



New Hampshire Fish and Game Department

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November 18, 2015

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

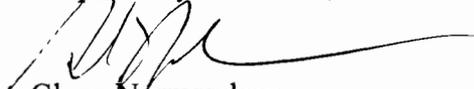
REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NHFG) to accept the transfer of a conservation easement on 293.30+/- acres in Hooksett from Bear-Paw Regional Greenways effective upon Governor and Council approval.

EXPLANATION

NHFG seeks authority to accept the transfer of a conservation easement on 293.30+/- acres in Hooksett. This easement is being offered at no cost by Bear-Paw Regional Greenways to NHFG as part of our continuing effort to conserve important wildlife habitats in the Hinman Pond Focus Area. These parcels will be open to the public for hunting, fishing and other wildlife related recreation activities.

Respectfully submitted,


Glenn Normandeau
Executive Director


Kathy Ann LaBonte
Chief, Business Division

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE November 17, 2015

FROM: Christopher G. Aslin
Assistant Attorney General

AT (OFFICE) Department of Justice
Environmental Protection Bureau

SUBJECT: Hinman Pond II Conservation Easement, Hooksett, NH

TO: Richard Cook, Land Agent
Fish and Game Department

The Office of the Attorney General has reviewed the Conservation Easement Deed and supporting documents provided in connection with the above referenced acquisition and approves the acquisition for form and substance only, with the condition that the property description of Tract 5 be added to Appendix A prior to execution. Following approval by Governor and Executive Council, the fully executed Conservation Easement Deed should be returned to this office for approval of execution before the Deed is recorded.



Christopher G. Aslin

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

With Third Party Right of Enforcement

BEAR-PAW REGIONAL GREENWAYS, a corporation with a principal place of business at 63 Nottingham Road, Deerfield, Rockingham County, State of New Hampshire, 03037 (hereinafter referred to as the "Grantor", which word includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's successors and assigns),

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

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

a Conservation Easement (hereinafter "Easement") hereinafter described with respect to those certain parcels of land (hereinafter "Property") being unimproved lands known as the Hinman Pond II parcels consisting of approximately 293.30 acres situated on/or near the Chester Turnpike, in the Town of Hooksett, County of Merrimack, State of New Hampshire, as shown on the plans entitled Standard Boundary Survey and Conservation Easement Plan, Chester Turnpike, Hooksett NH, Prepared for Bear-Paw Regional Greenways (Map 3, Lots 17, 19, 20, 21, and 22) and Standard Boundary Survey and Conservation Easement Plan, Chester Turnpike, Hooksett NH, Prepared for Bear-Paw Regional Greenways (Map 4, Lots 1, 2 and 36). Both dated July 29, 2015, prepared by T.D. Brouillette Land Surveying, recorded of near or even date herewith in the Merrimack County Registry of Deeds, (herein referred to as the "Plans"), and more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

ALSO CONVEYING AND GRANTING a Third Party Right of Enforcement to the STATE OF NEW HAMPSHIRE acting through its DEPARTMENT OF ENVIRONMENTAL SERVICES, an administrative agency duly organized and existing under the laws of the State of New

Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03302 (hereinafter referred to as the "Third Party Holder", which, unless the context clearly indicates otherwise, includes NHDES's successors and assigns). The parties recognize that the Property was acquired, in part, with funding received from the NHDES Aquatic Resources Mitigation Fund.

This award placed certain continuing obligations on the Grantor and Grantee in a Grant Agreement of near or even date.

In accordance with RSA 227-M:14, notwithstanding any other provision of law relating to disposal of publically-owned real estate, no deviation in uses of any resource asset acquired under this program to uses or purposes not consistent with the purposes of RSA 227-M shall be permitted. The sale, transfer, conveyance, or release of any resource asset from the public trust is prohibited, except as provided in RSA 227-M:13, (RSA 227-M:14).

The Grantor and Grantee have identified the area as critical wildlife habitat, which includes wetlands and uplands for a diversity of birds, mammals and other wildlife, including some that are rare, threatened or endangered in New Hampshire.

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 227-M and NH RSA 477:45-47, and in compliance with the New Hampshire Aquatic Resources Mitigation Fund Final In-lieu Fee Program Instrument (U.S. Army Corps of Engineers, New England District, Regulatory Division, File Number NAE 2005-1142, exclusively for the following conservation purposes:

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

To further the goals of the NH Wildlife Action Plan including but not limited to protecting and conserving habitats for species of greatest conservation concern.

The preservation and conservation of wetlands vegetation, soils, hydrology and/or habitat as documented in the baseline documentation report entitled "Baseline Documentation Report – MSG Hinman Pond II Project" (the "Report"), which Report is on file at the offices of the Grantor, Grantee and the Department of Environmental Services.

To preserve and protect in perpetuity the natural vegetation, soils, hydrology, natural habitat and the scenic and aesthetic character of the Property so that the Property retains its natural qualities and functions;

To protect the Property from future development, and to conserve and maintain the unique characteristics of 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 477:45-47 and RSA 227-M;

To conserve and manage the wildlife habitats of which the Property consists to benefit a diversity of wildlife species including birds, mammals and rare, threatened and endangered wildlife.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the 2004 Master Plan of the Town of Hooksett, which states among its recommendations, the following: establish conservation land in the northeast quadrant of the Town; target as a goal that 25% of the total land area in Hooksett be set aside in some manner as open space land; explore all possible avenues to fund the preservation of Hooksett's key natural resource assets; and RSA Chapter 79-A which states: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest and wildlife resources,"

and with New Hampshire RSA 227-M, which states:

"The intent of the program is to conserve and preserve this state's most important natural, cultural and historical resources through the acquisition of lands, and cultural and historical resources, or interests therein, of local, regional, and statewide significance, in partnership with the state's municipalities and the private sector, for the primary purposes of protecting and ensuring the perpetual contribution of these resources to the state's economy, environment and overall quality of life."

These purposes and the characteristics of the Property are also consistent with the conservation goals of the Grantor, including:

- The protection of conservation land within large contiguous blocks of unfragmented lands in southeastern New Hampshire;
- The protection of forestland;
- The protection of surface waters, groundwater and wetlands; and
- The protection of habitat for native plant and animal species.

The significant conservation values are set forth in detail in the baseline documentation on file with the Grantee.

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

The 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 or NH RSA 227-M shall be 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 agricultural, industrial or commercial activities except forestry, including timber harvesting in accordance with the approved Stewardship Plan as described

in Section 2. herein and provided that the productive capacity of the Property to support diverse wildlife populations shall not be degraded by on-site activities and subject to the following conditions:

- Such activities shall comply with the Purposes of this Easement;
 - Such activities shall not damage or destroy rare, threatened or endangered species or exemplary natural communities;
 - Such activities shall not degrade or otherwise impact water quality or aquatic habitats.
- i. For the purposes hereof, "Wildlife Habitat Management" shall include, but not be limited to, alteration of vegetation and soil and the placement of structures to provide habitat for a wide range of wildlife species; the construction or modification of roads or other access ways for the purpose of performing such activities, the use of forest equipment, all as not to be detrimental to the Purposes of this Easement.
 - ii. For the purposes hereof, "Forest Management" or "Forestry" shall include the growing, cutting, and sale of forest trees of any size capable of producing timber or other forest products; those forest practices employed primarily to enhance the forest, including the protection of wildlife habitat; and the construction of access ways for the purposes of removing forest products from the Property.
 - iii. For the purposes hereof, "Recreational Use" activities shall include low-impact, non-motorized, non-commercial recreational activities including, but not be limited to, hunting, fishing, trapping (in accordance to RSA 210:11), hiking, cross country skiing and nature observation, in accordance with current laws and regulations.
 - iv. Wildlife Habitat Management, Forest Management, and Recreational Use activities shall be conducted by the Grantor and/or the Grantee in accordance with a Stewardship Plan, prepared by a licensed professional forester, certified wildlife biologist, or other qualified person (the "Resource Professional"). Any person other than a licensed professional forester or a certified wildlife biologist shall be considered a Resource Professional under this Easement only if approved in advance and in writing by the Grantor and Grantee.
 - v. For the purposes hereof, "Riparian Buffers" shall be the areas within 100 feet of streams and Significant Wetlands as defined below. The Riparian Buffer shall be measured from the stream edge at the normal high water mark. In cases where the top of the embankment is less than 50 feet from the stream edge, the riparian buffer shall be measured from the top of embankment. In cases where wetlands surround the stream edge, the riparian buffer shall be measured from the boundary of the upland edge of the wetland area.
 - vi. For the purposes hereof, "Significant Wetlands" are those areas that by virtue of their unspoiled condition, unique physical or biological features, rarity, and/or exemplary nature have special value in a particular locale. This value is reflected in a high degree of functioning relative to its ecological integrity, wildlife and aquatic life habitat, flood storage, groundwater interactions, and/or sediment and toxicant attenuation, and special social values such as education, scenic quality, and recreation. Significant Wetlands are typically identified and evaluated by wetland scientists, wildlife biologists, or Natural Heritage ecologists through fieldwork and/or high resolution aerial photograph

interpretation. Significant Wetlands may include, but are not necessarily limited to:

- I. Wetland communities or systems that are classified as exemplary due to their high quality as determined by their size, condition, and landscape context (that is, the condition of the surrounding landscape). See [insert web link] for further explanation of the characteristics of an exemplary wetland.
- II. Wetland communities or systems that are classified as exemplary (S1 and S2) due to their rarity in the State of New Hampshire by the NH Natural Heritage Bureau (NHB). Rare wetland types need not be of high quality to qualify as exemplary, but they must be considered viable in light of their size, condition, and landscape context. See [insert web link] for further explanation of S rankings.
- III. New Hampshire Wildlife Action Plan Tier 1 and Tier 2 wetlands.
- IV. Wetlands providing habitat for Endangered Species, Threatened Species, and Species of Special Concern wildlife.

Examples of significant wetland types in New Hampshire include, but are not limited to cedar swamps, black gum swamps, exemplary natural communities tracked in the Natural Heritage Bureau (NHB) database, any wetland community type ranked by the NHB as critically imperiled/or imperiled, bogs, fens (peat lands), and floodplain forests.

vii. For the purposes hereof, forestry within the Riparian Buffer as defined in Section 2.A.v. shall adhere to the following additional restrictions:

- a. There shall be no application of herbicides or pesticides within the Riparian Buffer as defined above.
- b. There shall be no forestry activities, soil disturbance, or tree cutting and removal within the first twenty five (25) feet of the Riparian Buffer, except as necessary to conduct Wildlife Habitat Management or Recreational Use activities identified in the Stewardship Plan (i.e., wildlife habitat improvement, construction of wildlife viewing platforms and the view from said platforms, pedestrian trails, or to meet other specific natural resource or ecological goals).
- c. Forestry activities, including tree cutting and removal, within the remainder of the Riparian Buffer shall be limited to tree harvest methods that include single tree or small group selection cuts that leave a well-distributed, uneven-aged stand of trees, or other methods identified in the Stewardship Plan and approved by the Grantee, and the Third Party Holder.
- d. No skid trails, log landings, or access roads may be constructed, except in circumstances where complying with this provision may result in a greater overall environmental impact or would preclude reasonable access to areas suitable for forestry. Existing roads as identified in the baseline documentation may be retained and used but must be maintained to minimize degradation of water quality and aquatic habitat.
- e. Wildlife management activities included in the Stewardship Plan described in 2.B below, shall be exempt for paragraphs 2.A.vii. a & b above.

viii. For the purposes hereof, forestry within Significant Wetlands as defined in Section 2.A.vi. shall adhere to the following additional restrictions:

- a. No soil disturbance, tree cutting or removal shall occur, and no herbicides or pesticides shall be used.
- b. No skid trails, log landings, or access roads shall be constructed, except in circumstances where complying with this provision may result in a greater overall environmental impact or would preclude reasonable access to areas suitable for forestry. Existing roads as identified in the baseline documentation may be retained and used but must be maintained to minimize degradation of water quality and aquatic habitat.

B. The development of the Stewardship Plan should be, to the greatest extent possible, a collaborative effort involving the Grantor and the Grantee. Said Stewardship Plan must be approved in writing by the Grantor, Grantee and the Third Party Holder prior to any Wildlife Habitat Management or Forest Management activities.

- a. The Grantee's Resource Professional shall draft the Wildlife Habitat Management portion of the Plan, and a licensed professional forester, certified wildlife biologist, or other qualified person approved by the Grantor and Grantee shall draft the Forest Management and Recreational Use portion of the Plan.
- b. The Grantee and Grantor shall approve the Plan in writing
- c. At least sixty (60) days prior to any management activities, Grantor and Grantee shall have received copies of the Stewardship Plan.
- d. Within sixty (60) days after receipt of said Plan, the Grantor and Grantee shall approve or disapprove the same with respect to its wildlife habitat, forestry, and recreational use impacts, consistency with the Purposes stated in Section 1, and compliance with this Easement, and so inform the Grantor and Grantee in writing. Any disapproval shall specify in detail the reasons therefore. If the Grantor or Grantee fails to so approve or disapprove within said period, Grantor and/or Grantee may proceed with management activities recognizing that the paragraph below applies.
- e. Grantor and Grantee acknowledge that the Stewardship Plan's purpose is to guide management activities in compliance with this Easement and that the actual activities will determine compliance therewith.
- f. While it is agreed by the Grantor and Grantee that the purpose of the "Stewardship Plan" is to broadly describe management activities allowed on the Property, it is also agreed that specific management activities will be considered Stewardship Plan amendments and thus require additional review and approval by the Grantor and the Grantee.
- g. The Stewardship Plan shall have been prepared not more than ten (10) years prior to the date of any activity. Plans prepared more than ten (10) years prior to the anticipated management activities must be reviewed, and updated for the Grantor's and Grantee's approval in accordance with Section 2.B.

C. The Property shall not be subdivided or otherwise divided into parcels of separate distinct ownership and none of the individual tracts, which together comprise the Property, shall be

conveyed separately from one another, unless approved by the Grantee and Third Party Holder in writing.

D. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, educational building, tennis court, swimming pool, dock, athletic field, water wells and associated structures, pavilion, shooting range, aircraft landing strip, tower, including cell towers, mobile home, or wind powered generator or similar development, shall be constructed, placed, or introduced onto the Property. However,

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

ii. unpaved pedestrian trails and temporary wildlife blinds and tree stands may be constructed, placed, or introduced onto the Property provided that they are included in the Stewardship Plan and are not detrimental to wildlife habitat values or 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 Wildlife Habitat Management, Forest Management, or low-impact noncommercial 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; and

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 conservation, education, or low-impact noncommercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the purposes of this Easement. No sign shall exceed sixteen (16) square feet in size and no sign shall be artificially illuminated.

G. 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., or F, above. 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. There shall be no overnight camping or the construction of fires on the Property without the written consent of the Grantee.

J. 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.

K. Use of pesticides or herbicides in connection with any permitted activities must be approved in advance in writing by the Grantee and the Grantor.

L. The Grantor shall not authorize nor permit the use of motorized wheeled vehicles for recreational purposes.

M. The fee title to the Property is 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 must be approved in advance by the Grantee.

3. 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 Conservation Easement.

A. The Grantor reserves the right to use motorized vehicles to conduct activities on the Property consistent with the Stewardship Plan required by Section 2.A above.

B. The Grantor reserves the right to post against vehicles, motorized or otherwise.

C. The Grantor retains right to professionally conduct archaeological activities, including without limitation, survey, excavation and artifact removal, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the New Hampshire Division of Historic Resources (or appropriate successor official). The Grantor must notify the Grantee in writing at least thirty (30) days before the exercise of this reserved right.

D. The Grantor reserves the right to use and maintain the existing trails on the Property, along with any associated improvements including, but not limited to, fences, bridges, culverts and signs.

The provisions of Section 3 may be exceptions to the use limitations set forth in Section 2, above.

4. AFFIRMATIVE OBLIGATION FOR PUBLIC ACCESS

Pursuant to New Hampshire RSA chapter 227-M, there is hereby conveyed, and Grantor shall permit, public pedestrian access to, on and across the Property for hunting, fishing, nature observation, hiking, cross-country skiing and similar transitory non-intensive, non-commercial, outdoor recreational purposes, but not for camping. However, Grantor may post against or limit

such access, with prior approval of the Grantee if such activities become inconsistent with the Purposes of the Conservation Easement, or when public safety would be at risk.

5. AFFIRMATIVE RIGHTS OF THE GRANTEE

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

A. Through the auspices of the Grantee and the Third Party Holder, the public has the right of pedestrian access, in perpetuity, on and across the Property for low-impact non-commercial recreational activities including but not limited to hunting, fishing, trapping with permission of the Grantor as defined in RSA 210:11 on the date of this Easement, hiking, cross country skiing and nature observation, in accordance with current laws and regulations. However, the Grantee agrees to cooperate with the Grantor, with prior approval of the Third Party Holder, to limit allowed public access and use of the Property if the public use is not consistent with the Purposes of this Easement.

B. The Grantee shall have access to the Property for all purposes related to wildlife monitoring and/or management.

C. The Grantee and/or its agent shall have reasonable access to the Property and all of its parts for such inspection as are 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.

D. The Grantee and/or its agent reserve the right to use motorized vehicles to conduct activities on the Property consistent with the Stewardship Plan required by Section 2.A.iv above.

E. Grantee shall have the right, but not the obligation, to mark and maintain the boundaries of the Property.

6. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

A. The Grantor agrees to notify the Grantee and the Third Party Holder 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 and has the resources to enforce the restrictions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

8. THIRD PARTY RIGHT OF ENFORCEMENT

A. If the Easement Holder ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Third Party Holder requesting such, then the notifying Third Party Holder shall have all the rights heretofore granted to the Easement Holder to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Easement Holder.

B. The interests held by the Third Party Holder are assignable or transferable to any party qualified to become the Easement Holder's or Third Party Holder's assignee or transferee as specified in Section 7 above. Any such assignee or transferee shall have like power of assignment or transfer.

Any holder of an interest in this Easement desiring to transfer or assign its interest shall send written notice describing said intention to all other holders of any interest in this Easement at least thirty (30) days prior to such transfer or assignment taking effect.

9. MERGER

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

10. BREACH OF EASEMENT

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

B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including but not limited to restoration, 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. Forbearance by the Grantee to exercise their rights under this Easement in the event of any breach of any term thereof shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee or in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.

F. 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, Grantee, or Third Party Holder may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

Any holder of an interest in this Easement desiring to transfer or assign its interest shall send written notice describing said intention to all other holders of any interest in this Easement at least thirty (30) days prior to such transfer or assignment taking effect.

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) shall be divided between the Grantor, the New Hampshire Land and Community Heritage Investment Program and New Hampshire Department of Environmental Services Aquatic Resource Mitigation Fund in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the property condemned. The value of the property shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.

C. By virtue of the Grant from the New Hampshire Land and Community Heritage Investment Program (LCHIP) for purchase of the fee title to the property and this Conservation Easement, LCHIP shall be entitled to 29.41 percent of the portion of the proceeds pursuant to this Section 14.

D. By virtue of the Grant from the New Hampshire Department of Environmental Services Aquatic Resource Mitigation Fund (NHDES) for purchase of the fee title to the property and this Conservation Easement, NHDES shall be entitled to 29.41 of the proceeds pursuant to this Section 12.

E. The Grantor shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation Purposes set forth herein.

14. ADDITIONAL EASEMENT

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

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

15. STEWARDSHIP RESPONSIBILITIES OF THE GRANTEE

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

A. Provide an annual on-ground monitoring inspection that confirms that the interest acquired as part of an LCHIP project and a NHDES ARM Fund Grant is being protected and maintained according to the terms of the Easement;

B. Provide annual contact with Property owners to inform them of their obligations under the terms of this Easement;

C. Prepare and submit an annual monitoring report to the Grantor, LCHIP, and NHDES Aquatic Resources Mitigation Fund which shall contain the following:

- i. Description of the inspection conducted;
- ii. Description of any physical changes to the Property;
- iii. Description of any contacts made with Property owners, including their current name and address information;
- iv. Description of any conditions or activities on the Property, including those which violate or may violate the intent of this Easement;

v. Explanation of the current status of any previously identified violations and any remedial steps taken; and

vi. Any steps to be taken by Property owners to bring the Property into compliance with the terms of the Easement (if necessary).

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

16. SUBORDINATION

Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.

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

BEAR-PAW REGIONAL GREENWAYS

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire
County of _____

Personally appeared, _____ and _____
_____, this _____ day of 2015 and being duly authorized acknowledged
the foregoing on behalf of Bear-Paw Regional Greenways

Before me, _____
Print Name: _____
Justice of the Peace/Notary Public
My commission expires: _____

ACCEPTED: STATE OF NEW HAMPSHIRE FISH & GAME DEPARTMENT

By: _____
Glenn Normandeau
Executive Director

Date: _____, 2015

**The State of New Hampshire
County of Merrimack**

Personally appeared, Glenn Normandeau, Executive Director of the New Hampshire Fish and Game Department, this _____ day of _____, 2015 and being duly authorized acknowledged the foregoing on behalf of the State of New Hampshire.

Before me, _____
Print Name: _____
Justice of the Peace/Notary Public
My commission expires: _____

Approved by the New Hampshire Governor and Executive Council:

Approval Date: _____ Item #: _____

**Accepted: Third Party Right of Enforcement
NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES**

By : _____
Thomas S. Burack, Commissioner
Its duly authorized agent

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, ss.

On this _____ day of _____, 2015, before me the undersigned officer, personally appeared Thomas Burack known to me (or satisfactorily proven) to be the authorized agent of the New Hampshire Department of Environmental Services and that being authorized so to do on behalf of such entity, executed the foregoing instrument for the purposes therein contained.

In witness whereof I set my hand and seal.

Justice of the Peace/Notary Public
My commission expires: _____

APPENDIX A

Tract 1

Certain unimproved land situated northerly of the Chester Turnpike in the Town of Hooksett, County of Merrimack, State of New Hampshire, shown as "Tax Map 3 Lot 19" on a certain plan of land entitled "Standard Boundary Survey and Conservation Easement Plan, Chester Turnpike, Hooksett, N.H.", prepared by T.D. Brouillette Land Surveying, 39 Park Street, Exeter, NH 03833, dated July 29, 2015, to be recorded herewith in the Merrimack County Registry of Deeds, being more particularly bounded and described as follows:

Beginning at the northwesterly corner of the parcel on the northerly sideline of the Chester Turnpike at a ½ inch iron rod at land of Bear Brook State Park of N.H.;

thence S 76° 08'54" E 1,434.19 feet along land of Bear Brook State Park of N.H. to a ½ iron rod;

thence S 06° 14'00" W 1,033.25 feet along land of Edward L. Huggins to an iron rod on the northerly sideline of the Chester Turnpike;

thence N 44° 48'40" W 236.38 feet to a point;

thence N 40° 34'08" W 282.66 feet to a point;

thence N 44° 36'43" W 258.82 feet to a point;

thence N 57° 19'09" W 515.27 feet to a point;

thence N 30° 52'54" W 571.14 feet to a point;

thence N 30° 59'04" W 41.42 feet to the point of beginning, the previous 6 courses along the northerly sideline of the Chester Turnpike.

Said parcel contains 18.52 acres, more or less.

Tract 2

Certain unimproved land situated northerly of the Chester Turnpike in the Town of Hooksett, County of Merrimack, State of New Hampshire, shown as "Part of Tax Map 3 Lot 17" on a certain plan of land entitled "Standard Boundary Survey and Conservation Easement Plan, Chester Turnpike, Hooksett, N.H.", prepared by T.D. Brouillette Land Surveying, 39 Park Street, Exeter, NH 03833, dated July 29, 2015, to be recorded herewith in the Merrimack County Registry of Deeds, being more particularly bounded and described as follows:

Beginning at the northwesterly corner of the parcel on the northerly sideline of the Chester Turnpike at a ½ inch iron rod at land of Edward L. Huggins;

thence S 26° 13'57" E 577.52 feet to an iron rod;

thence S 08° 59'29" W 44.92 feet to an iron rod;

thence N 77° 35'58" W 345.98 feet to a point;

thence N 64° 56'03" W 225.17 feet to a point;

thence N 44° 48'40" W 17.08 feet to point of beginning, the previous 3 courses along the northerly sideline of the Chester Turnpike.

Said parcel contains 0.54 acres, more or less.

Tract 3

Certain unimproved land situated southwesterly of the Chester Turnpike in the Town of Hooksett, County of Merrimack, State of New Hampshire, shown as "Tax Map 3 Lots 17, 20, 21, 22" on a certain plan of land entitled "Standard Boundary Survey and Conservation Easement Plan, Chester Turnpike, Hooksett, N.H.", prepared by T.D. Brouillette Land Surveying, 39 Park Street, Exeter, NH 03833, dated July 29, 2015, to be recorded herewith in the Merrimack County Registry of Deeds, being more particularly bounded and described as follows:

Beginning at the northeasterly comer of the parcel on the southerly sideline of the Chester Turnpike at a ½ inch iron rod;
thence S 30° 59'04" E 87.46 feet to a 4 inch by 4 inch granite bound;
thence S 30° 59'04" E 19.53 feet to a point;
thence S 30° 52'54" E 586.59 feet to a point;
thence S 57° 19'09" E 523.42 feet to a point;
thence S 44° 36'43" E 249.14 feet to a point;
thence S 40° 34'08" E 282.78 feet to a point;
thence S 44° 48'40" E 378.56 feet to a point;
thence S 64° 56'03" E 244.20 feet to a point;
thence S 77° 35'58" E 357.24 feet to a ½ inch iron rod, the previous 8 courses along the southerly sideline of the Chester Turnpike;
thence S 08° 59'29" W 2,160.71 feet to a drill hole set in stone pile found with 12 inch oak and pine trees by land of Bear Brook State Park of N.H.;

thence N 76° 37'10" W 1,692.70 feet by land of Manchester Sand and Gravel to a 4 inch by 4 inch granite bound;
thence N 01° 31'48" W 3,418.98 feet by land of Bear-Paw Regional Greenways to a 4 inch by 4 inch granite bound;
thence N 02° 38'25" E 63.22 feet to a ½ rod in a stone pile;
thence S 76° 08'54" E 82.72 feet to a ½ inch iron rod on the southerly side of the Chester Turnpike, being the point of beginning.

Said parcel contains 114.73 acres, more or less.

Tract 4

Certain unimproved land located north of the Chester Turnpike at the town line of Allentown and Hooksett, in the Town of Hooksett, County of Merrimack, State of New Hampshire, shown as "Tax Map 4 Lot 2" on a certain plan of land entitled "Standard Boundary Survey and Conservation Easement Plan, Chester Turnpike, Hooksett, N.H.", prepared by T.D. Brouillette Land Surveying, 39 Park Street, Exeter, NH 03833, dated July 29, 2015, to be recorded herewith in the Merrimack County Registry of Deeds, being more particularly bounded and described as follows:

Beginning at the northwesterly comer of the parcel at a 12 inch by 15 inch fieldstone town bound with an "A" and "H" found up 1 foot with a drill hole and triple blazed 15 inch Oak

and 20 inch Birch trees at land of Bear-Paw Regional Greenways and Bear Brook State Park of N.H.;

thence S 60° 52'37" E 668.14 feet along the town line and land of Bear Brook State Park of N.H. to a ½ inch iron rod in stone pile with triple blazed 12 inch Pine trees at land of the Town of Hooksett;

thence S 54° 47'45" W 4,291.85 feet along land of the Town of Hooksett to a 5/8 inch iron rod in stone pile with triple blazed 12in Oak and 12in Pine trees at land of the Town of Hooksett, formerly of Nathan A. Hanscom and Sylvia Itsuko;

thence N 61° 25'48" W 612.42 feet along land of the Town of Hooksett to a ½ inch iron rod with stone pile at land of Bear-Paw Regional Greenways;

thence N 52° 48'04" E 767.84 feet along land of Bear-Paw Regional Greenways to a ½ inch iron rod with stone pile;

thence N 56° 07'49" E 758.40 feet along land of E&A Realty to a stone found upright in stone pile with triple blazed 18 inch Pine and Oak trees;

thence N 53° 53'01" E 2,747.81 feet along land of Bear-Paw Regional Greenways to a 12 inch by 15 inch fieldstone town bound with an "A" and "H", being the point of beginning.

Said parcel contains 56.68 acres, more or less..

Tract 5 Buxton Map 4, Lots 1 and 36 TO BE ADDED

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 BEAR-PAW REGIONAL GREENWAYS is a New Hampshire nonprofit corporation formed January 13, 1997. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 21st day of October A.D. 2015

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

William M. Gardner
Secretary of State



CERTIFICATE OF VOTE

I, Bruce Adami, Chairman of Bear-Paw Regional Greenways do hereby certify that:

- 1. I am the duly elected Chairman of Bear-Paw Regional Greenways.
- 2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of Bear-Paw Regional Greenways duly held on October 27, 2015.

RESOLVED that this organization shall enter into a contract with the State of New Hampshire, acting through its Fish and Game Department entitled Bear Brook – Hooksett Focus Area Land Conservation Project.

RESOLVED that Daniel E. Kern, Executive Director of Bear-Paw Regional Greenways, is hereby authorized on behalf of this Organization to enter into said contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions or modifications thereto, as they may deem necessary, desirable or appropriate.

- 3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of October 27, 2015.

IN WITNESS WHEREOF, I have hereunto set my hand as the Chairman of Bear-Paw Regional Greenways, this 28 th day of October 2015.

Bruce Adami
Bruce Adami, Chairman

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, SS

On this 28th day of October, 2015, before me the undersigned officer, personally appeared Bruce Adami who acknowledged himself to be an officer of Bear-Paw Regional Greenways, and acting in said capacity, and being authorized so to do, executed the foregoing instrument on behalf of Bear-Paw Regional Greenways as its voluntary act and deed for the purposes therein contained.

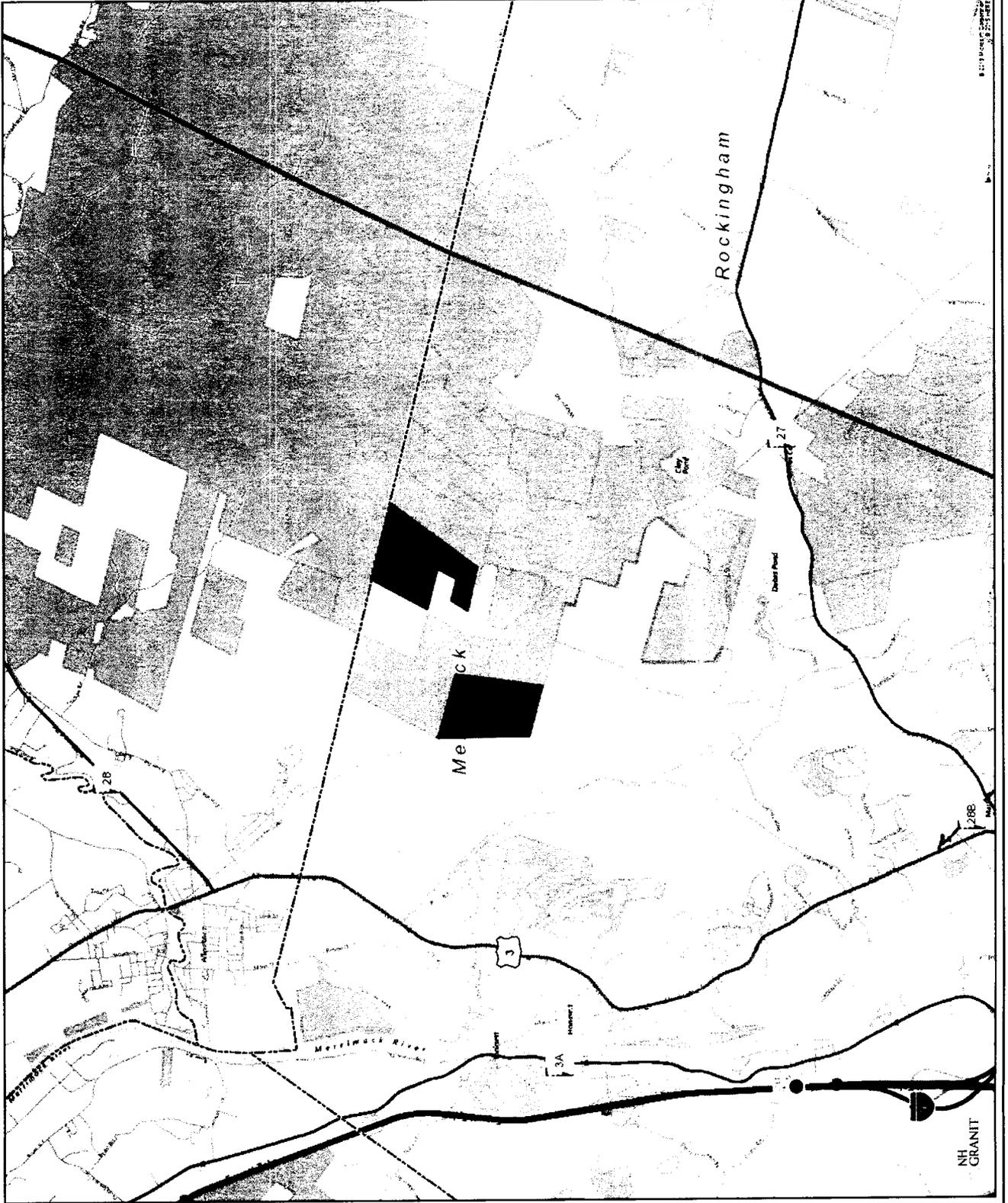
Before me, Jennifer A. Sciaudone
Justice of the Peace/Notary Public

My commission expires: JENNIFER A. SCIAUDONE, Notary Public
My Commission Expires January 15, 2019

A land trust conserving ribbons of green in southern New Hampshire

Post Office Box 19, Deerfield, New Hampshire 03037

Proposed Conservation Easement Area



Legend

- State
- County
- City/Town
- Interstates
- Turnpikes
- US Routes
- State Routes
- Local Roads
- CL: Generic

Map Scale
1: 59,174

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Map Generated: 11/18/2015

Notes

