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# New Hampshire Fish and Game Department

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

TDD Access: Relay NH 1-800-735-2964  
FAX (603) 271-1438  
E-mail: info@wildlife.nh.gov

November 2, 2016

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

## REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG) to acquire a conservation easement on 38.49 acres in Randolph, New Hampshire from the Robert C. Potter Trust, Robert C. Potter and Roberta C. Arbree, Trustees (Vendor Code 276258), at the bargain sale cost of \$4,200, effective upon Governor and Council approval through June 30, 2017. Funding is 100% Other (Wildlife Habitat Funds).

Funding for this purchase is available as follows:

<u>03 75 75 751520-2155 Wildlife Program – Wildlife Habitat Conservation</u>		
020-07500-21550000-305-500845	Habitat Acquisition and Management	<u>FY2017</u> \$4,200.00

## EXPLANATION

NHFG proposes to purchase a conservation easement on 38.49 acres in Randolph at the bargain sale cost of \$4,200. An appraisal of the conservation easement area has determined that its fair market value is \$130,000. The Robert C. Potter Trust is providing a \$125,800 bargain sale value.

Funding for this project will be provided by the Wildlife Habitat Account. The New Hampshire Fish and Game Commission approved the expenditure of \$4,200 at their June 8, 2016 meeting.

Respectfully submitted,

  
Glenn Normandeau  
Executive Director

  
Kathy Ann LaBonte  
Chief, Business Division

**Inter-Department Communication**

**DATE:** October 11, 2016

**FROM:** Christopher G. Aslin                      **AT (OFFICE)**                      Department of Justice  
Assistant Attorney General                      Environmental Protection Bureau

**SUBJECT:** Robert C. Potter Trust – Randolph, Conservation Easement

**TO:** Richard A. Cook  
Fish & Game Department

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The Office of the Attorney General has reviewed the above-referenced and supporting documents provided and approves the easement for form and substance. Please note that once approved by the Governor and Council, and signed by all parties, the Conservation Easement should be returned to this office for final review of execution before they are recorded in the appropriate county registry of deeds.

  
\_\_\_\_\_  
Christopher G. Aslin

/cmc  
Attachments

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

**ROBERT C. POTTER AND ROBERTA R. ARBREE**, Trustees of **THE ROBERT C. POTTER TRUST** with a mailing address of 101 US Route 2, Town of Randolph, County of Coos, State of New Hampshire 03593 (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 QUITCLAIM covenants, grants in perpetuity to

the **STATE OF NEW HAMPSHIRE**, acting by and through the **FISH AND GAME DEPARTMENT**, with a principal office at Eleven 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),

the Wild Apple Hill Conservation Easement (hereinafter "Easement") hereinafter described with respect to that certain parcel of land (hereinafter "Property") being unimproved land, consisting of approximately 38.49 acres, bounded on the north by Route 2 in the Towns of Randolph, County of Coos, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

**WHEREAS**, the Grantee has identified the area as critical wildlife habitat for a variety of species and the Property possesses the following natural attributes:

- The Property is part of an important north-south and east-west wildlife travel corridor, contributing to the preservation and conservation of the region's biodiversity.
- The Property adds to the existing 250 acre conservation easement area known as the Moose River Conservation Easement already held by the Grantee.
- The Property enhances wildlife habitat connectivity from the White Mountain National Forest to the south to the Randolph Community Forest to the north.
- The Property contains northern hardwood-conifer forests which provide habitat for a broad range of species and habitats including winter yarding areas for deer and moose.

**NOW THEREFORE**, it is hereby understood and acknowledged:

### 1. PURPOSES

The Wild Apple Hill Conservation Easement hereby granted is pursuant to New Hampshire RSA 477:45-47 exclusively for the following conservation purposes (“Purposes”):

- A. To retain the Property forever in its undeveloped state for critical wildlife habitat including upland forest and deer winter habitat, and to prevent any use of the Property that will significantly impair or interfere with its conservation values;
- B. To maintain the Property 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-;
- C. To protect biological diversity and integrity through the conservation, and promotion of diverse forest community and the conservation and enhancement of native plant and animal species and their habitats;
- D. To provide for the scenic enjoyment and the low-impact, transitory non-commercial, outdoor recreational use of the general public for such activities as hiking, nature observation, cross-country skiing, fishing and hunting on the Property;
- E. To maintain on the Property, scenic views from the Boston & Maine Rail-Trail; and
- F. To provide access to the Property for ecological, archaeological, conservation, and fish & wildlife habitat research.

These purposes are consistent with:

- the open space and conservation goals and objectives as stated in the 2016 MASTER PLAN OF THE TOWN OF RANDOLPH, which states: “There is one overriding concern which draws the townspeople together. That is the need to conserve land for hiking, hunting, snowmobiling, skiing, and other forms of traditional outdoor recreation, for ecological protection and supporting the local economy through the practice of sustainable forestry” and with
- NEW HAMPSHIRE RSA 79-A:1 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,” and with

All of these Purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

The Wild Apple Hill Conservation Easement hereby granted with respect to the Property is as follows:

## **2. USE LIMITATIONS**

Subject to provisions specified in Sections 3 through 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 residential, 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 diverse 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 but not for nursery production; the construction of roads or other accessways for the purpose of removing forest products from the Property; and the processing and sale of products produced on the Property (such as maple syrup), all as not detrimental to the purposes of this Easement.
  - ii. Forestry shall be performed as hereinafter specified in Section 3 of this Easement and in accordance with the following stewardship goals:
    - a. maintenance or enhancement of the Property's wildlife habitat values;
    - b. maintenance or enhancement of native biological diversity and natural habitat values found on the Property
    - c. maintenance of soil productivity and protection against soil erosion;
    - d. protection of water quality and wetlands;
    - e. protection of rare plants & animals;
    - f. protection of unique or fragile natural areas;
    - g. conservation of native plant and animal species;
    - h. protection of unique historic and cultural features;
    - i. protection of low-impact, non-commercial outdoor recreational qualities; and
    - j. conservation of scenic quality as seen from public roads, trails and waters.
- B. Forestry activities shall be considered commercial activities unless they are for the Grantor's personal use on the Property. Such Forestry activities for personal use and any non-commercial activities for the purposes of wildlife habitat improvement shall all be subject to the written approval and conditions of the Grantee regarding timing, location, scope and scale of the activities, but, may not be required to meet the stewardship planning requirements in Section 3 herein subject to the sole discretion of the Grantee. No such personal use or wildlife habitat improvement activities shall be approved that are detrimental to the Purposes of the easement, are inconsistent with the stewardship goals in 2.A.ii., or degrade the productive capacity of the Property to support diverse wildlife populations.
- C. The Property shall not be subdivided or otherwise divided into parcels of separate distinct ownership and none of the tracts together which together comprise the property shall be conveyed separately from one another.
- D. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, educational building, tennis court, athletic field, pavilion, swimming pool, dock, shooting range, aircraft landing strip, pavement, dam, bridge, outdoor lighting, utility pole, conduit, antenna, personal wireless service facility, communications facility 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, levee, water control structure, 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 and wildlife blinds may be constructed, placed, or introduced onto the Property only to the extent necessary to accomplish the transitory, 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.
- E. 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, wildlife habitat management, or transitory, 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 made at the sole discretion of the Grantee and 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. 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.
- F. 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, conservation, education, or transitory, 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 16 square feet in size and no sign shall be artificially illuminated.
- G. Notwithstanding the terms of Section 4.E., 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., B., D., E., F. or J. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- H. There shall be no dumping, spreading, injection, burning, or burial of biosolids, man-made materials or materials then known to be environmentally hazardous.
- I. The Grantor shall not engage in, nor shall the Grantor grant permission to any party for 1) operation of aircraft of any sort; or 2) operation of motorized all-terrain vehicles or other off highway recreational vehicles as defined in New Hampshire RSA 215-A:1 as of the date of execution of this Easement, attached as Appendix "B", or successor definition

mutually agreed to by Grantor and Grantee except as provided for in Sections 4.A. and 5.C. below.

- J. There shall be no activity on the Property conducted by or permitted by the Grantor or its agents that causes pollution, alteration, or depletion of surface or subsurface water, natural water courses, ponds, marshes or any other surficial water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity, or which could alter natural water level and/or flow over the Property. Notwithstanding the foregoing, alteration of natural water courses, surface water level or flow shall be permitted provided that such activities:
- i. are necessary to accomplish the Wildlife Habitat Management uses of the Property; and
  - 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 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; and
  - iii. are not detrimental to the purposes of this Easement; and
  - iv. are 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 2016 ” (Department of Resources and Development, Division of Forest and Lands); and
  - v. have received all necessary federal, state, local, and other governmental permits and approvals.
- K. The within described 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**

- A. Forestry activities shall be conducted in accordance with a stewardship plan, prepared by a licensed professional forester, a certified wildlife biologist, or by another 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.
- i. 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:
    - a. The Grantor’s Resource Professional shall draft the Plan, prepared as outlined (Section 3) herein.
    - b. 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.ii., and compliance with this Easement.

- c. At least sixty (60) days prior to land management activities, Grantor shall submit the Plan to the Grantee for approval.
  - d. 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.ii., 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 paragraph below applies. This timeline may be extended by mutual consent of the Grantor and Grantee.
  - e. 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.
- ii. The Plan shall specifically address and include at least the following elements:
- a. The long-term protection of those values for which this easement is granted, as described in Section 1 above;
  - b. The stewardship goals set forth in Section 2.A.ii. above;
  - c. A statement of landowner management objectives consistent with the Purposes of the easement and stewardship goals stated in Section 2.A.ii. above;
  - d. A map showing the Property's boundaries, access roads, public use areas and forest stand types;
  - e. Forest Health, including insects, disease, invasive species and soil erosion
  - f. A description of the Property's existing conditions and natural features including land cover, topography, soils, geology, wetlands, streams and ponds, wildlife habitat features, transitory, low-impact, non-commercial, outdoor recreational and educational uses, and boundary conditions;
  - g. Identification of plant and wildlife species of conservation concern, and how management will enhance or avoid detrimental impacts to said plant and wildlife species;
  - h. Proposed management prescriptions for wildlife habitat management, Forestry, conservation, transitory, low-impact, non-commercial, outdoor recreation, and education; and
  - i. Proposed schedule of implementation of management prescriptions, including a schedule for boundary, road and trail maintenance.
- iii. The Plan shall have been prepared not more than ten 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.B. herein.
- iv. 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.B. herein prior to conducting any such new management activity. Such amendments shall include any changes and additions to or deletions from the approved Plan.

- B. 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:
- i. 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, 1996), and “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” Bennett, Karen B., 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, 1996), or similar successor publications
  - ii. In areas used by, or visible to, the general public, such harvesting shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in “A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners” (Geoffrey Jones, 1993) or similar successor publications.
- C. The Grantor shall provide the Grantee and its agents with a reasonable opportunity to meet and confer with the Grantor at least annually to review proposed management activities and to evaluate management activities commenced in the previous years. At a minimum, during such meetings, the Grantor shall report on the status of the Stewardship Plan, the timetable for implementation, and the consistency of management activities and uses of the Property with the Purposes and terms of this Easement.

#### **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.

- A. The Grantor reserves the right to operate and permit the operation of motorized all-terrain vehicles or other off highway recreational vehicles, as previously defined, solely for the purposes of conducting Grantor’s maintenance and management of the Property and for emergency or law enforcement purposes. This provision is an exception to Section 2.I. herein.
- B. The Grantor reserves the right to permit low impact non-commercial camping on the Property, provided camping impacts are not detrimental to the Purposes of the Easement.
- C. Grantor reserves the right to issue written permission for trapping and baiting of all wildlife on the Property in accordance with New Hampshire RSA 210:11 and 207:3d or successor laws, as may be amended.
- D. Grantor reserves the right to permit archaeological investigations on the Property after receiving written approval from the Grantee. Prior to permitting any such investigations, Grantor shall send written notice to the New Hampshire State Archaeologist (or other person or agency then recognized by the State as having responsibility for archaeological resources) for review and comment, and to the Grantee, such notice describing the nature,

scope, location, timetable, qualifications of investigators, site restoration, research proposal, and any other material aspect of the proposed activity. The Grantor and Grantee shall request the State Archaeologist (or other person or agency, as above) to consider the proposal, to apply the standards as specified in rules implementing New Hampshire RSA 227-C:7 (Permits Issued for State Lands and Waters), and to provide written comments to the Grantor and Grantee. The Grantee may, in its sole discretion, approve the proposed investigations only if it finds that all of the following conditions are met:

- i. The archaeological investigations shall be conducted by qualified individuals and according to a specific research proposal;
  - ii. The proposed activities will not harm state or federally recognized rare, endangered, or threatened species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire 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; and
  - iii. The proposed activities will not be materially detrimental to the Purposes of this Easement.
- E. The Grantor reserves the right to allow snowmobiles on designated trails only, or to prohibit them altogether. Location and design of any trails for snowmobile use shall be prepared in consultation with the Grantee, identified in the Stewardship Plan, designed to avoid negative ecological impacts, and shall not be detrimental to the Purposes of this Easement.
- F. The Grantor reserves the right to use aerial drones to aid in data collection for wildlife habitat and forestry management.
- G. The Grantor reserves the right to harvest up to fourteen (14) cords of firewood annually for personal use.
- H. The Grantor reserves the right to undertake vegetative management including tree removal within a “vegetative management zone” being that area defined as follows: all that portion of the Property east of a line from a NHHD concrete monument located at Station 665 + 00, 90 feet right of centerline, on the northern boundary line of the property and shown on the Survey entitled “Plat to accompany Deed John Hancock Mutual Life Ins. Co, to Robert Potter and Roberta Arbree Parts of Lots 2 & 3, Range 4 U.S. Route 2, Randolph, NH and recorded at the Coos County Registry of Deeds, October 31, 1995 to a point 400 feet west of the southeast corner of the Property along the southern boundary line. A map entitled “*Potter Tract, Randolph: Infrastructure*” and included in the Baseline Documentation Report on file with the Grantee designates the approximate location of this area. In the event of conflict between the Vegetative Management Zone Map and descriptions set forth above, the later shall govern.

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

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

- A. The public has the right of pedestrian access, in perpetuity, on and across the Property for

transitory, low-impact, non-commercial, outdoor recreational activities including but not limited to hunting, fishing, hiking, cross country skiing and nature observation, in accordance with current laws and regulations. The right of overnight camping, motorized access or construction of fires on the Property by the public is not hereby conveyed. The Grantee agrees to cooperate with the Grantor to limit allowed public access and use of the property if, in the sole discretion of the public safety is at risk, or the public use is not consistent with the Purposes or stewardship goals listed in Sections 1 and 2.A.ii. of this Easement.

- B. 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 to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.
- C. Grantee and its agents shall have the right to operate and permit the operation of motorized all-terrain vehicles or other off highway recreational vehicles, as previously defined, solely for the purposes of carrying out its responsibilities under this Easement and for emergency or law enforcement purposes. This provision is an exception to Section 2.I. herein.
- D. Grantee and its agents shall have the right but not the obligation to mark and maintain the boundaries of the Easement.
- E. The Grantee may, at any time, reassign oversight of those portions of this Easement relevant to archaeological sites to the New Hampshire Department of Cultural Resources' Division of Historical Resources.

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

- A. The Grantor agrees to notify the Grantee in writing at least 30 days before the transfer of title to the Property.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

#### **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. ADDITIONAL EASEMENT**

Should the Grantor determine that the Purposes of this Easement could be accomplished better by additional easements or restrictions, the Grantor may execute an additional instrument to this effect with written approval of the provided that the conservation purposes of this Easement are not diminished thereby and, further, that a qualified conservation organization or public body pursuant to New Hampshire RSA 477:46 and Section 7 of this Easement accepts and records the additional easements or restrictions.

#### **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, 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 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.

## **14. MISCELLANEOUS**

The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and the Grantor hereby waives any defense of *laches* with respect to any delay or omission by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement, any such delay or omission shall not impair the Grantee's rights or remedies or be construed as a waiver.

The Grantee, by accepting and recording the Wild Apple Hill Conservation 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.

IN WITNESS WHEREOF, we have heretounder set our hand this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
**Robert C. Potter, Trustee, Robert C. Potter Trust**

\_\_\_\_\_  
**Roberta R. Arbree, Trustee, Robert C. Potter Trust**

The State of New Hampshire  
County of \_\_\_\_\_

Personally appeared Robert C. Potter and Roberta R. Arbree , Trustees of the Robert C. Potter Trust , this \_\_\_\_\_ day of \_\_\_\_\_, 2016.  
And acknowledged the foregoing to be their voluntary act and deed.

Before me \_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires: \_\_\_\_\_

**ACCEPTED: STATE OF NEW HAMPSHIRE FISH & GAME DEPARTMENT**

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

Date: \_\_\_\_\_, 2016

The State of New Hampshire

County of \_\_\_\_\_

Personally appeared Glenn Normandeau, Executive Director of the New Hampshire Fish and Game Department, this \_\_\_\_\_ day of \_\_\_\_\_, 2016, and being duly authorized acknowledged the foregoing on behalf of the State of New Hampshire.

Before me, \_\_\_\_\_  
Justice of the Peace/Notary Public

My commission expires: \_\_\_\_\_

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

## APPENDIX A

### **DESCRIPTION OF THE BOUNDARY ROBERT C. POTTER TRUST RANDOLPH, NH**

The following described parcel of land is located southerly of U.S. Route 2 and is part of Lots 2 and 3, Range 4 of the lots and ranges of Randolph, New Hampshire.

Beginning at a New Hampshire Highway Department concrete monument on the southerly sideline of U.S. Route 2. Said monument at Station 651+ 00, 90 feet right of centerline.

Thence N81°50'06"E along the southerly sideline of U.S. Route 2 for 1399.70 feet to a N.H.H.D. monument at Station 665 + 00, 90 feet right.

Thence N72°50'40"E along said sideline for 179.71 feet to an iron pipe.

Thence S14°59'45"W along other land of the grantor for 1196.52 feet to an iron pipe and wood post.

Thence N74°50'37"W along land of Broad Acres Trust for 1347.65 feet to a wood post in stones on the westerly line of Lot 2, Range 4.

Thence S17°32'19"W along land of Broad Acres Trust and the line between lots 2 and 3, Range 4 for 72.06 feet to a wood post and stones.

Thence N74°45'41"W along land of Broad Acres Trust for 1357.45 feet to an iron pipe.

Thence N09°31'41"E along land of Broad Acres Trust for 26.81 feet to an iron pipe.  
Thence continuing on the same course of N09°31'41"E for 27.81 feet or a total distance on this course of 54.62 feet to a point on the southerly sideline of U.S. Route 2.

Thence N77°38'37"E along said line for 166.82 feet to a point.

Thence N81°50'06"E along said sideline for 1225.00 feet to the point of beginning.

Containing 38.49 acres, more or less.

As shown on a plat prepared by York Land Services Company titled "Plat to Accompany Deed, John Hancock Mutual Life Ins. Co. to Robert Potter and Roberta Arbree, Part of Lots 2&3, Range 4, U.S. Route 2, Randolph, New Hampshire," dated July 27, 1995 and recorded at Coos County Registry of Deeds, to which reference may be made for a more particular description.

All courses of this description are referenced to magnetic meridian of 1995.

Being a portion of the premises conveyed to John Hancock Mutual Life Insurance Company by deed dated October 7, 1993, recorded in the aforesaid Registry of Deeds at Book 817, Page 701.

APPENDIX B

**TITLE XVIII  
FISH AND GAME**

**CHAPTER 215-A  
OFF HIGHWAY RECREATIONAL VEHICLES AND  
TRAILS**

**Section 215-A:1**

**215-A:1 Definitions.** – As used in this chapter unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings:

I-b. "All terrain vehicle (ATV)" means any motor-driven vehicle which is designed or adapted for travel over surfaces other than maintained roads with one or more non-highway tires, having capacity for passengers or other payloads, not to exceed unladen dry weight of 1,000 pounds, and not to exceed 50 inches in width. For the purposes of this chapter, all vehicles within this definition shall be classified as off highway recreational vehicles.

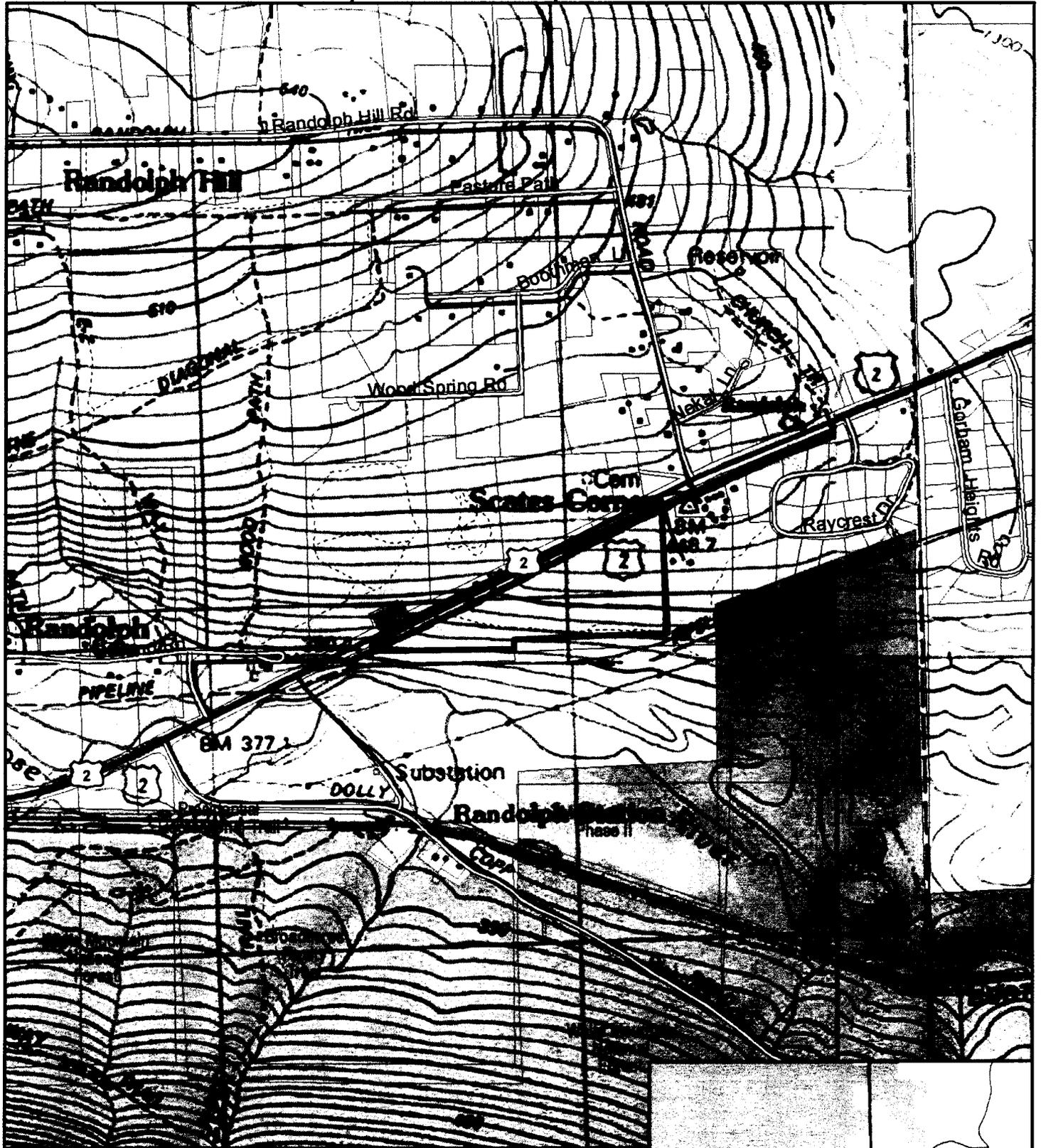
V. "OHRV" means off highway recreational vehicle.

V-c. "Other OHRV" means an OHRV that is not a trail bike.

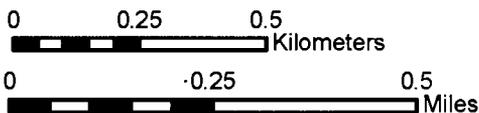
VI. "Off highway recreational vehicle" means any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, tracks, or cushion of air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ice or snow or not, where the operator sits in or on the vehicle. All legally registered motorized vehicles when used for off highway recreational purposes shall fall within the meaning of this definition; provided that, when said motor vehicle is being used for transportation purposes only, it shall be deemed that said motor vehicle is not being used for recreational purposes. For purposes of this chapter "off highway recreational vehicle" shall be abbreviated as OHRV. OHRVs shall include utility terrain vehicles and shall not include snowmobiles as defined in RSA 215-C.

**Source.** 1981, 538:3. 1983, 449:1. 1985, 137:1; 261:1, 2. 1986, 152:2-6. 1989, 179:1. 1993, 53:3. 1997, 268:2. 2000, 85:1; 108:1, 2. 2001, 226:1, 2. 2002, 233:1, 25. 2003, 112:7; 120:1, 2; 295:1, 14. 2004, 174:1. 2005, 210:12, 64, I-III. 2006, 14:2. 2007, 228:1, eff. Aug. 24, 2007. 2014, 39:1, eff. July 1, 2014; 281:1, 2, eff. Sept. 26, 2014. 2015, 33:1, 2, eff. May 7, 2015.

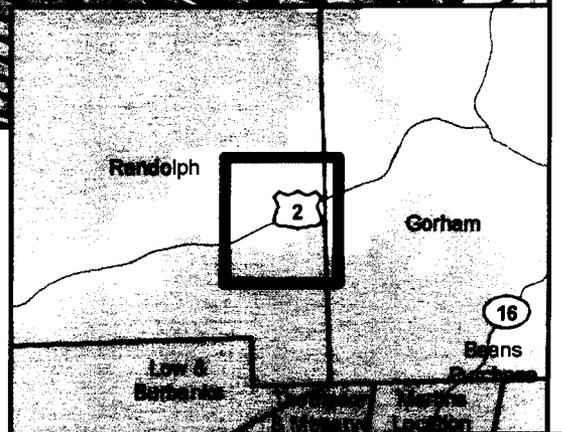
# Potter Tract, Randolph: Basemap



Digital data in NH GRANIT represent the efforts of the contributing agencies to record information from the source materials. Not intended for legal use. Background: copyright 2013 National Geographic Society, i-cubed



Map prepared: 10/11/2016



**NEW HAMPSHIRE FISH AND GAME DEPARTMENT**

**JUNE 8, 2016 COMMISSION MEETING**

Meeting Location: NH Fish & Game Department's Great Bay Discovery Center, 89 Depot Road, Greenland, NH 03840.

Commissioners Present: F. Clews, R. Phillipson, J. McGonagle, T. Baldwin, J. Ryan, B. Carr, V. Greco T. Hubert, D. Patch, and W. Morse.

Commissioners absent/excused: T. Tichy

Executive Director Normandeau – Present

Vice Chairman Patch called the meeting to order at 1:01 p.m., and asked the audience to join in the pledge of allegiance. He informed the audience that the public is entitled to attend all Commission meetings and when recognized by the chairman, the public may speak on any item on the agenda. The Chair reserves the right to limit comment to the extent necessary for the orderly conduct of the meeting.

**ACTION ITEMS:**

1.) Commissioner Greco moved to approve the May 11, 2016 Commission Minutes as written and Commissioner Clews seconded. The vote was unanimous in the affirmative.

2.) Consent Agenda - The following items were grouped together and were noticed as consent agenda items to expedite action on routine matters, which may not require public discussion. The Commission voted to approve these matters as presented. Commission members may remove certain items if further public input or discussion is deemed necessary.

Commissioner Ryan moved to approve consent agenda items 2a & 2b as presented below, and Commissioner Phillipson seconded. The vote was unanimous in the affirmative.

2a.) Commission accepted two donations totaling \$77.00 from the below individuals, to be utilized by the Inland Fisheries Division:

William & Michele Riley -	\$27.00
Ken Moore -	<u>\$50.00</u>
Total:	\$77.00

2b.) Commission accepted two donations totaling \$45.00 from the below individuals, in memory of Lawrence Mayer, Let's Go Fishing Instructor, to be utilized by the Aquatic Education Program:

Richard Sanders -	\$15.00
Craig & Donna Hempy-	<u>\$30.00</u>
Total:	\$45.00

- 3.) Commissioner Phillipson moved to approve the expenditure of up to \$400.00 from the fish food account to purchase an Ecosense PH100A pH/Temp meter from Pentair Aquatic Systems and Commissioner Morse seconded. The vote was unanimous in the affirmative.
- 4.) Commissioner Carr moved to expend \$4,200 from the Wildlife Habitat Account to acquire a conservation easement on 39± acres in Randolph, NH, and Commissioner Clews seconded. The vote was unanimous in the affirmative.
- 5.) Commissioner Hubert moved to approve a variety of marine rules due to expire in 2016 and to waive the requirement to obtain a fishing tournament permit for coastal & estuarine waters and Commissioner Clews seconded. The vote was unanimous in the affirmative.
- 6.) Doug Grout, Chief, Marine Division, presented the Environmental Protection Agency's Environmental Merit Award and Atlantic States Marine Fisheries Commission's Award of Excellence to Marine Division staff as follows:

**Steve Miller**, the Coastal Training Program Coordinator for the Great Bay National Estuarine Research Reserve (GBNERR), was honored as a 2015 recipient of the EPA Region 1 Environmental Merit Award for his work as co-chair of the NH Coastal Adaptation Work Group (CAW). Steve leads a group of government, non-governmental, university and private organizations in New Hampshire that collaborate to provide resources for coastal communities responding to the impacts of climate change. Now involving a collaboration of 21 organizations, the work group is looked at as a national model. To date CAW has received more than \$5 million in grant funds for 46 municipal projects and sponsors an annual Climate Summit.

**Paul Stacey**, who oversees the research program at GBNERR, earned the 2016 EPA Region 1 Environmental Merit Award as a member of the Water Integration for Squamscott-Exeter (WISE) team. The Squamscott River has elevated nitrogen concentrations and has suffered a significant loss of its historical eelgrass cover. As communities respond to Clean Water Act requirements for reducing harmful nitrogen loading from the discharge of polluted storm water and wastewater, they must find effective and affordable means to meet water quality goals. Ultimately, these efforts will help restore ecosystems in the Great Bay estuary.

Marine Fisheries Supervisor **Cheri Patterson** and Marine Biologist **Renee Zobel** were honored as recipients of the Atlantic States Marine Fisheries Commission's Award of Excellence in the field of Management & Policy Contributions for their work on the American Lobster Trap Tag Team. The team is a group of 19 state, federal and Atlantic Coastal Cooperative Statistics Program fishery and data managers responsible for the creation of the first-of-its kind cooperative permitting and trap allocation tracking database for American lobster. The database became fully operational in late 2015 and provides a central database to manage and track Trap Tag transfers and allocations between commercial lobstermen.

On behalf of the Commission, Vice Chairman Patch congratulated the above individuals on their accomplishments.

### **INFORMATION ITEMS:**

- 1.) Director Normandeau reviewed the monthly financial statement dated May 31, 2016 with the Commission.
- 2.) Jason Smith, Chief, Inland Fisheries Division, came before the Commission and provided a brief update and results on the bass movement radio tag study ongoing at Squam Lakes. He reported that he would bring the final results before the Commission when the study is complete.
- 3.) Corey Riley, Great Bay National Estuarine Research Reserve Program Supervisor, provided an overview of the Great Bay Discovery Center and the most recent boardwalk project. She offered to take the Commission on a tour of the new boardwalk after the meeting.
- 4.) Director Normandeau provided a comprehensive report as to the position, reason & action regarding the water withdrawal from the Androscoggin River, Indian Bay for the Balsams Project. Below is the link to obtain all the relative information about the project.

<http://des.nh.gov/organization/divisions/water/wmb/section401/index.htm>, then click on the link: Water Quality Certification Approved for the Balsams Grand Resort Wilderness Ski Area snowmaking withdrawal and redevelopment.

Director Normandeau reminded everyone, “We comment on what comes before our review team. We do not design or designate where things go.”

Clark Corson, audience member, stated, “This hit the Commission like a news flash.”

Director Normandeau responded, “I can’t explain how people are not aware of this.”

Clark stated, “There will be litigation on this. I know Fish & Game is not responsible.”  
Director Normandeau responded, “Nobody has petitioned a public hearing for this.”

Director Normandeau encouraged folks wanting to obtain more information on this project to visit the above link on the DES website.

### **STANDING COMMITTEES:**

**POLICY COMMITTEE:** Commissioners; Commissioners McGonagle & Clews.  
Commissioner McGonagle reported that the committee did not meet.

**LEGISLATIVE COMMITTEE:** Commissioner Morse, Chair; Commissioners Hubert, Greco, Patch, and Baldwin. Commissioner Morse reported that the committee did not meet.

Director Normandeau reported that HB-1176, relative to nomination and qualification of fish and game commissioners, was before the House Fish & Game Committee. He reported that the bill includes the New Hampshire Guides Association in the nomination process for fish and game commissioners, decreases the term of commissioners, and prohibits former employees of the fish and game department from being appointed to the commission.

He further reported that members of the committee determined that the department is not in favor of any of those proposals.

**RIVERS COMMITTEE:** Commissioner Ryan reported that the committee did not meet.

**LAKES COMMITTEE:** Commissioner Clews reported that the Lakes Committee did not meet.

**HANDBOOK & ORIENTATION COMMITTEE:** Commissioner Patch, Chair; Commissioner Carr. Commissioner Patch reported that the committee did not meet. He reported that the committee would be meeting in the near future to do the annual review.

**STRATEGIC PLANNING COMMITTEE:** Commissioner Greco, Chair; Commissioners McGonagle, Tichy and Phillipson. Commissioner Greco reported that the committee did not meet.

**WILDLIFE HERITAGE FOUNDATION:** Commissioner Greco reported that the committee would be meeting today, June 8, 2016, therefore was not able to attend.

**AWARDS COMMITTEE:** Commissioners Hubert and Baldwin. Commissioner Hubert reported that there was no meeting, however, encouraged everyone to bring forward nominees for next years' awards.

**NOMINATING COMMITTEE:** Commissioners Hubert, Greco & Baldwin. Vice Chairman Patch reported that a report from the nominating committee will be heard at the August 10, 2016 Commission Meeting.

**NEW BUSINESS:** Commissioner Phillipson moved to cancel the July 13, 2016 Commission Meeting and Commissioner Greco seconded. The vote was unanimous in the affirmative.

**OLD BUSINESS:** Commissioner Baldwin asked that his item for discussion be heard at the end of the meeting.

**DIRECTOR'S REPORT:** Director Normandeau reported that things were quiet at the moment. He reported that the budget process would be starting soon.

**COMMISSIONERS REPORTS:**

**COMMISSIONER BALDWIN:** Commissioner Baldwin had nothing to report at this time.

**COMMISSIONER CARR:** Commissioner Carr had nothing to report at this time.

**COMMISSIONER GRECO:** Commissioner Greco had nothing to report at this time.

**COMMISSIONER PHILLIPSON:** Commissioner Phillipson had nothing to report at this time.

**COMMISSIONER MORSE:** Commissioner Morse had nothing to report at this time.

**COMMISSIONER RYAN:** Commissioner Ryan had nothing to report at this time.

**COMMISSIONER PATCH:** Commissioner Patch had nothing to report at this time.

**COMMISSIONER MCGONAGLE:** Commissioner McGonagle had nothing to report at this time.

**COMMISSIONER CLEWS:** Commissioner Clews had nothing to report at this time.

**COMMISSIONER HUBERT:** Commissioner Hubert had nothing to report at the time.

**COMMISSIONER TICHY:** Commissioner Tichy was absent.

**OLD BUSINESS:** At 2:50 p.m., Commissioner Baldwin moved to go into non-public session to confer with counsel and Commissioner Phillipson seconded. A roll call vote was taken at this time, Commissioner Clews, "Yes", Commissioner Phillipson, "Yes", Commissioner McGonagle, "Yes", Commissioner Baldwin, "Yes", Commissioner Ryan, "Yes", Commissioner Carr, "Yes", Commissioner Greco, "Yes", Commissioner Hubert, "Yes", Commissioner Patch, "Yes", and Commissioner Morse, "Yes".

The Commission conferred with counsel and no action was taken.

At 3:05 p.m., Commissioner Hubert moved to come out of non-public session and Commissioner Carr seconded. A roll call vote was taken at this time, Commissioner Clews, "Yes", Commissioner Phillipson, "Yes", Commissioner McGonagle, "Yes", Commissioner Baldwin, "Yes", Commissioner Ryan, "Yes", Commissioner Carr, "Yes", Commissioner Greco, "Yes", Commissioner Hubert, "Yes", Commissioner Patch, "Yes", and Commissioner Morse, "Yes".

**CALL TO THE PUBLIC:**

At this time, 3:06 p.m., Commissioner Hubert moved to adjourn and Commissioner Phillipson seconded. The vote carried with 9 in favor and 1 opposed (T. Baldwin).

Respectfully submitted,

James Ryan, Secretary

Approved: \_\_\_\_\_  
Ted Tichy, Chairman