit partner of the Department for the purpose of accepting gifts, grants, bequests, and donations to further department goals.

WHEREAS, GBNERR’s federally approved management plan also establishes the need for a “friend’s group” to help support activities and programs at the GBNERR.

WHEREAS, the Great Bay Stewards is incorporated in New Hampshire and maintains status as an I.R.C. §501(c)(3) entity. The Great Bay Stewards operate for the purpose of protecting and promoting the health of the Great Bay estuarine ecosystem including, without limitation, supporting GBNERR and the Great Bay Discovery Center.

WHEREAS, the Parties, by this Agreement, desire to confirm, among other things: (1) the Great Bay Stewards’ designation as a “friends group” of the Department; and (2) obligations involving the support, operation, and use of certain premises by the Great Bay Stewards in relation to its mission and the Department’s management of GBNERR.

NOW, THEREFORE, in exchange of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. GBS Designation, Support Activities, and Use of the Discovery Center Campus – General.

1.1 Designation: The Department hereby confirms its past and ongoing designation of the Great Bay Stewards as a “friends group” of the Department.

1.2 General Support Activities: The Great Bay Stewards may, at the Department’s request, perform the following activities in its discretion in support of the Department:

- a. Fundraise for GBNERR, whether in the form of money, services, or real or personal property;
- b. Serve as a fiscal agent to administer certain grants awarded to GBNERR programs;
- c. Create GBNERR’s newsletter; and/or
- d. Provide any other support as may be subsequently and mutually agreed by the Parties.

1.3 Use of the Discovery Center Campus: In return for its support of GBNERR, the Great Bay Stewards shall be permitted to use the Discovery Center Campus (defined herein):

- a. As their legal place of business;
- b. For various purposes related to its nonprofit mission, including meetings and operations;
- c. To conduct fundraising, education, and related activities in support of its mission, including use of portions the Discovery Center Campus to the extent necessary to implement programs and activities that are controlled by the Great Bay Stewards, their members or staff; and
- d. As may be otherwise set forth herein and/or mutually agreed by the Parties.

The Great Bay Stewards’ use of the Discovery Center Campus, and any other Department location as may be mutually agreed, shall be subject to consultation with, and approval of, on-site staff of the Department. All activities permitted herein shall be conducted solely for the purpose of furthering the objectives of GBNERR and/or the Great Bay Stewards’ purpose and mission.

2. GBS Support and Use of the Campus – Additional Terms: In addition to the general description of activities and use of the Discovery Center Campus described in Paragraph 1, above, the Parties further agree as follows:

2.1 Definitions.

“Program Revenues” shall mean the gross receipts from the collection of program fees from programs sponsored by the Great Bay Stewards for the benefit of GBNERR.

“Program Costs” shall mean the costs incurred by Great Bay Stewards for the products or materials necessary for programs sponsored by the Great Bay Stewards for the benefit of GBNERR.

“Net Program Proceeds” shall mean Program Revenue minus Program Costs.

“Discovery Center Campus” shall mean the Great Bay National Estuarine Research Reserve campus located at 89 Depot Road, Greenland, NH 03840, including the Great Bay Discovery Center, the Hugh Gregg Coastal Conservation Center and the Depot Station, and the contiguous grounds of these buildings.

2.2 The Great Bay Stewards may assist the Department with its operation of the Discovery Center Campus by providing volunteers, sponsorship, and community advocacy for programs related to GBNERR to be held at the Discovery Center Campus under the Department’s direction and control. The extent of assistance from the Great Bay Stewards shall be agreed upon by the Great Bay Stewards and the Department and adjusted based upon the specific requirements of each program delivered.

2.3 The Great Bay Stewards may collect program fees for GBNERR educational programs that are held at the Discovery Center Campus. In such instances, the Great Bay Stewards shall keep a written record in accordance with normal business practices of all such program fees received, with such records available for inspection by the Department upon request. The Great Bay Stewards shall transfer the Net Program Proceeds from the above GBNERR educational programs to the Department as required in this Paragraph 2.

2.4 The Great Bay Stewards may host fundraising events at the Discovery Center Campus and/or on Great Bay provided the purpose of the fundraising event is to raise funds in support of the Great Bay Discovery Center, GBNERR, and/or the Great Bay Stewards. The Great Bay Stewards shall keep a written record in accordance with normal business practices of all donations received from fund-raising activities conducted for the benefit of GBNERR. All records of the Great Bay Stewards related to fundraising events for the benefit of GBNERR shall be available for inspection by the Department upon request. The use of all donations received during fundraising events for the benefit of GBNERR shall be documented by reports, in the format and with the frequency requested by the Department business office.

2.5 The Great Bay Stewards may use the Discovery Center Campus as their legal place of business for the term of this Agreement provided that:

- a. The Great Bay Stewards corporate and nonprofit purpose continues to be primarily for the support of GBNERR and the Great Bay Discovery Center;
- b. The Great Bay Stewards shall not possess, or purport to possess, any ownership interest in or control over the Discovery Center Campus;
- c. The Great Bay Stewards shall remain in good standing as a New Hampshire nonprofit corporation with the New Hampshire Secretary of State, and as an exempt organization under the terms of the Internal Revenue Code, as amended; and
- d. The Great Bay Stewards use their own equipment to operate their organization.

2.6 The Great Bay Stewards shall not make any material alteration to the physical conditions of the Discovery Center Campus without the written consent of the Executive Director of the Department. Upon termination of this Agreement, the Premises shall be returned to the Department free of any debris and in substantially the condition that exists at the time of this Agreement, reasonable wear and tear excepted.

2.7 The Department shall at all times maintain sole custody, care, and control over the Discovery Center Campus and is responsible for the general maintenance and custodial care of the interior and exterior of the buildings and improvements. General seasonal outdoor maintenance of the property is the responsibility of the Department.

2.8 Notwithstanding Paragraph 2.7 of this Agreement, the Great Bay Stewards are responsible for any additional custodial care and outdoor maintenance of the Premises arising from events specifically associated with Great Bay Stewards sponsored programs or fundraising events.

2.9 The Great Bay Stewards may, but shall not be obligated to, set aside an area at the Discovery Center Campus for the storage and sale of products that are consistent with the purposes of GBNERR or that advertise its programs or services. This program may be commenced or discontinued at any time in the discretion of the Great Bay Stewards.

Such items may include, but not be limited to, clothing, hats, calendars, mugs, glassware, or other items used in its educational programs. All such products shall

be purchased by the Great Bay Stewards as their separate property, stored by them, and sold by Great Bay Stewards staff or volunteers at prices they may determine.

The Great Bay Stewards shall account for such activities in accordance with paragraph 5 of this agreement.

3. GBNERR's Newsletter

3.1 The Great Bay Stewards shall participate in the publication of a GBNERR newsletter (*i.e.* "Great Bay Matters"), the copyright to which shall be owned by the Department, in the manner described herein.

3.2 The Great Bay Stewards shall assist with design and creation, in a manner suitable for copying, of GBNERR's newsletter. The newsletter shall primarily describe and highlight current events, news stories, opinions, and other articles related to GBNERR and the work of its paid staff, partners, and volunteers. The Great Bay Stewards may use up to 2 (two) pages of each newsletter to describe and highlight the work of its staff and volunteers and its other current or future efforts in support of the Great Bay Discovery Center and GBNERR.

3.3 The Department shall be responsible for distribution of the newsletter, whether in print format or electronic format. Decisions as to which format shall be used shall be made by the Department. The Great Bay Stewards shall pay for the costs of printing and mailing one issue per year. The Department shall pay for the costs of printing and mailing any additional print format materials, and shall determine the website or other electronic home of any electronic format materials.

3.4 The newsletter shall be issued up to 4 (four) times per year in accordance with the mutual Agreement of the Great Bay Stewards and the Department and contingent upon the existence of appropriate funding for the distribution of the newsletter.

4. Donations from the Great Bay Stewards

4.1 The Great Bay Stewards may donate money, services, equipment and other materials or supplies to the Department for the use and benefit of GBNERR. The Department reserves the right to (a) require additional approvals as may reasonably be required in order to comply with prevailing law and the procedures imposed by the New Hampshire Department of Administrative Services; and (b) obtain the

necessary review and approval of donations from the Fish and Game Commission and the Governor and Executive Council. The Department shall use best efforts to notify the Great Bay Stewards of any such additional approval requirements in advance of any donation.

4.2 The Department shall use all reasonable, customary and good-faith efforts to advocate for the appropriation of adequate levels of funding for the staff, work, and maintenance of the GBNERR, irrespective of any donations received by the Great Bay Stewards, in each biennial state budget process and in each federal budget process during the term of this agreement.

5. Financial Reporting

5.1 The Great Bay Stewards shall provide the Department with one or more financial report(s) describing the running balances of (1) GBNERR grants and programs for which the Great Bay Stewards is a fiscal agent; and (2) the so-called "GBNERR account" and any other account as may be subsequently agreed by the Parties. Such reports shall be issued each calendar year prior to June 30 of the following calendar year, or as otherwise agreed by the Parties, and contain the level of transaction detail as may be reasonably required by the Department. The financial reports shall also include the amounts transferred to the Department as prescribed in Paragraph 2.

6. Other Rights of Great Bay Stewards

6.1 Nothing in this Agreement shall be interpreted as preventing the Great Bay Stewards from requesting grants or other financial assistance from any source, including but not limited to the Wildlife Heritage Foundation or the Department, so long as such grant or assistance is consistent with and will support the purposes of GBNERR.

7. General Conditions

7.1 Effective Date. This Agreement shall become effective upon the later of the Parties' mutual execution of this Agreement and the date upon which the Governor and Council of the State of New Hampshire approve this Agreement.

7.2 Term. The term of the Agreement is for a five (5) year period from the Effective Date. If, upon the date of expiration, the Parties have submitted an executed renewal of this Agreement to the Governor and Council of the State of New Hampshire, and such submittal is pending, then this Agreement shall remain in full force and effect until such time as the Governor and Council have approved the renewal.

7.3 Conditional Nature of Agreement. To the extent applicable, the Parties agree that all obligations of the Department to maintain the operation of the premises are contingent upon the availability and continued appropriation of funds.

7.4 Great Bay Steward's Compliance With Laws and Regulations: Equal Employment Opportunity and Personnel.

7.4.1 In connection with its performance hereunder, the Great Bay Stewards shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Great Bay Stewards, including, but not limited to civil rights and equal opportunity laws. This may include any requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Great Bay Stewards. In addition, the Great Bay Stewards shall comply with all applicable copyright laws.

7.4.2 During the term of this Agreement, the Great Bay Stewards shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap or national origin.

7.4.3 If this Agreement is funded in any part by monies of the United States, the Great Bay Stewards shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations.

7.4.4 The Great Bay Stewards shall at its own expense provide all personnel necessary to perform its activities described hereunder. The Great Bay Stewards warrant that all personnel so engaged shall be qualified as necessary, shall be properly licensed, and otherwise authorized to do so under all applicable laws.

7.4.5 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the date of termination of this Agreement, the Great Bay Stewards shall not, unless otherwise agreed in writing, hire any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.5 Termination.

7.5.1 Either Party may terminate this Agreement for any reason 120 (one hundred and twenty) days after providing the other Party written notice of such termination.

7.5.2 Either Party may terminate this Agreement for cause 20 (twenty) days after mailing a written notice to the other of its intent to terminate for cause and the reason for such termination. A Party shall not terminate for cause if the other Party corrects the noticed deficiency within 20 (twenty) days after receipt of the written notice described above.

7.6 Great Bay Steward's Relation to the Department. In the performance of this Agreement, the Great Bay Stewards shall at all times perform either as a volunteer organization or an independent contractor, as applicable. In no instance shall the Great Bay Stewards be considered an employee of the Department or the State of New Hampshire. Neither the Great Bay Stewards nor any of its officers, employees, agents or members shall have authority to bind the Department or receive any benefits, worker's compensation, or other emoluments provided by the Department to its employees. Both the Great Bay Stewards and its officers, employees, agents, and members shall ensure that the public is made aware that the Great Bay Stewards is not an entity of the Department or the State of New Hampshire and is not affiliated with any entity of either.

7.7 Assignment, Delegation, and Subcontracts. The Great Bay Stewards shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the Department. None of the services shall be delegated or subcontracted by the Great Bay Stewards without the prior written consent of the Department.

7.8 Indemnification. Nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State of New Hampshire, which immunity is hereby reserved. This covenant shall survive the termination of this Agreement.

7.9 Insurance.

7.9.1 The Great Bay Stewards shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, both for the benefit of the Department, the following insurance:

7.9.2 Comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate; and

7.9.3 The policies described in this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the Department, and authorized to do business in the State of New Hampshire.

7.10 Worker's Compensation.

7.10.1 By signing this Agreement, the Great Bay Stewards agrees, certifies and warrants that it is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

7.10.2 To the extent the Great Bay Stewards is subject to the requirements of N.H. RSA chapter 281-A, it shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Great Bay Stewards shall furnish proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The Department shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for the Great Bay Stewards, or any subcontractor or employee of the Great Bay Stewards, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

7.11 Waiver of Breach. No failure by either Party to enforce any provisions hereof after any breach or event of default shall be deemed a waiver of its rights with regard to that event, or any subsequent event. Moreover, no such failure shall be deemed a waiver of the right of either Party to enforce each and all of the provisions hereof upon any further or other default on the part of the other.

7.12 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, either by e-mail or U.S. certified mail, postage prepaid.

7.13 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.

7.14 Construction of Agreement and Terms. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the Parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the Parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

7.15 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.

7.16. 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 understanding.

7.17 Data: Access, Confidentiality, and Preservation.

7.17.1 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, papers, and documents, all whether finished or unfinished.

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

7.17.3 Confidentiality of data shall be governed by RSA 91-A or other existing law. Disclosure pursuant to a right to know request shall require prior written approval of the Department.

[SIGNATURE PAGES FOLLOW]

Signed under seal as of the first date appearing above,


NEW HAMPSHIRE FISH AND GAME DEPARTMENT


By: Glenn Normandeau, Executive
Director

STATE OF NEW HAMPSHIRE

COUNTY OF Merrimack, ss.

On this 19th day of May, 2020, before me personally appeared Glenn Normandeau, to me personally known, who, being by me duly sworn, did depose and say that he is the person named in the foregoing instrument, and acknowledged said instrument to be his free act and deed.


Notary Public/Justice of the Peace

My Commission Expires: TANYA L. HASKELL, Notary Public
My Commission Expires November 4, 2020

GREAT BAY STEWARDS, INC.

By: 
Deborah L. Alberts, Board Chair, Duly Authorized

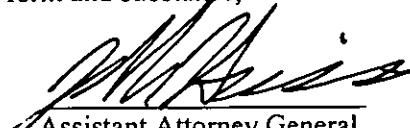
COUNTY OF Rochester STATE OF NEW HAMPSHIRE

On this 29 day of April, 2020, before me, Allison Knab, personally appeared Deborah Alberts, to me personally known, who, being by me duly sworn, did depose and say that she is the person named in the foregoing instrument, and acknowledged said instrument to be his free act and deed.


Notary Public/Justice of the Peace

My Commission Expires: June 5 2024

Reviewed and approved as to form and substance,

a.  5/27/2020
Assistant Attorney General

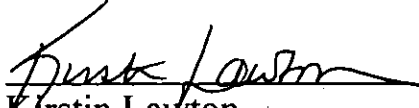
Certificate of Vote

Name of Organization: Great Bay Stewards, Inc.
Address: 89 Depot Road, Greenland NH 03840
Telephone: (603) 778-0015

I, Kirstin Lawton, do hereby certify that I am the duly elected and qualified Treasurer of the Great Bay Stewards, Inc. and that the following is a true and correct copy of resolutions made a by the Board of Trustees of the Great Bay Stewards, Inc. on the 4th day of January, 2020, and the following resolutions are in full force and effect:

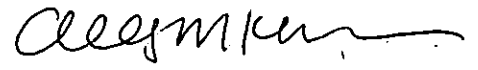
- I. BE IT RESOLVED, that the Great Bay Stewards, Inc. hereby authorizes Deb Alberts, Chair of the Great Bay Stewards, Inc. to enter into contracts with the State of New Hampshire, and to execute any and all documents, agreements and other instruments, and to sign and deliver in the name of and on behalf of the Great Bay Stewards, Inc. any and all documents pertaining to services provided to the State of New Hampshire projects.
- II. BE IT RESOLVED, that the Great Bay Stewards enter into a Memorandum of Agreement with the New Hampshire Fish and Game Department.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 29 day of ~~May~~ ^{April}, 2020.


Kirstin Lawton
Title: Treasurer, Great Bay Stewards

State of New Hampshire, County of Rockingham
On this the 29 day of April 2020, before me Allison Knab, the undersigned officer, personally appeared Kirstin Lawton, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes

therein contained. In witness whereof, I hereunto set my hand
and official seal.



COMMISSION EXPIRES:
JUNE 5, 2024

State of New Hampshire

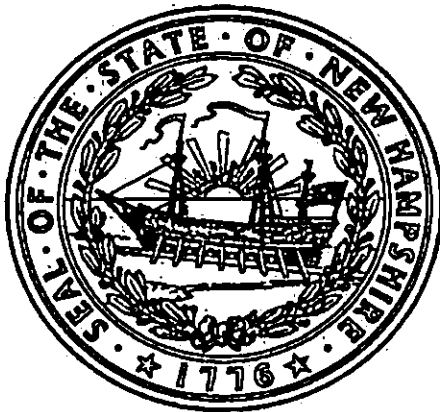
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that GREAT BAY STEWARDS, INC. is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on October 26, 1995. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 239305

Certificate Number: 0004896501



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 20th day of April A.D. 2020.

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

William M. Gardner
Secretary of State