

## STATE OF NEW HAMPSHIRE DEPARTMENT of NATURAL and CULTURAL RESOURCES Division of FORESTS and LANDS

172 PEMBROKE ROAD CONCORD, NEW HAMPSHIRE 03301 PHONE: 271-2214 FAX: 271-6488 WWW.NHDFL.ORG

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May 24, 2018

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

### REQUESTED ACTIONS

1. Authorization is requested for the Department of Natural and Cultural Resources, Division of Forests and Lands to budget and expend \$13,700 from the Groton Wind Settlement Fund as established by SEC application for Groton Wind LLC for a certificate of site and facility, Docket No. 2010-01, final decision and order on outstanding issues dated July 9, 2014, upon Governor and Executive Council approval through June 30, 2019. 100% Agency Income

	Groton Wi	nd Settleme	nt Fund		
٠	03-35-35-	-351510-520	40000		
Fiscal Year 2018					
Class	Class Description	Account	Current Available Balance	Request amount to be budgeted	Adjusted Available
Revenue					
009	Agency Income	407079	147,600	-13,700	133,900
	Total Revenue		147,600	-13,700	133,900
Expense					
033	Land Acquisition and Easement	509033		13,700	13,700
103	Contracts for Operational Serv	502664	2,400		2,400
	Total Appropriations		2,400	13,700	16,100

 Pursuant to RSA 227-H:3,I, authorize the Department of Natural and Cultural Resources (DNCR) to acquire fee title to 1.098 acres in Campton from Wilson L. and Elizabeth A. Pollard Real Estate Partnership (Pollard) at the fair market value of \$13,700.

Funding for this purchase is available as follows:

03-035-035-351510-52040000 Groton Wind Settlement Fund 033-509033 Land Acquisition and Easement

### **EXPLANATION**

DNCR proposes to purchase 1.098 acres for \$13,700, which is the fair market value as determined by a New Hampshire certified general appraiser. This acquisition will add additional acreage to Livermore Falls State Forest in Campton. The purpose of the purchase is to enable DNCR to develop a public parking area to access the western portion of the property which is divided by the Pemigewasset River. This portion of the property has a historic mill site and is currently accessed by parking along Route 3.

Attached is an executed purchase and sales agreement, statement of value letter from the appraiser, a survey plan, a copy of the Groton Winds settlement agreement, and a letter of support from the Friends of the Pemi.

Acquisition of fee title is subject to approval of the budget and expend action in Item 1, and final approval of the legal documents as to form, substance and execution by the NH Department of Justice.

Respectfully submitted,

Jeffrey J. Rose, Commissioner

Department of Natural and Cultural Resources

## **PURCHASE AND SALE AGREEMENT**

Elizabeth A. Pollard, General Partner of the Wilson L. and Elizabeth A. Pollard Real Estate Partnership ("the PARTNERSHIP"), 35 Old Etna Road, Lebanon, NH 03766 ("SELLER") agrees to sell, and the State of New Hampshire, through its Department of Natural and Cultural Resources, of 172 Pembroke Road, Concord, New Hampshire 03301 ("BUYER") agrees to purchase certain property on the terms and conditions set forth below:

- 1. <u>PROPERTY</u>: The property to be conveyed is a certain tract or parcel of approximately +/1.1 acres of undeveloped land, which is a portion of a lot identified on the Town of Campton Tax
  Maps as Lot 21-5-7 ("the PROPERTY"), currently owned by the PARTNERSHIP (c/o Elizabeth A.
  Pollard, 35 Old Etna Road, Lebanon, NH, 03766), located on the south side of Route 3, and
  abutting Livermore Falls State Forest in the Town of Campton, NH. The SELLER'S source of title is
  recorded at the Grafton County Registry of Deeds at Book 2277, Page 74.
- 2. <u>Purchase Price</u>: With full knowledge of an appraisal report dated September 14, 2017, prepared by Scot D. Heath, that reports the "Market Value" of the Property to be \$13,700 on September 12, 2017, the SELLER hereby agrees to sell, and the BUYER hereby agrees to purchase the Property at the purchase price ("PURCHASE PRICE") of **Thirteen Thousand and seven hundred dollars (\$13,700)** to be paid by the BUYER to the SELLER with a check issued by the Treasurer of the State of New Hampshire at the closing.
- 3. <u>Title and Deed</u>: The SELLER shall convey the PROPERTY to the BUYER by warranty deed, conveying good and clear record and marketable title thereto, free and clear from all liens and encumbrances except usual public utilities serving the PROPERTY.
- 4. <u>Closing</u>: A warranty deed shall be delivered and exclusive possession shall be given to the BUYER, and the BUYER shall tender the Purchase Price to the SELLER, no later than June 30, 2018, unless a later date is mutually agreed to by the Parties. The date, time and location of the closing shall be mutually agreed to by the SELLER and the BUYER.
- 5. <u>Payment of Real Property Taxes</u>: The Seller shall be responsible for payment of all real estate property taxes assessed for the Premises at the date of closing by the Town of Campton.
- 6. <u>Examination of Title and Environmental Assessment</u>: If the BUYER desires an examination of title or environmental assessment, it shall bear the cost therefor. If, upon examination of title or environmental assessment, it is found that title is not marketable or environmental issues detrimental to the BUYER, this Purchase and Sale Agreement ("AGREEMENT") may be rescinded at the option of the BUYER.
- 7. <u>Conditions Precedent</u>: The SELLER understands that the BUYER must secure the approval to purchase the PROPERTY from the Legislative Fiscal Committee and Governor and His Executive Council prior to the closing.

- 8. <u>Risk of Loss</u>: Risk of loss relative to any damage or loss to the PROPERTY shall be on the SELLER until closing. In case of loss, any sums recoverable from insurance shall be paid or assigned at the Closing to the BUYER.
- 9. <u>Warranties and Representations</u>. To induce BUYER to enter into this Agreement, SELLER hereby warrants and represents to BUYER as follows:
- (a) BUYER has no knowledge of any adverse rights to the PROPERTY; there are no leases, subleases, licenses, known prescriptive rights, tenancies or other agreements which grant any possessory or other interest in the PROPERTY; there are no known contracts affecting the PROPERTY which will survive the closing; and SELLER has no knowledge of any default with respect to any permit, approval, ordinance, law or obligation pertaining to the PROPERTY.
- (b) SELLER has the requisite power and authority to enter into and perform its obligations under this Agreement
- (c) There are no known actions (legal or administrative), suits or other proceedings with respect to the PROPERTY pending for which legal process has been served on the SELLER or threatened against the SELLER.
  - 10. <u>Time</u>: Time is of the essence for all dates and time periods in the Agreement.
- 11. <u>Default</u>: If either party defaults hereunder, then the other party shall have available to it all rights provided under law and in equity.
- 12. <u>Notices</u>: All notices shall be sent to the parties at their addresses set forth above. Any press release regarding this transaction shall be first approved by the SELLER.
- 13. <u>Merger</u>: All representations, statements and agreements made by and between the BUYER and the SELLER are merged in the Agreement which alone fully and completely expresses their respective rights and obligations.
- 14. <u>Governing Law</u>: The AGREEMENT is made in accordance with New Hampshire law and shall be interpreted, governed and enforced under New Hampshire law.
  - 15. <u>Counterparts</u>: The AGREEMENT may be executed in two (2) or more counterparts, all of which shall constitute but one (1) Agreement.

Signature Page follows.

IN WITNESS WHEREOF the parties have caused this instrument to be executed this 1011 day of \_\_

## **SELLER**

Wilson L. and Elizabeth A. Pollard Real Estate Partnership

₩itness

By:

DATE

**General Partner** 

**BUYER** 

State of New Hampshire

By:

Jeffrey J. Rose, Commissioner DATE

Department of Natural and Cultural Resources

MAY 1 8 2018

# Heath Appraisal Services

140 SECOND NEW HAMPSHIRE TURNPIKE NORTH FRANCESTOWN, NH 03043

SCOT D. HEATH (603) 588-3020 FAX (603) 588-3048

September 14, 2017

Robert Spoerl, Land Agent
State of New Hampshire
Department of Natural and Cultural Resources
Division of Forests and Lands
172 Pembroke Road
Post Office Box 1856
Concord, New Hampshire 03301

RE: Appraisal of fee simple interest; approximately 1.098 acres vacant land, located on U. S. Route 3, Campton,
New Hampshire; property of the Wilson L. and Elizabeth A. Pollard Real Estate Partnership (proposed annexation/lot line adjustment).

Dear Mr. Spoerl,

As requested, I have completed the appraisal of the above referenced real estate. Based upon my investigations and analyses, market value of the fee simple interest in the subject property as proposed, as of September 12, 2017, being the most recent date of inspection, was concluded at the level of.....

#### \$13,700

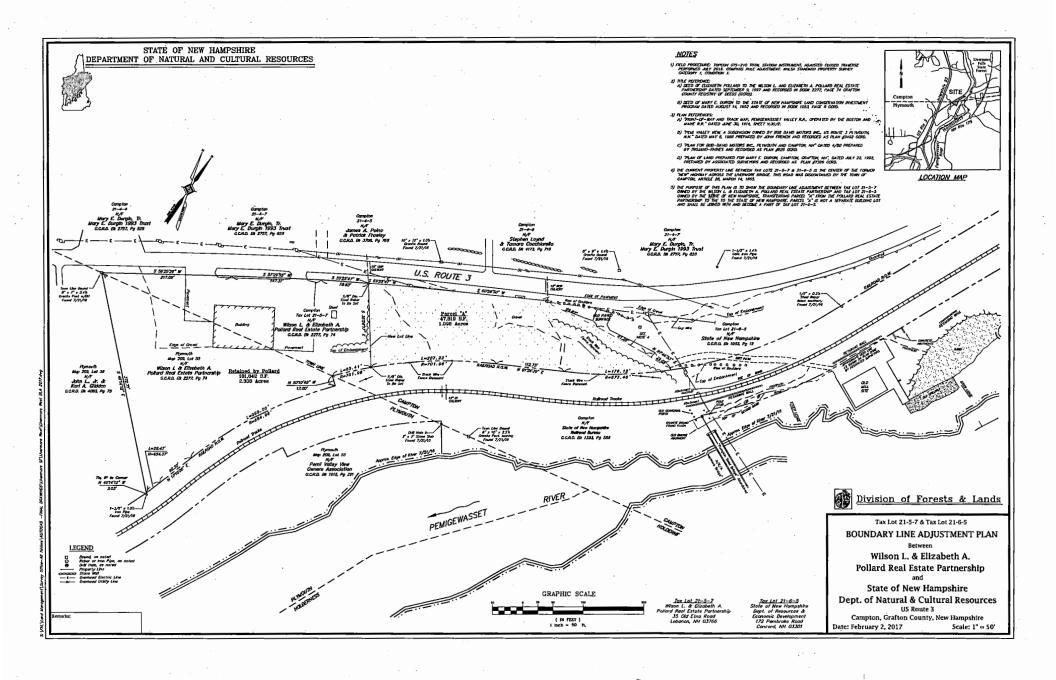
The accompanying report outlines the appraisal process and sets forth the rationale and methodology leading to the final opinions of market value as set forth above. Your attention is called to the Table of Contents which outlines the report, the Assumptions and Limiting Conditions which apply to this report, and to the Certification.

Scot D. Heath

Certified General Appraiser

(NHCG-211)

FileNo.15-17



### SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of this 2 day of July, 2014, ("Effective Date"), by and between, Groton Wind, LLC, an Oregon limited liability company ("Groton Wind") and Peter C.L. Roth, in his capacity as Counsel to the Public ("Counsel for the Public") in New Hampshire Site Evaluation Committee ("SEC") Docket No. 2010-01. Groton Wind and Counsel for the Public are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

- A. Groton Wind is the owner of an electric generating wind power project ("Wind Project") in Groton, New Hampshire.
- B. Counsel for the Public is a party to SEC Docket No. 2010-01 and has asserted, among other things, that: Groton Wind constructed its Wind Project not in accordance with its SEC certificate in violation of RSA 162-H:5, I; the SEC should order Groton Wind to terminate the violation and move the Wind Project's operations and maintenance ("O&M") building to its originally certificated location; and Groton Wind's Environmental, Health and Safety Plan (filed October 11, 2013) is deficient (the "Enforcement Claims").
- C. Groton Wind and Counsel for the Public recognize that claims and concerns of certain owners of property in close proximity to the O&M building (i.e. Mario Rampino, Mary Ann Peabody; and Greg Saulnier) have been addressed and settled as to these property owners.
- D. Groton Wind and Counsel for the Public recognize that Groton Wind and the Office of the State Fire Marshal have executed a Compliance Agreement to satisfy the State Fire Marshal's issues pending in SEC Docket No. 2010-01, (the "Compliance Agreement"), and have substantially performed the responsibilities required thereby, and that Groton Wind has filed, and the State Fire Marshal has accepted, the Groton Wind Plant "Emergency Plan", filed with the SEC on June 20, 2014 (the "Emergency Plan").
- E. Groton Wind and Counsel for the Public are entering into this Agreement to compromise, settle and resolve Counsel for the Public's Enforcement Claims presently pending before the SEC, for Counsel for the Public to permanently withdraw said claims, and for Groton Wind to make a payment in the amount of \$160,000 for the public benefit (the "Payment") and to take additional steps described below in paragraph 2.

### **AGREEMENT**

NOW THEREFORE in consideration of the promises, terms and conditions set forth herein the Parties mutually agree as follows:

- 1. Withdrawal of Enforcement Claims. Within five (5) days after full execution of this Agreement, Counsel for the Public shall: (a) cause all of his claims, protests and objections currently pending before the SEC against Groton Wind and/or the Wind Project related to the Enforcement Claims to be withdrawn by filing a notice of withdrawal with the SEC. Such withdrawal shall become permanent upon receipt by Counsel for the Public of the Payment.

  Notwithstanding the foregoing, Counsel for the Public reserves the right to participate, in accordance with his powers under RSA 162-H:9, in an adjudicative proceeding with respect to Groton Wind's requests to amend its certificate of site and facility, but agrees that he will not demand that the Wind Project's O&M building be removed or relocated, nor will he seek or assist others with seeking a determination that Groton Wind has violated the terms of its certificate of site and facility, or any provision of law.
- 2. Payments and Actions by Groton Wind. Groton Wind shall make the Payment to the New Hampshire Department of Justice ("NHDOJ") on or before May 1, 2015. Up to \$10,000 of said Payment funds may be retained by NHDOJ to defray its expenses associated with SEC Docket No. 2010-01; these funds shall be used at the discretion of the Attorney General. The remaining funds shall be used by NHDOJ for the public purpose of supporting the "Livermore Falls Project" in Grafton County by the New Hampshire Department of Resources and Economic Development for park management and park infrastructure at Livermore Falls. Groton Wind shall also continue to comply with all of the terms and conditions of the Compliance Agreement and shall maintain in effect an emergency plan satisfactory to the State Fire Marshal, substantially similar to the Emergency Plan.
- 3. Release. Upon the delivery of the Payment by Groton Wind to Counsel for the Public, Counsel for the Public, on his own behalf, and on behalf of his representatives, employees, contractors, attorneys, agents, successors, and assigns, and any other person or entity claiming by or through any of them, will release, acquit and discharge Groton Wind from the Enforcement Claims. This release expresses a full and complete settlement of the Enforcement Claims, regardless of the adequacy of the above consideration.
- 4. Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, the Parties warrant and represent to each other as follows:
  - a. By signing below, each signatory represents and warrants that he/she is authorized to sign this Agreement on the Party's behalf and to thereby bind such Party to the terms of the Agreement.
  - b. Each Party represents and warrants to all other Parties that neither the execution of this Agreement nor the performance of any obligations

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- 4. <u>Warranties and Representations</u>. In addition to the representations and warranties contained elsewhere in this Agreement, the Parties warrant and represent to each other as follows:
  - a. By signing below, each signatory represents and warrants that he/she is authorized to sign this Agreement on the Party's behalf and to thereby bind such Party to the terms of the Agreement.
  - b. Each Party represents and warrants to all other Parties that neither the execution of this Agreement nor the performance of any obligations

hereunder will violate, or constitute a default under or breach of, any other agreement to which any Party is bound.

5. Settlement and Compromise. It is understood and agreed that this Agreement is a settlement and compromise of disputed claims described herein. The Parties agree to the following Iberdrola Renewables statement:

Iberdrola Renewables is a company that prides itself on transparency and clear communication. Iberdrola Renewables acknowledges that certain communications and decisions surrounding its construction of the operations and maintenance building of the Groton Wind Project did not meet the expectations of state officials and some members of the local community and was not explicitly authorized by the certificate. While we believe that we acted appropriately, we regret that this situation has resulted in misunderstandings and a lack of trust with those impacted. Iberdrola Renewables is working diligently to reestablish its reputation as a good corporate citizen within the State of New Hampshire, as it does at all of its nearly 60 renewable projects throughout the United States and has taken a number of important steps to rectify the situation with respect to the operations and maintenance facility.

Iberdrola Renewables also acknowledges that a lack of close coordination with the State Fire Marshal's office ahead of construction has led to further misunderstanding and a lack of trust when it comes to fire safety issues. Safety is the number one concern for Iberdrola Renewables, both for the communities it serves and its own employees and contractors. With all of this in mind, we have reached an agreement with the State Fire Marshall's office on an action plan which addresses all concerns.

- 6. SEC Approval. The Parties agree that within 10 days of its full execution, they will develop a Joint Motion for Approval of Settlement Agreement and provide the Motion and Settlement Agreement to the parties in SEC Docket No. 2010-01 for concurrence, at which time the terms of this Agreement shall be public. The Parties agree to cooperate in advocating that this Agreement be approved by the SEC in its entirety and without modification. This Agreement is expressly conditioned upon the SEC's acceptance and approval of all of its provisions without change or condition. If the SEC does not accept this Agreement in its entirety in full satisfaction of all of the pending claims against Groton Wind and/or the Wind Project, or if the SEC makes changes to this Agreement, or issues conditions or findings that go beyond the scope of this Agreement, the Settling Parties shall negotiate reasonable modifications to this Agreement if necessary and possible. Such modifications shall take into account the SEC's determinations, and to the extent possible, maintain the original language and intent of this Agreement.
- 7. Entire Agreement. This Agreement sets forth the entirety of the agreement between the Parties hereto and supersedes all prior negotiations, agreements, representations, and understandings between the Parties with respect to the subject matter hereof, and any reliance upon any prior negotiations, agreements, representations, and understandings between the Parties is expressly waived and disclaimed.

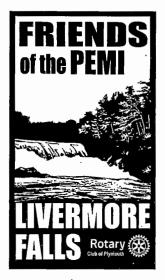
- 8. Confidentiality of Settlement Negotiations. This Agreement is the product of confidential settlement negotiations. The content of these negotiations, including any documents prepared during such negotiations for the purpose of reaching settlement, shall be privileged and all offers of settlement shall be confidential and without prejudice to the position of any party presenting such offer.
- Counterparts. This Agreement may be signed in counterparts and facsimile signatures will be accepted in lieu of original signatures.
- 10. <u>Successors</u>. The terms of this Agreement shall be binding upon the heirs, representatives, successors and assigns of each Party hereto.
- 11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Hampshire.
- 12. Negotiated Agreement. This Agreement shall not be construed as if it were prepared by one of the Parties, and shall be deemed to have been negotiated by and between the Parties, who are separately represented by counsel. All provisions of this Agreement have been negotiated at arm's length, and this Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision hereof.
- 13. <u>Survival</u>. All representations and warranties set forth in, and all provisions of, this Agreement shall survive the consummation of the transactions contemplated by this Agreement, and the delivery of any instruments required to be delivered hereunder and be fully enforceable thereafter.
- 14. <u>Performance of Additional Acts</u>. Each Party agrees that it shall execute and deliver any and all documents and perform any and all acts required on its part or those which may be reasonably necessary to effectuate and complete and facilitate the provisions of this Agreement.
- Modification of Agreement. Any modification of this Agreement shall be in writing and signed by the Parties.
- Breach and Remedies. Each Party shall retain its rights to pursue legal and/or
  equitable actions to remedy breach(es) of this Agreement by the other Party.
- Third Party Beneficiaries. The Parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

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- Breach and Remedies. Each Party shall retain its rights to pursue legal and/or
  equitable actions to remedy breach(es) of this Agreement by the other Party.
- 17. Third Party Beneficiaries. The Parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Vaura Mayrand Witness	Peter C.L. Roth Counsel for the Public
Witness Tyry	GROTON WIND, LLC, an Oregon Limited Liability Company  By:  Kevin Devlin  Authorized Representative  Its:
Witness Agra-	Name: Scott Jacobson Authorized Representative

APR 1 7 2018,



PO Box 393 Plymouth, NH 03264 livermorefalls.org April 16, 2018

Joseph D. Kenney

PO Box 201

Union, NH 03887

Dear Councilor Kenney,

I am contacting you on behalf of Friends of the Pemi – Livermore Falls Chapter. You have been tremendous in your support of our long-term project to establish and improve the Livermore Falls State Forest. Your visits to our ribbon-cutting ceremony on the east side of the Pemi and tour last year to review our plans on the west side of the river have demonstrated your enthusiasm for our efforts. For all of this, we offer our sincere gratitude and appreciation.

We have been informed that the Executive Council will meet on May 2, 2018 to approve the purchase of a small parcel on the west side which will be used as a parking lot and access to viewing and river locations. As a historical and interpretive site, this location is rich in educational and scenic value. And, the new parking lot is the critical starting point for building safer access and interpretive signage down to the river and falls below. As you recall, the funding for the entire project is and has been in place for some time now. We ask you, once again, to demonstrate your support by approving this purchase.

Our relationship and coordination with the State is stronger than ever. With good weather and a little luck, we should be holding another ribbon-cutting ceremony by fall of this year.

Best regards,

Ken Evans

Coordinator, Friends of the Pemi – Livermore Falls Chapter and President, Plymouth Rotary Club

cc., Phillip Bryce, Ben Wilson, 172 Pembroke Road, Concord, NH 03301