

AGENDA

COMMITTEE ON LANDS AND BUILDINGS

June 21, 2010
Aldermen Osborne, Lopez,
Shea, Roy, Greazzo

4:30 PM
Aldermanic Chambers
City Hall (3rd Floor)

1. Chairman Osborne calls the meeting to order.
2. The Clerk calls the roll.
3. Communication from Planning and Community Development regarding a petition to acquire city-owned lands on Groveland Avenue (TM 492, Lots 3A & 3B).
Ladies and Gentlemen, what is your pleasure?
4. Communication from Planning and Community Development regarding a petition to acquire a city-owned parcel of land off Eve Street (TM 273 Lot 32).
Ladies and Gentlemen, what is your pleasure?
5. Communication from Manchester Water Works regarding Conservation Easement funding for Audubon Society Property.
(Note: A Conservation Easement Deed from Water Works has been attached.)
Ladies and Gentlemen, what is your pleasure?
6. Communication from the Manchester School District regarding the purchase of office space for their relocation of the School District administrative staff.
Ladies and Gentlemen, what is your pleasure?

TABLED ITEMS

A motion is in order to remove either of these items from the table.

7. Communication from Jack Baringer, Site Acquisition Manager for Goodman Networks, submitting a proposal for Clearwire to Lease City Property.
(Note: Tabled 1/19/10; Planning & Community Development to work with staff and provide a recommendation.)

8. Report of the Board of Mayor and Aldermen advising that is has requested staff to prepare documents to provide that the City agree to extend the term on the 2nd mortgage relating to Lowell Terrace Associates property located at the northwest corner of Lowell and Chestnut Streets to coincide with the expiration of the existing first mortgage in 2013.
*(Note: The Committee has requested clarification from Finance as to whether financials from 1984 – 2001 have been provided; Solicitor to provide a fair market value for the property as established by the Superior Court in October; Tabled 8/04/08; The Committee requests the Solicitor to provide an updated Certificate of Insurance for the property; Re-tabled 12/2/08. Information to be provided by the Assessor. Re-tabled 7/07/09 waiting for disposition letter. Re-tabled 9/1/09, Finance Officer and City Solicitor to provide a final disposition letter.). Re-tabled 1/19/10, Mayor, Finance Officer and City Solicitor to provide a final disposition letter.)
On file for viewing with Office of the City Clerk, One City Hall Plaza.*

9. There being no further business, a motion is in order to adjourn.



CITY OF MANCHESTER

PLANNING AND COMMUNITY DEVELOPMENT

Planning and Land Use Management
Building Regulations
Community Improvement Program
Zoning Board of Adjustment

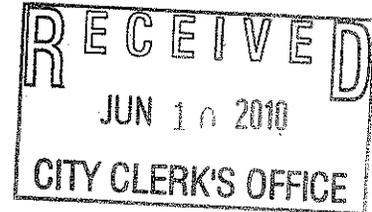
Leon L. LaFreniere, AICP
Director

Pamela H. Goucher, AICP
Deputy Director - Planning & Zoning

Matthew M. Sink
Deputy Director - Building Regulations

11 June, 2010

Committee on Lands and Buildings
Honorable Board of Mayor and Aldermen
City Hall - One City Hall Plaza
Manchester, N.H. 03101



RE: *Petition to acquire city-owned lands on Groveland Avenue (TM 492, Lots 3A & 3B)*

Dear Committee Members:

This is to provide a report pursuant to Section 34.20 pertaining to the above-referenced parcel. Please refer to the accompanying map as needed.

Background: The City has received a letter from Travis and Jamie Lovering, owner of lands near the end of the paved portion of Groveland Avenue (TM 492, Lots 3 & 4), indicating their interest in acquiring two small, adjoining, tax-deeded, city-owned lots (TM 492, Lots 3A & 3B) which are situated between the two above mentioned petitioner-owned parcels. The petitioner's stated aim is to (a) merge the newly-acquired Lots 3A and 3B with their abutting and undeveloped lot 4 and then to (b) sell off this newly merged parcel (now 19,700 s.f.) along with their undersized 7,500 s.f. residential property at Lot 3.

All of these lands are situated in the R-1A zoning district which requires a minimum of 12,500 s.f. of buildable land area for a single family dwelling if city sewer services are available but which requires an undetermined larger sized lot if septic systems are used – as is the case here (note: a sewer line is scheduled to be extended up the entire paved length of Groveland Street in 2011).

A study of the parcels in question shows that the paved portion of Groveland Avenue ends alongside the two involved city-owned properties and does not extend to the petitioner's undeveloped parcel at Lot 4; this is a factor which, on its own, could prevent the development of Lot 4. Also, if steep slopes and other unbuildable areas are excluded, it would appear that Lot 4 may not be large enough to accommodate a septic system; this could explain the petitioner's desire to enlarge Lot 4 by acquiring the abutting city-owned parcels. Even so, it appears that multiple zoning variances would be needed to allow building activity on Lot 4.

Lastly, the petitioner's existing residential property at Lot 3 was created prior to the enactment of current zoning rules and is an existing non-conforming lot of record. Its 7,500 s.f. size is well below the minimum lot size needs for both modern septic systems and the R-1A zoning district

(i.e., 12,500 s.f.). Also, at 60 feet wide along Groveland Avenue, Lot 3 does not meet the requirement of 100 feet minimum lot frontage on an accepted street for the R-1A district.

When considered individually, each of the two city-owned properties at Lots 3A and 3B are also non-conforming lots of record and are too small to be developed as house lots. Because they are lots of record, it is possible that, if combined together, they could be permitted to contain a small residential building.

Established City Policy:

1. Existing city policy at Article 11.03(D)(2)(d) of the **Zoning Ordinance** requires that

"In cases in which development is proposed on a non-conforming lot with abutting other lot or lots in the same ownership, these lots shall be consolidated as necessary to eliminate the non-conformity to the maximum extent possible. . . ."

If the petitioner were to acquire city-owned Lots 3A and 3B, then application of this policy would require the merger of Lots 3A, 3B, and 4 with residential Lot 3.

2. The properties under discussion also fall within the **Zoning Ordinance's** *Lake Massabesic Protection Overlay District* whose established purpose is to protect the Lake Massabesic drinking water supply to the City. The Ordinance, at Article 7.11(B), asks that such protection be carried out by, in part, avoiding *"impacts that may affect the drinking water supply over the long term"* and by avoiding *"land use activities that could potentially be a nonpoint source water quality issue. . . ."*

In this regard, we have consulted with the Water Works Department and, after reviewing the petitioner's application, they have indicated that an added septic system on the currently undeveloped Lot 4 would likely be a negative environmental impact that should be avoided. They further pointed out that heightened environmental protection could be gained if the petitioner acquired the two city-owned parcels at 3A and 3B and merged them with their own parcels at Lots 3 and 4. In this way the petitioner's existing, and undersized, residential Lot 3 would substantially "grow" to a size which could accommodate a beneficial upgrade to their current septic system.

Surplus Determination: Based upon our review of the involved city-owned parcels, we do not believe that there are any City needs for Lots 3-A and 3-B. As such, we would recommend that, if the Committee wishes to return these properties to private ownership, Lots 3A and 3B be determined "surplus" and disposed of in a manner consistent with Section 34.21 of the City Ordinances.

Manner of Disposition: While we support the disposition of city-owned Lots 3A and 3B to private ownership, we would seek to uphold established city policy and support the above noted position of the Water Works Department. Therefore, if the petitioner were to acquire the city-

owned lots in question, then a condition of sale should be to require the merger of all four adjoining properties (i.e., Lots 3, 3A, 3B & 4) into a single, larger, residential parcel.

Such a merger would produce the following benefits:

- (a) The greatly undersized residential Lot 3 (7,500 s.f.), which currently utilizes a private septic system, would be significantly enlarged (to 27,200 s.f.) to comply with the zoning district's minimum lot size. If offered for sale, as is the stated intent of the petitioner, the newly enlarged lot could be marketed at a higher sale price than the current residential lot.
- (b) If the scheduled 2011 sewer line extension is delayed, the new, larger sized, residential Lot 3 could newly accommodate a beneficial upgrade to the existing septic system. This would not only be a benefit to the owner of Lot 3 and increase the marketed sales price for the property but would also promote a heightened level of protection for the public drinking water supply.
- (c) Lot 3's currently non-conforming minimum lot frontage of 60 feet would be increased to above the 100 foot minimum lot frontage in the R-1A district. This would also boost the marketability of this residential parcel.
- (d) The owner of residential Lot 3 currently stores, without permission, equipment and vehicles on the two adjoining city-owned lots in question. Consolidated ownership of these lots would correct this problem and add to the attractiveness of selling the property.

To dispose of city-owned Lots 3A and 3B in this manner, the Committee needs to:

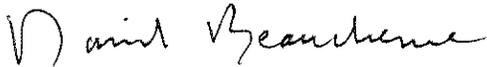
- (1) Find that city-owned TM 492, Lots 3A and 3B are "surplus" to City needs;
- (2) Find that "justice will prevail" if Lots 3A and 3B are acquired by the petitioner because
 - (a) residential Lot 3 would become newly conforming with respect to size and frontage,
 - (b) the petitioner's are the only direct abutter to the lots in question (not counting the "common land" portion of a manufactured housing development on the west side of Lots 3A and 3B), and
 - (c) the safety of the public drinking water supply would be enhanced;
- (3) Condition the sale of Lots 3A and 3B on the petitioner's acceptance of their market value as determined by the City Assessor's Office;
- (4) Condition any sale of city-owned Lots 3A and 3B upon their merger with the abutting petitioner-owned Lots 3 and 4;

(Continue)

- (5) Because the paved portion of Groveland Avenue partially crosses into Lots 3A and 3B, the sale of Lots 3A and 3B should be conditioned upon the granting to the City of an appropriate road easement satisfactory to the Highway Department and the Solicitors Office; and
- (6) Recommend that the Board of Mayor and Aldermen pass an ordinance that authorizes the disposition of the city-owned tax deeded properties at TM 492, Lots 3A and 3B, in the manner suggested herein.

If you have any questions, I will be available at your next committee meeting.

Sincerely,



David Beauchesne, Senior Planner

Copy: Leon L. LaFreniere, AICP, Director



CITY OF MANCHESTER
PLANNING AND COMMUNITY DEVELOPMENT

Planning and Land Use Management
Building Regulations
Community Improvement Program
Zoning Board of Adjustment

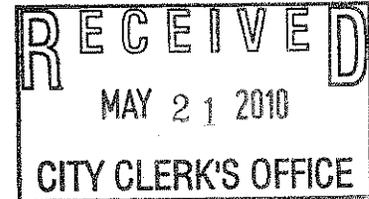
Leon L. LaFreniere, AICP
Director

Pamela H. Goucher, AICP
Deputy Director - Planning & Zoning

Matthew M. Sink
Deputy Director - Building Regulations

20 May, 2010

Committee on Lands and Buildings
Honorable Board of Mayor and Aldermen
City Hall - One City Hall Plaza
Manchester, N.H. 03101



RE: *Petition to acquire city-owned lands on Groveland Avenue (TM 492, Lots 3A & 3B)*

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3-5

One City Hall Plaza, Manchester, New Hampshire 03101
Phone: (603) 624-6450 or (603) 624-6475 Fax: (603) 624-6529 or (603) 624-6324
E-Mail: pcd@manchesternh.gov
www.manchesternh.gov

When considered individually, each of the two city-owned properties at Lots 3A and 3B are also non-conforming lots of record and are too small to be developed as house lots. Because they are lots of record, it is possible that, if combined together, they could be permitted to contain a small residential building.

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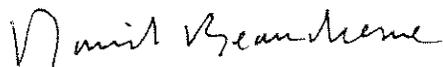
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(Continue)

(6) Recommend that the Board of Mayor and Aldermen pass an ordinance that authorizes the disposition of the city-owned tax deeded properties at TM 492, Lots 3A and 3B, in the manner suggested herein.

If you have any questions, I will be available at your next committee meeting.

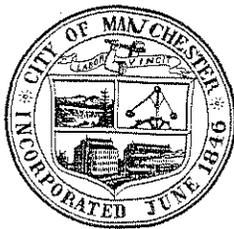
Sincerely,



David Beauchesne, Senior Planner

Copy: Leon L. LaFreniere, AICP, Director

Matthew Normand
City Clerk



Kathleen Gardner
Deputy City Clerk

CITY OF MANCHESTER
Office of the City Clerk

MEMORANDUM

To: Board of Assessors

From: Heather Freeman 
Vital & Legislative Records Supervisor

Date: April 13, 2010

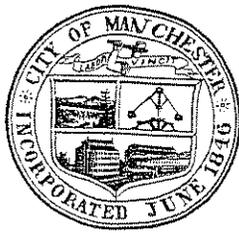
Re: 70-72 Lakeview Terrace

The letter attached was received by the City Clerk's Office and is being forwarded on behalf of the Committee on Lands and Buildings for an appraisal.

Enclosure

3-9

Matthew Normand
City Clerk



Kathleen Gardner
Deputy City Clerk

CITY OF MANCHESTER
Office of the City Clerk

MEMORANDUM

To: Leon LaFreniere
Director of Planning & Community Development

From: Heather Freeman *HP*
Vital & Legislative Records Supervisor

Date: April 13, 2010

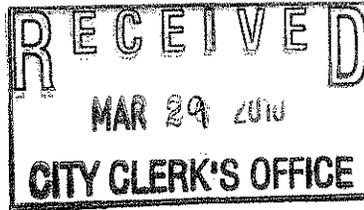
Re: 70-72 Lakeview Terrace

The letter attached was received by the City Clerk's Office and is being forwarded on behalf of the Committee on Lands and Buildings for study and recommendation.

Enclosure

pc: Pat Harte, Acting Tax Collector

3-10



Travis and Jamie Lovering
216 Groveland Ave
Manchester, NH 03104
603-240-2791

March 24, 2010

City of Manchester
Board of Mayor and Alderman
One City Hall Plaza
Manchester, NH 03101

To Whom it may concern:

We bought our home at 216 Groveland Ave back in August 2007 from Travis's father William Dumont. Mr. Dumont acquired the house along with the land from his late father, Arthur Delisle, who had lived at the residence for years until he passed away in 2005. Mr. Delisle was also good friends with Alderman Real Pinard who would be familiar with the property. We are writing you today to see about acquiring some of the land currently owned by the city. Attached you will find the plan of Lakeview Terrace with the lots. Our house currently sits on map lots 67-69 and we own lots 73-78. The city records show lot 70 and part 71 got acquired by the city of Manchester in 1926 and lot 72 and part of lot 71 were acquired by the city in 1934. We are looking to acquire from the city of Manchester those lots, 70-72. The reason we are looking to do this is so we can sell our home on lots 67-69 and then sell lots 70-78 separate so it can then be built on. Our agent Dawn Fortier has worked with Max in the building department who has seen the property.

Please respond back as soon as possible so we can work on the next steps. I look forward in hearing from you. Thank you for your time.

Sincerely,

Travis and Jamie Lovering

In Board of Mayor and Aldermen
Date: 4/6/10
On motion of Ald. O'Neil
Seconded by Ald. DeVries
Voted to refer to the Committee on
Lands and Buildings.

City Clerk

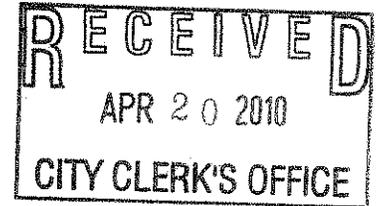
3-11

Patricia M. Harte
Acting Tax Collector



Jacqueline G. Lutkevich
Second Deputy Tax Collector

**CITY OF MANCHESTER
TAX COLLECTOR**



Memorandum

DATE: April 20, 2010
TO: Land & Building Committee
FROM: Pat M. Harte, Acting Tax Collector 
RE: **Map 0492 Lot 0003A & Map 0492 Lot 003B**

As requested, the following contains information regarding the Tax-Deeded property located at: **L Groveland Ave**

Map 0492 Lot 0003A (Lot 70 and 1/2)

Prior Owners: Michael Jasinski
Lien Date: 05/28/1923
Deed Date: 08/01/1925
Recorded Date: 08/04/1925
Book/Page: Book 0847 Page 0389
Back Taxes: \$6.34 (not including interest and costs)
Current Assessment: 12,600

Map 0492 Lot 0003B (Lot 72 and 1/2)

Prior Owners: Constantine Pasciak
Lien Date: 05/06/1931
Deed Date: 05/08/1933
Recorded Date: 05/12/1933
Book/Page: Book 0920 Page 0507
Back Taxes: \$8.91 (not including interest and costs)
Current Assessment: 12,600

I do not have any objections to the disposition of this property.

The Notice to Former Owner to Repurchase (RSA 80:89) does not apply in this case as it was tax deeded prior to the effective date of the Statute.

3-14

CURRENT OWNER
 CITY OF MANCHESTER
 ONE CITY HALL PLAZA
 MANCHESTER, NH 03101
 Additional Owners:

TOPO. 1 Suitable
UTILITIES 1 Paved
STRT./ROAD 1 Urban
LOCATION 1 Urban

EXEMPTIONS
 Other ID: 04920003A
 Land Adjust NO
 Voided NO
 Total SF 3610
 Zone
 Frontage/Dep
 GIS ID: 492-3A

RECORD-OF-OWNERSHIP
 CITY OF MANCHESTER

SALE DATE 08/01/2025 U V
SALE PRICE V.C.

ASSOCIATED DATA
 RAD OR CA1700
 Old LUC
 Sketch Note
 Land Class
 Parcel Zip 03104
 ASSOC PID#

Yr.	Code	Assessed Value	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value
Total:			Total:			Total:		
12,600			12,600			12,600		

OTHER ASSESSMENTS

Year	Type	Description	Amount	Number	Comm. Int.

ASSESSING NEIGHBORHOOD
 STREET INDEX NAME TRACING BATCH

NOTES
 CREATED LOT ON 03.24.2010

APPRaised VALUE SUMMARY

Appraised Bldg. Value (Card)	0
Appraised XF (B) Value (Bldg)	0
Appraised OB (L) Value (Bldg)	0
Appraised Land Value (Bldg)	12,600
Special Land Value	0
Total Appraised Parcel Value	12,600
Valuation Method:	C
Adjustment:	-0
Net Total Appraised Parcel Value	12,600

BUILDING PERMIT RECORD

Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments

LAND LINE VALUATION SECTION

B Use Code #	Use Description	Zone	Frontage	Depth	Units	Unit Price	I. Factor	S. Factor	ST. Idx	C. Factor	S.I. Adj.	Notes-Adj	Rec Y/N	CU Cond	Special Pricing	Adj. Unit Price	Land Value
1	NON TAX R		3,610 SF			23.36	1.00	1	320	0.15	1.00		N	0.000		3.50	12,600

Total Card Land Units: 0.08 AC Parcel Total Land Area: 0.08 AC Total Land Value: 12,600

3-16

CURRENT OWNER
 CITY OF MANCHESTER
 ONE CITY HALL PLAZA
 MANCHESTER, NH 03101
 Additional Owners:

UTILITIES
 I Suitable
STRT./ROAD
 I Paved
LOCATION
 I Urban
EXM1 LAND
 Description Code Appraised Value Assessed Value
 EXM1 LAND 9500 12,600 12,600
MANCHESTER, NH
 2017

RECORD OF OWNERSHIP
 CITY OF MANCHESTER
 BK-VOL/PAGE 0920/0507
 SALE DATE 05/08/1933
 U V
SALE PRICE V.G.
 Yr. Code Assessed Value Yr. Code Assessed Value
 Total 12,600 12,600

EXEMPTIONS
 Year Type Description Amount Code Description Number Amount Comm. Int.
OTHER ASSESSMENTS
 Total:

ASSESSING/NEIGHBORHOOD
 NBHD/SUB NBHD NAME STREET INDEX NAME TRACING BATCH
 320/A
NOTES
 CREATED LOT ON 03.24.2010

APPRaised VALUE SUMMARY
 Appraised Bldg. Value (Card) 0
 Appraised XF (B) Value (Bldg) 0
 Appraised OB (L) Value (Bldg) 0
 Appraised Land Value (Bldg) 12,600
 Special Land Value 0
 Total Appraised Parcel Value 12,600
 Valuation Method: C
 Adjustment: 0
 Net Total Appraised Parcel Value 12,600

BUILDING PERMIT RECORD
 Permit ID Issue Date Type Description Amount Insp. Date % Comp. Date Comp. Comments
VISIT/CHANGE HISTORY
 Date Type IS ID CD Purpose/Result

LANDLINE VALUATION SECTION
 B Use Code Use Description Zone Frontage Depth Units Unit Price Factor I S C ST. Idx S I Notes-Adj Rec CU Cond Special Pricing Adj. Unit Price Land Value
 1 9500 NON TAX R 3,520 SF 23.89 1.00 1 0.15 320 1.00 N 0.000 3.58 12,600

Total Card Land Units: 0.08 AC
 Parcel Total Land Area: 0.08 AC
 Total Land Value: 12,600



3-17

12,600

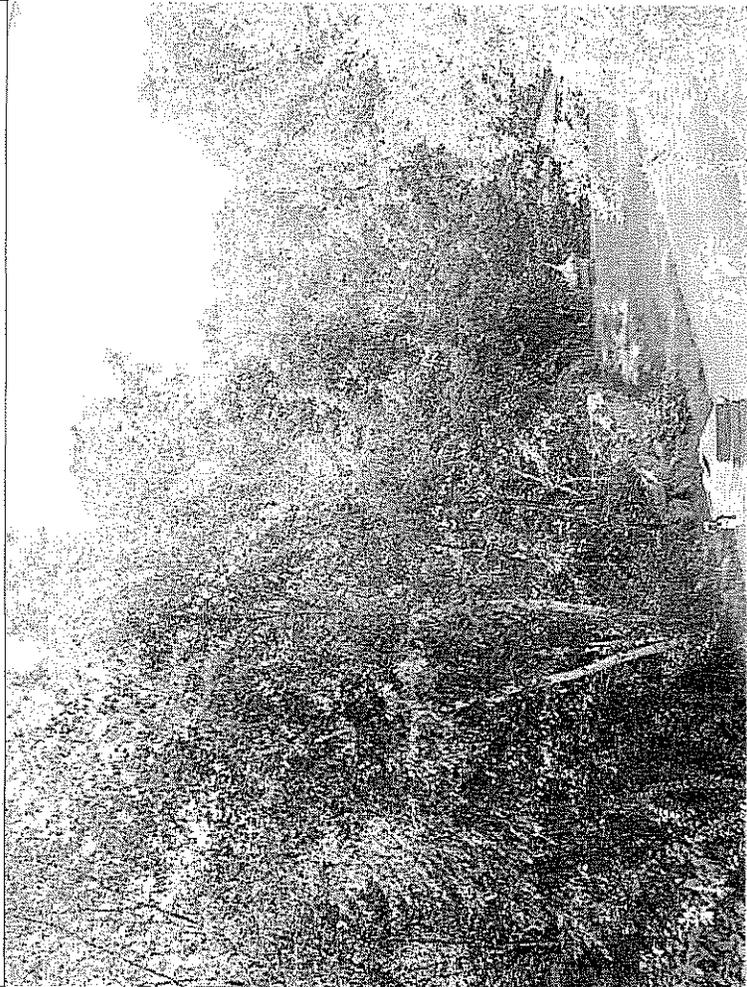
CONSTRUCTION DETAIL		CONSTRUCTION DETAIL (CONTINUED)									
Element	Cd	Ch	Description								
Model	00		Vacant								
MIXED USE											
Code	9500		NON TAX R								
			Percentage 100								
COST/MARKET VALUATION											
Adj. Base Rate:			0.00								
Replace Cost			0								
AYB			0								
EYB			0								
Dep Code											
Remodel Rating											
Year Remodeled											
Dep %											
Functional Obslnc											
External Obslnc											
Cost Trend Factor											
Status											
% Complete											
Overall % Cond											
Apprais Val											
Dep % Ovr											
Dep Ovr Comment											
Misc Imp Ovr											
Misc Imp Ovr Comment											
Cost to Cure Ovr											
Cost to Cure Ovr Comment											
OB-OUTBUILDING & YARD ITEMS(L) / XF-BUILDING EXTRA FEATURES(B)											
Code	Description	L/B	Units	Unit Price	Gr	Dp	Rt	Cnd	%Cnd	Apr	Value
BUILDING SUB-AREA SUMMARY SECTION											
Code	Description	Living Area	Gross Area	Eff. Area	Unit Cost	Undepprec. Value					

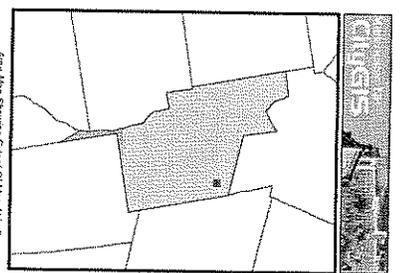
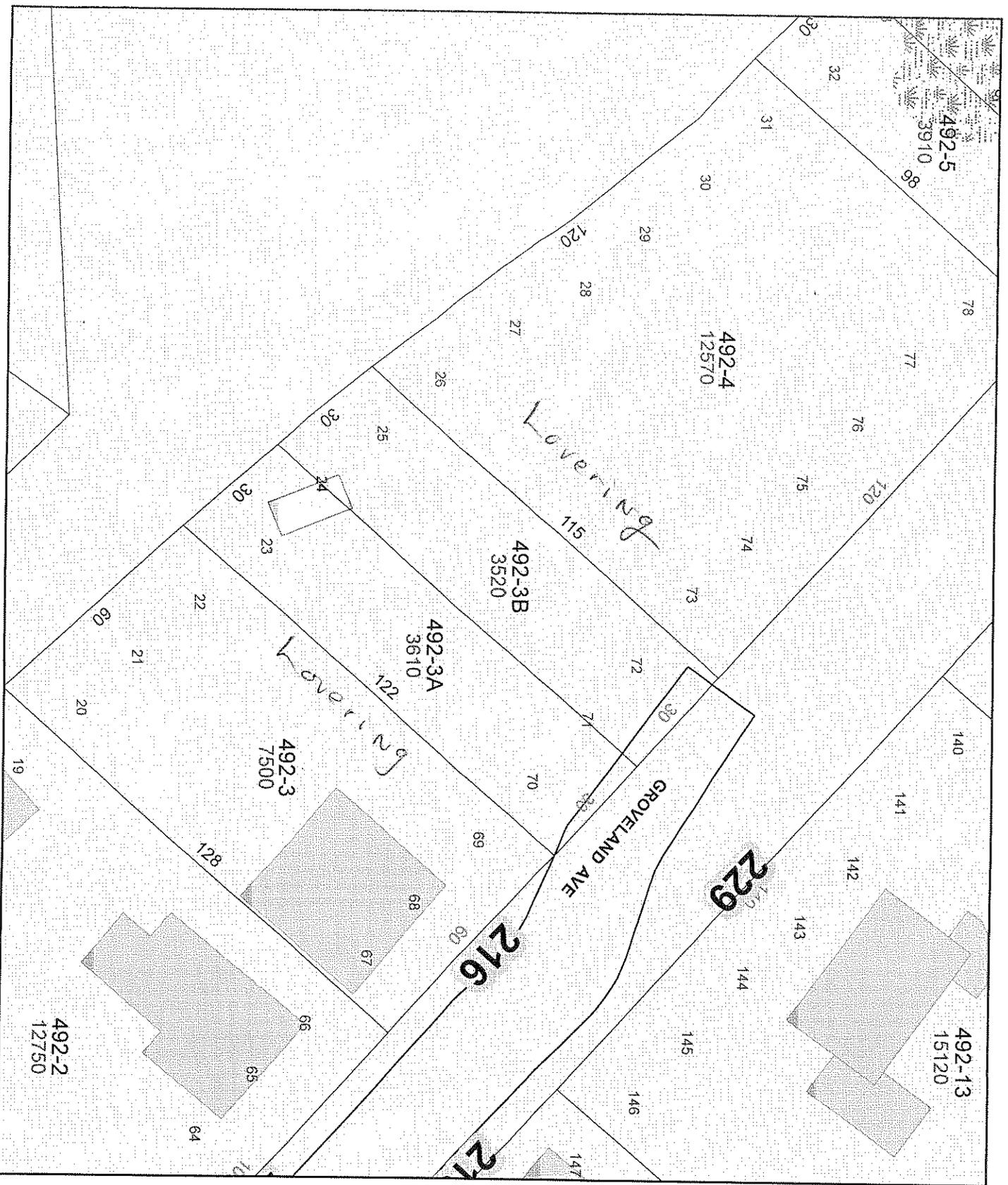
3-18

No Photo On Record

CONSTRUCTION DETAIL		CONSTRUCTION DETAIL (CONTINUED)										
Element	Cd.	Ch.	Description									
Model	00		Vacant									
		MIXED USE										
	1320	VAC RES UB	Percentage 100									
		COST/MARKET VALUATION										
		Adj. Base Rate:	0.00									
		Replace Cost	0									
		AYB	0									
		EYB	0									
		Dep Code										
		Remodel Rating										
		Year Remodeled										
		Dep %										
		Functional ObsInc										
		External ObsInc										
		Cost Trend Factor	1									
		Status										
		% Complete										
		Overall % Cond										
		Apprais Val	0									
		Dep % Ovr	0									
		Dep Ovr Comment										
		Misc Imp Ovr	0									
		Misc Imp Ovr Comment										
		Cost to Cure Ovr	0									
		Cost to Cure Ovr Comment										
OB-OUTBUILDING & YARD ITEMS(L) / XF-BUILDING EXTRA FEATURES(B)												
Code	Description	Sub	Sub Descript	L/B	Units	Unit Price	Gde	Dp	Rt	End	%Cnd	Appr Value
BUILDING SUB-AREA SUMMARY SECTION												
Code	Description	Living Area	Gross Area	Eff. Area	Unit Cost	Undeprc. Value						

3-20





<p>DISCLAIMER</p> <p>The information appearing on this map is for the convenience of the user and is not an official public record of the City of Manchester, NH (the "City"). This map is not survey-quality. All data appearing on this map, including measurements, right-of-way, etc., are based on the best available information, and are not guaranteed to be accurate. The City makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of this information for any particular use. The City assumes no liability whatsoever associated with the use or misuse of this information. The official public records from which this information was compiled are kept in the offices of various City, County, and State government agencies and departments, and are available for inspection and copying upon request. The City is not responsible for any errors or omissions in this map, and you agree to these terms and conditions.</p>
--

3-21

Vicinity of 216 Groveland Avenue

NH RT. 101

Youngsville Park

T. Lovering
TM 492, Lot 9
(1,879 s.f.)

City of Manchester
TM 492, Lot 14
(5,610 s.f.)

T. Lovering
TM 492, Lot 7
(5,730 s.f.)

City of Manchester
TM 492, Lot 11
(3,100 s.f.)

T. Lovering
TM 492, Lot 14
(12,570 s.f.)

City of Manchester
(tax-deeded)
TM 492, Lot 3B
(3,520 s.f.)

City of Manchester
(tax-deeded)
TM 492, Lot 3A
(3,610 s.f.)

City of Manchester
TM 492-12
(15,620 s.f.)

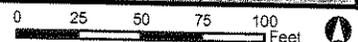
T. Lovering
216 Groveland Ave.
TM 492, Lot 3
(7,500 s.f.)

City of Manchester
TM 492-16
(9,800 s.f.)

SUNSET WAY

GROVELAND AVE.

1. Map created by the City of Manchester Planning & Community Development Department (D. Beauchesne) on May 4, 2010.
2. Aerial photo taken in April, 2003.



Water Main or Hydrant

3-22

Owned by City of Manchester

OR

Owned by City of Manchester Lands requested by petitioner





CITY OF MANCHESTER
PLANNING AND COMMUNITY DEVELOPMENT

Planning and Land Use Management
Building Regulations
Community Improvement Program
Zoning Board of Adjustment

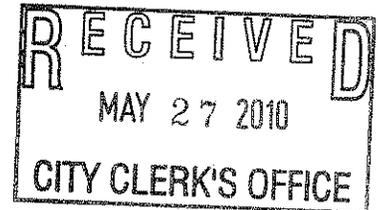
Leon L. LaFreniere, AICP
Director

Pamela H. Goucher, AICP
Deputy Director - Planning & Zoning

Matthew M. Sink
Deputy Director - Building Regulations

27 May, 2010

Committee on Lands and Buildings
Honorable Board of Mayor and Aldermen
City Hall - One City Hall Plaza
Manchester, N.H. 03101



RE: *Petition to acquire city-owned land on Eve Way (TM 273, Lot 32)*

Dear Committee Members:

This is to provide a report pursuant to Section 34.20 pertaining to the above-referenced parcel. Please refer to the accompanying map as needed.

Background: The City has received a letter from Cascade North Real Estate, Inc., asking to acquire an undeveloped, and landlocked, 42,216 s.f. city-owned parcel (0.97 ac.) known as TM 273, Lot 32, which is currently under the jurisdiction of the Department of Public Works (DPW). The petitioner's stated goal is to utilize Lot 32, which is in the R-1A zoning district, for a single family residence which would be accessed via Eve Way, an as-yet unconstructed private road. The petitioner has previously received legal permission to use Eve Way as an access road for entry into a series of other buildable parcels they own which abut city-owned Lot 32 along the west-side length of Eve Way and the DPW has reviewed their driveway access design.

An analysis of Lot 32 shows it to be a long (2,200-ft.) and narrow tract of land positioned between Boston and Eve Streets in the North End near the B & M railroad tracks and the Merrimack River. Generally wooded, it primarily consists of steeply sloping land with possibly enough buildable area at its south end to accommodate a single family home. Situated on a bluff immediately above, and to the east, of city-owned Lot 32 on McPhail, Sixth and Seventh Streets are a series of eight residential properties whose westerly views are significantly blocked by the wooded areas of Lot 32.

At the present time, a number of various-sized sewer and drain pipes are situated beneath Lot 32 and Eve Way, including a 54" sewer pipe which flows westerly to the Merrimack River through Lot 32 and the petitioner's lands to the west of Eve Way.

Consultation with Other City Agencies: We have conferred with DPW concerning this matter and they have indicated no heightened concern about disposing of city-owned Lot 32 to the private sector so long as easements (a) protect their right to access and maintain all sewer and

4-1

One City Hall Plaza, Manchester, New Hampshire 03101
Phone: (603) 624-6450 or (603) 624-6475 Fax: (603) 624-6529 or (603) 624-6324
E-Mail: pcd@manchesternh.gov
www.manchesternh.gov

drain pipes situated beneath Lot 32 and Eve Way and (b) prevent construction activities from occurring within 20 lateral feet of any sewer or drain pipe crossing Lot 32.

Established City Policy:

Existing city policy at Article 6.03 of the **Zoning Ordinance** requires a minimum lot frontage in the R-1A zoning district to be 100-feet along a "public street" – a requirement that is currently not met by Lot 32, which is landlocked. The petitioner recognizes this problem and understands that a ZBA-approved variance from the lot frontage requirement would be required before any building permit could be issued. They have asked that any sale of Lot 32 be conditioned upon the granting of such a variance.

Surplus Determination & Manner of Disposition:

After discussing this request with appropriate City agencies, we do not believe that there are any City needs for Lot 32 which cannot be resolved by appropriate public infrastructure easements. As such, we would recommend that, if the Committee wishes to return these properties to private ownership,

1. Lot 32 be determined "surplus" and disposed of through a public sale in a manner consistent with Section 34.21 of the City Ordinances;
2. That the minimum sale price be determined by the Assessor's Department; and
3. That any sale be conditioned on the development of appropriate public infrastructure easements to the satisfaction of the DPW and the Office of the City Solicitor.

If you have any questions, I will be available at your next committee meeting.

Sincerely,



David Beauchesne, Senior Planner

Copy: file, Leon L. LaFreniere, AICP, Director

Matthew Normand
City Clerk



Kathleen Gardner
Deputy City Clerk

CITY OF MANCHESTER
Office of the City Clerk

MEMORANDUM

To: Leon LaFreniere
Director of Planning & Community Development

From: Heather Freeman 
Vital & Legislative Records Supervisor

Date: April 22, 2010

Re: Map 273 Lot3 2

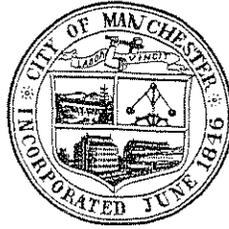
The letter attached was received by the City Clerk's Office and is being forwarded on behalf of the Committee on Lands and Buildings for study and recommendation.

Enclosure

pc: Pat Harte, Acting Tax Collector

43

Matthew Normand
City Clerk



Kathleen Gardner
Deputy City Clerk

CITY OF MANCHESTER
Office of the City Clerk

MEMORANDUM

To: Board of Assessors

From: Heather Freeman
Vital & Legislative Records Supervisor

Date: April 22, 2010

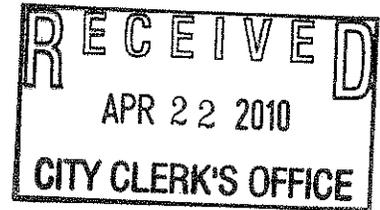
Re: Map 273 Lot 32

The letter attached was received by the City Clerk's Office and is being forwarded on behalf of the Committee on Lands and Buildings for an appraisal.

Enclosure

4-4

*Cascade North Real Estate Inc.
722-2 East Industrial Park Drive
Manchester NH 03109
669-4354
Fax 669-6631*



City of Manchester NH
Office of the City Clerk
One City Hall
Manchester NH 03103

4/14/10

Dear Mr. Normand, City Clerk

Cascade North Real Estate Inc. would like to purchase a city owned parcel of raw land off Eve Street. The parcel is designated as Tax Map 273 Lot 32. The area of the lot is just under one acre, and has enough usable area for one single family house pending a variance. The lot would be accessed through a private road called Eve Way. The unusable area is as a result of steep slopes and a large drainage system and RCP pipe. This drainage system would be retained by the City with a proper easement drawn up.

Attached are photographs for your review. As you can also see from the photos the slopes are covered with wood, tires, and lawn debris. Cascade would also like to clean up these current eyesores for the neighborhood and the City of Manchester in general.

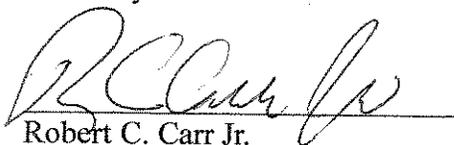
I have spoken to officials from the Building Department, Highway Department and the Assessors Office, all three departments do not see a reason why we shouldn't pursue its purchase. Because the property is located on a private street the final approval would have to go before the ZBA, as such the purchase of the property would have to be contingent upon that approval and our acceptance of a reasonable price for the land. Cascade would like to offer \$40,000 for the parcel.

When placing a value on the property, we considered the following: the cost of the road Cascade is installing, the 4 year cost of approvals to get to this point, and the cleaning up of debris throughout the site as shown in the photographs.

Receipts and budgets are available for your review at any time.

Thank you for your consideration.

Sincerely:

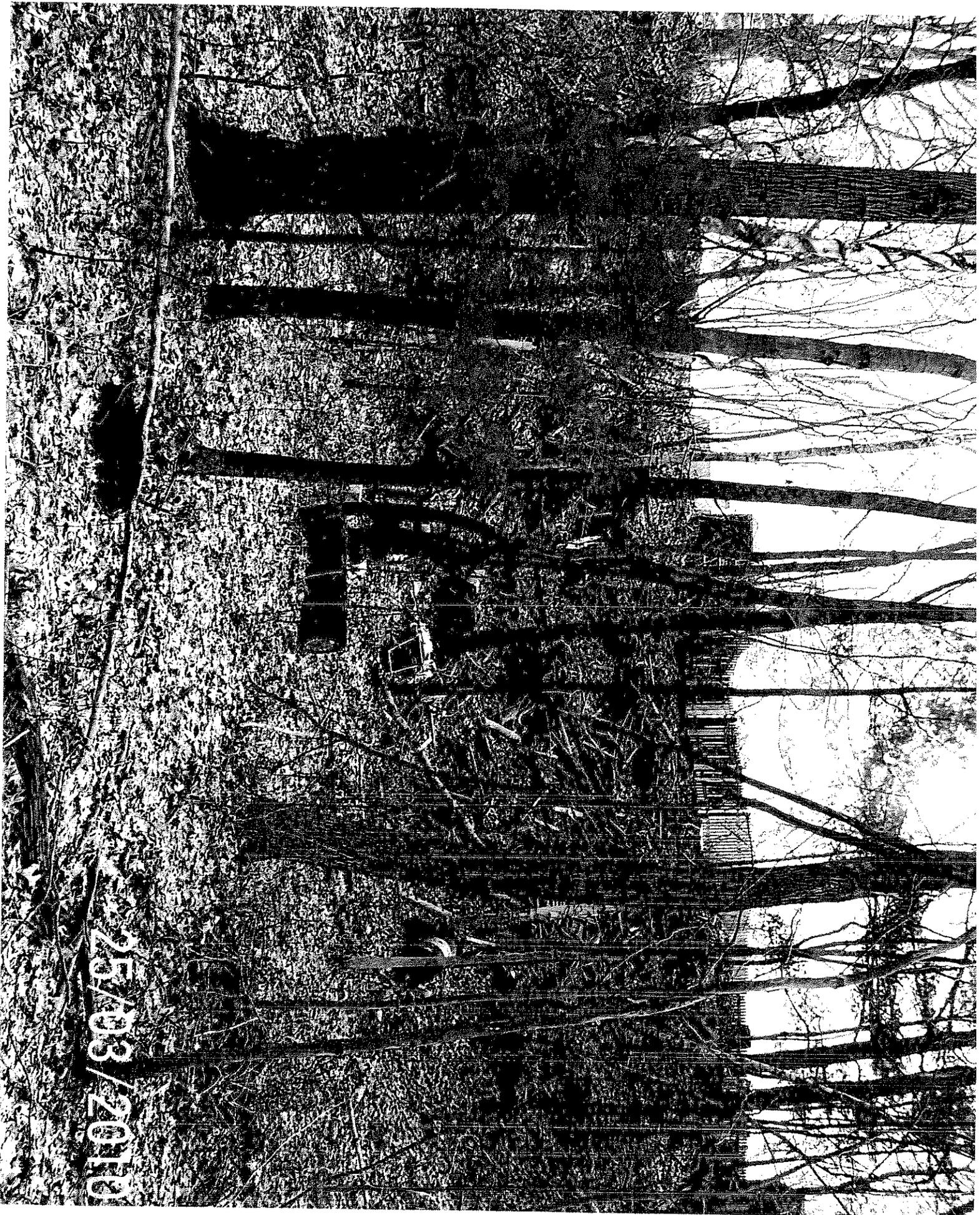

Robert C. Carr Jr.

4-5



01027001/02

4-6



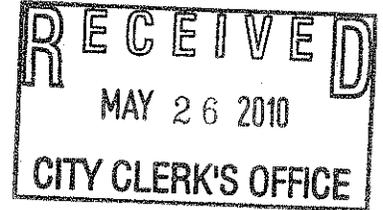
25/03/2010

Patricia M. Harte
Acting Tax Collector



Jacqueline G. Lutkevich
Second Deputy Tax Collector

**CITY OF MANCHESTER
TAX COLLECTOR**



Memorandum

DATE: May 26, 2010
TO: Land & Building Committee
FROM: Pat M. Harte, Acting Tax Collector
RE: Map 0273 Lot 0032

As requested, the following contains information regarding the Tax-Deeded property located at: **Eve Street**

Prior Owners: Charles P. Guay
Map/Lot: 0273/0032 (Previously known as Lot 44 Seventh Ave)
Lien Date: 09/07/1956
Deed Date: 09/09/1958
Recorded Date: 09/16/1958
Book/Page: Book 1545 Page 442
Back Taxes: \$76.67

I do not have any objections to the disposition of this property

The Notice to Former Owner to Repurchase (RSA 80:89) does not apply in this case as it was tax deeded prior to the effective date of the Statute.

4-8

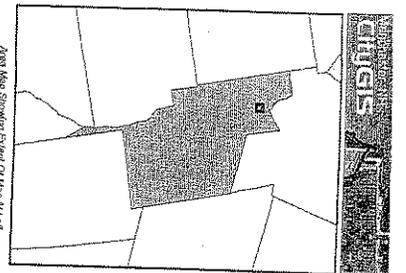
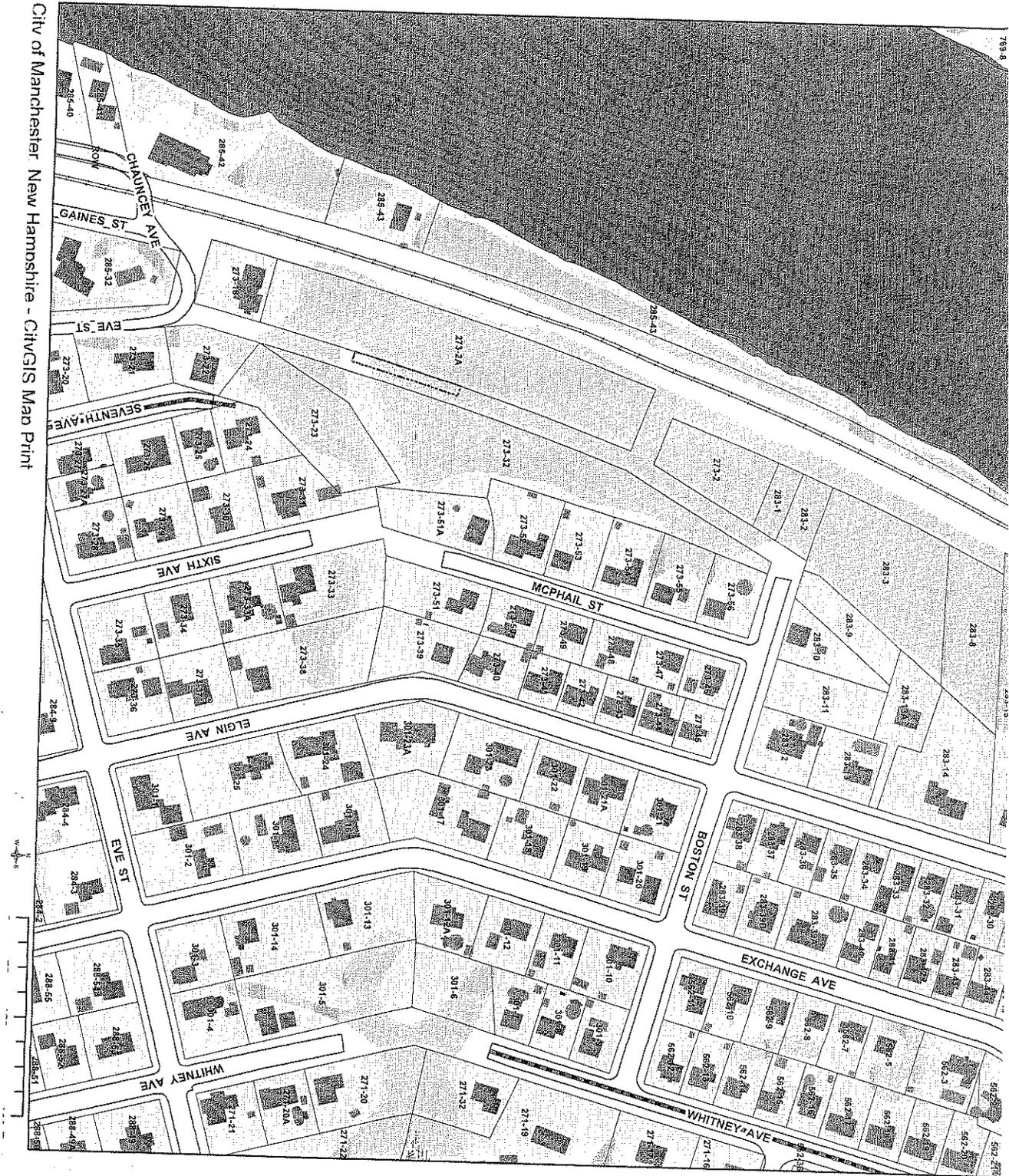
LOT NO. 44
 BLK.
 SECTION 42,216 sq ft/4

~~424th~~ Ave.,
 Sixth

LOCATION OF PROPERTY 273

YEAR	LAND VALUE	BLDG. VALUE	TOTAL VALUE	OWNER
1954	225		225	Guay, Charles P.,
1957		(deed not recorded)		Paquette, Philibert A.
1961	(Claims should be in name of Guay)			Guay, Charles P.,
1961				City-Collector

City of Manchester New Hampshire - CHGIS Map Print



Print Map Showing Bound of Map At Left

4-12

Legend

Parcels	Lake / Poi
Easements	River
Building	Wet Area
Outbuilding	Stream
Deck	Excavation
Foundation	
Other Building or Structure	
Pool	
Tank	
Roads	
Railroads	

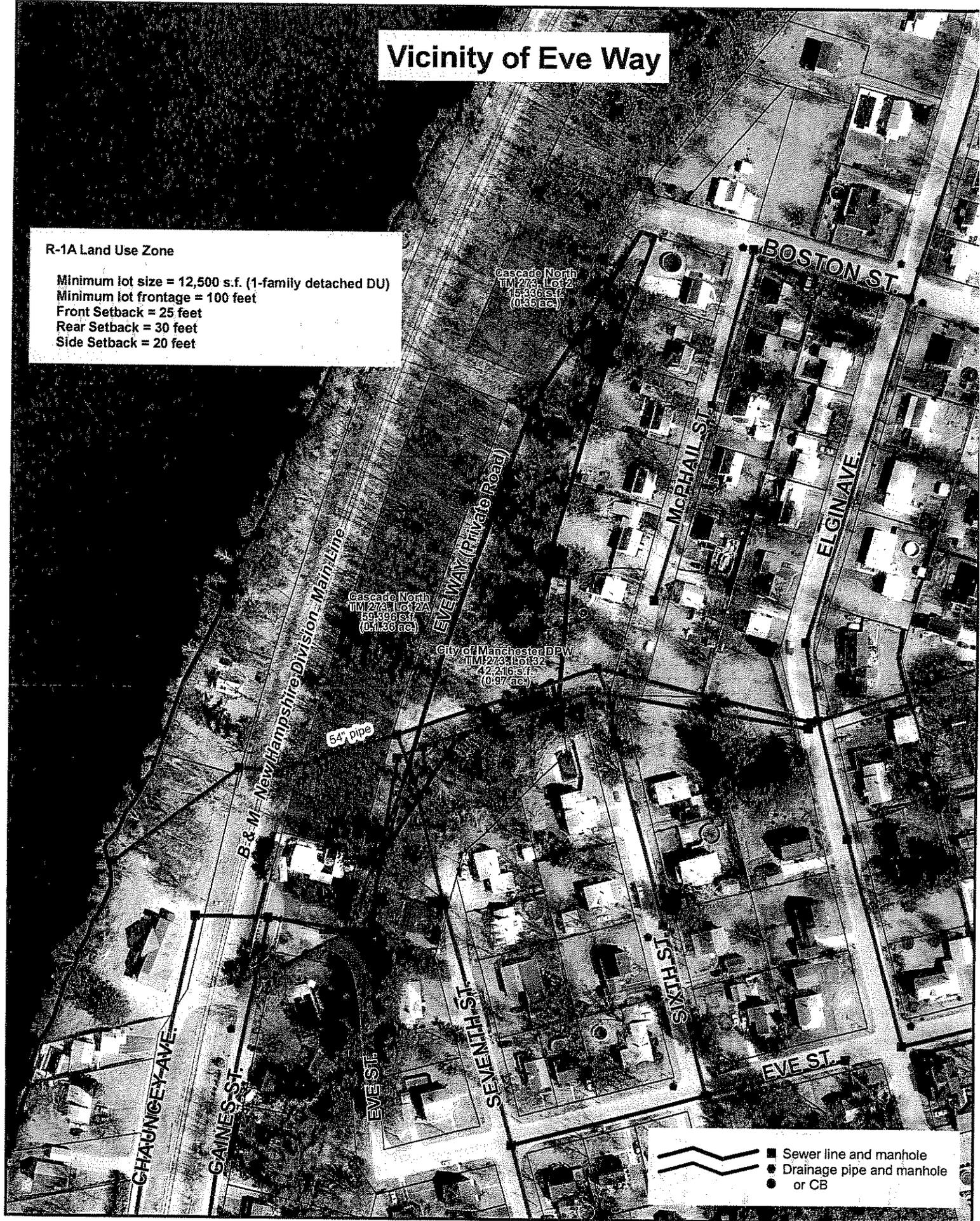
DISCLAIMER

The information appearing on this map is for the convenience of the user and is not an official public record of the City of Manchester, NH (the City). This map is not survey-quality. All boundaries, easements, areas, measurements, rights-of-way, etc. appearing on this map should only be considered as approximations, and as such have no official or legal value. The City makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of this information for any particular use. The City, however, makes no warranty associated with the use or misuse of this information. This information was compiled from various City, County, and State government agencies and departments, and is available for inspection and copying during normal business hours. By using this

Vicinity of Eve Way

R-1A Land Use Zone

- Minimum lot size = 12,500 s.f. (1-family detached DU)
- Minimum lot frontage = 100 feet
- Front Setback = 25 feet
- Rear Setback = 30 feet
- Side Setback = 20 feet



Cascade North
TM 273, Lot 2
15,336 s.f.
(0.36 ac)

Cascade North
TM 273, Lot 2A
59,396 s.f.
(0.136 ac)

City of Manchester DPW
TM 273, Lot 32
42,210 s.f.
(0.97 ac)

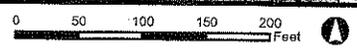
54" pipe

- Sewer line and manhole
- Drainage pipe and manhole or CB

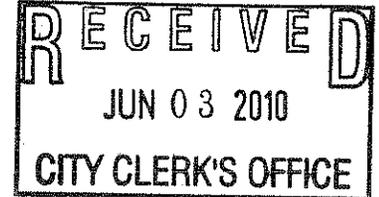
1. Map created by the City of Manchester Planning & Community Development Department (D. Beauchesne) on April 26, 2010.
2. Aerial photo taken in April, 2003.

4-13

Perimeter of City-owned
TM 273, Lot 32



Memo



June 2, 2010

TO: MATTHEW NORMAND
CITY CLERK

FROM: *RB* ROBERT BEAURIVAGE, P.E., ASSISTANT DIRECTOR

RE: CONSERVATION EASEMENT INFORMATION FOR JUNE 21ST LANDS AND BUILDINGS COMMITTEE

As I mentioned in a recent voicemail message to you, please find attached the information required for the June 21, 2010 BMA Lands and Buildings Committee meeting relative to Conservation Easement funding for Audubon Society property. Should the Lands and Buildings Committee approve this item, the desire would be to have it acted upon at the July 6th BMA meeting.

RB:ds

Enclosures

cc: Thomas Bowen
Thomas Clark (w/att.)

5-1

Manchester Water Works

281 Lincoln St., Manchester, NH 03103, tel. 603-624-6494, fax: 603-628-6020

Memo

June 2, 2010

TO: BOARD OF MAYOR AND ALDERMEN
LANDS & BUILDINGS COMMITTEE

FROM: ROBERT BEAURIVAGE, P.E., ASSISTANT DIRECTOR

RE: CONSERVATION EASEMENT FUNDING FOR AUDUBON
SOCIETY PROPERTY

The Audubon Society of New Hampshire owns 129 acres of property in Auburn located on a peninsula of land that extends into Lake Massabesic called Battery Point. The Audubon Society is facing significant financial problems that include potential foreclosure of this land parcel with an appraised value of just over \$1,000,000. The MWW is very concerned that property critical to protecting the watershed and Manchester's drinking water supply could be subject to development. In order to avoid this possibility, MWW formed a partnership with the Audubon Society and the Town of Auburn. MWW agreed to fund \$400,000 and the Town of Auburn \$100,000 to place the property in a Conservation Easement, and then seek \$500,000 in grant funding to make up the difference in the appraised value. MWW and Auburn applied for \$500,000 in LCHIP (Land and Community Heritage Investment Program) funding, and in January were notified that \$200,000 had been approved. Recognizing we were still underfunded, the partnership applied for a \$375,000 National Resource Conservation Service grant through the Southeast Land Trust of New Hampshire. The partnership was notified in April that the grant funding was approved bringing the total committed funds to \$1,075,000:

MWW	\$ 400,000
NRCS	\$ 375,000
LCHIP	\$ 200,000
Town of Auburn	<u>\$ 100,000</u>
Total	\$1,075,000

The above funding has been approved by the Board of Water Commissioners and now requires action by the Board of Mayor and Aldermen. The process will require the review of the attached Cooperative Agreements that explains the roll of each party in the partnership and the preparation of the Conservation Easement Deed. Both of these documents will require review by the City Solicitor's Office and approval of the BMA.

At this time it is therefore recommended that the BMA Lands & Buildings Committee accept the funding commitment from LCHIP and the NRCS subject to review by the City Solicitor's Office and then forward the above documents to the BMA for their approval.

Enclosures

cc: Tom Bowen
Thomas Clark, Solicitor
Matt Normand, City Clerk

5-2

Manchester Water Works

281 Lincoln St., Manchester, NH 03103, tel. 603-624-6494, fax: 603-628-6020

COOPERATIVE AGREEMENT
BETWEEN THE
UNITED STATES OF AMERICA
COMMODITY CREDIT CORPORATION
ACTING THROUGH THE
NATURAL RESOURCES CONSERVATION SERVICE
and the
SOUTHEAST LAND TRUST OF NEW HAMPSHIRE
and the
MANCHESTER WATER WORKS
for the
FARM AND RANCH LANDS PROTECTION PROGRAM

This Cooperative Agreement, made the ____ day of _____, 2010 is entered into by and between the **United States of America (the United States)**, acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC), **the Southeast Land Trust of New Hampshire**, and the **Manchester Water Works** for the implementation of the Farm and Ranch Lands Protection Program (FRPP). The CCC shall utilize the expertise and services of NRCS to administer this program and perform the duties set forth within this Cooperative Agreement. The term "Parties" as used herein refers collectively to the United States, the **Southeast Land Trust of New Hampshire**, herein referred to as SELTNH and the **Manchester Water Works**, herein referred to as MWW.

I. AUTHORITY.

This Cooperative Agreement is entered into by the United States under the authorities of the Commodity Credit Charter Act, 15 U.S.C. 714 et seq. and Title II, Subtitle E, Section 2401 of the Food, Conservation, and Energy Act of 2008, Public Law 110□234, 16 U.S.C. 3838h and i. In addition to these authorities, this Cooperative Agreement will be administered in accordance with the policies and procedures set forth in the FRPP regulation, 7 CFR part 1491. The CCC administers the FRPP under the general supervision of the Chief of the NRCS who is a Vice President of the CCC.

II. BACKGROUND AND PURPOSE.

Section 2401 of the Food, Conservation, and Energy Act of 2008 authorizes the Secretary of Agriculture to facilitate and provide funding for the purchase of conservation easements that are subject to pending offers from eligible State, Tribal or units of local government or nongovernmental organizations for the purpose of protecting the agricultural uses and related conservation values of eligible land by limiting non-agricultural uses of the land. To be eligible, the farm or ranch land must meet one of three criteria: contain prime, unique, or other productive

5-3

soil; contain historical or archaeological resources; or further a State or local policy consistent with the purposes of the program. The Food, Conservation, and Energy Act of 2008 authorized FRPP funding for fiscal years 2008 through 2012.

WHEREAS, the **SELTNH**, the **MWW**, and the United States have mutual interests in preventing the conversion of agricultural lands to non-agricultural uses; and

WHEREAS, the United States administers the FRPP through NRCS on behalf of the CCC; and

WHEREAS, the **SELTNH** and the **MWW** administer farmland protection programs and have pending offers for acquiring agricultural conservation easements from landowners within the State of New Hampshire, and the United States, the **SELTNH**, and the **MWW** have agreed to combine their resources to assure that such areas are protected from conversion to nonagricultural uses.

THEREFORE, the parties agree to enter into this Cooperative Agreement.

III. BENEFITS

The benefit of this Cooperative Agreement is that funds will be provided to the cooperating entity for the protection of farm and ranch lands from conversion to non-agricultural use. Section 2401 of the Food, Conservation, and Energy Act of 2008 authorizes the Secretary of Agriculture to provide funding for the purchase of conservation easements by eligible State, Tribal or units of local government or nongovernmental organizations. Section 1238I of the Food, Conservation, and Energy Act of 2008 authorizes the Secretary of Agriculture to enter into agreements with eligible entities.

IV. OBLIGATION OF FUNDS

Upon execution of this agreement, the United States shall obligate the sum of \$ 375,000 for the acquisition by **SELTNH** and the **MWW** of conservation easements for the parcels listed on Attachment A. This agreement may be revised to obligate funds in Fiscal Years 2011 and 2012 if the cooperating entity submits parcels that rank high enough to warrant the obligation of funds. The **SELTNH** and the **MWW** must close on the easement acquisition and request payment of this amount in accordance with Part VII of this Cooperative Agreement before the dates in the table below.

Fiscal Year	Attachment with Associated Parcels	Funds Obligated	Fund Citation
2010	A	375,000	10 69F
2011	B	NA	NA
2012	C	NA	NA

5-4

Fiscal Year of Fund Obligation	Attachment with Associated Parcels	Closing Deadline	Payment Request Deadline	Fund Disbursement Deadline
2010	A	March 31, 2012	August 31, 2012	September 30, 2012
2011	B	March 31, 2013	August 31, 2013	September 30, 2013
2012	C	March 31, 2014	August 31, 2014	September 30, 2014

This Cooperative Agreement expires on September 30, 2014.

This Cooperative Agreement is the authorizing document that obligates CCC funds to acquire conservation easements. The United States' contribution for the acquisition of each conservation easement acquired by the SELTNH and the MWW shall be up to but not more than 50% of the appraised market value of the conservation easement. The United States' contribution cannot be used for closing and related administrative costs incurred by the SELTNH and the MWW in acquiring the conservation easement. Attachments A, B, and C to this Cooperative Agreement specify the properties on which CCC funds will be used within the State of New Hampshire and includes a list with a detailed breakdown of the: (1) name and mailing address of the landowner; (2) number of acres to be acquired; (3) the estimated conservation easement value, and (4) estimated Federal contribution to the estimated conservation easement value. However, nothing in this document obligates the United States, the SELTNH, or the MWW to purchase all or any of the conservation easements parcels listed. There may be further modifications, additions or deletions to the list depending on the prices paid for the conservation easements, the ability to obtain good and clear title, future funding for acquisitions, etc. Additions or deletions to the Attachments A, B, and C will be made by mutual agreement between the Parties to this Cooperative Agreement. Additions to Attachments A, B, and C must have written pending offers and the parcels and the landowners must meet eligibility requirements. The pending offers may be from any year. The additions and deletions must be made by a formal amendment to this cooperative agreement and must contain the same deadlines for closing easements, requesting reimbursement, and certifying payments.

V. FEDERAL CONTRIBUTION

The Federal contribution for parcels must be based on an appraisal of the conservation easement performed by a certified general appraiser in accordance with either the Uniform Standards of Professional Appraisal Practices (USPAP) OR the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) (Interagency Land Acquisition Conference, 2000) AND policies and procedures in the NRCS Conservation Programs Manual, Part 519. The appraisal must have an effective date that is within twelve months of the closing date. For appraisals performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), the appraiser must have completed training in using the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) as well as either eminent domain or conservation easements and have experience in appraising agricultural property with and without conservation easements. For appraisals performed in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP), the appraiser must have completed training in either eminent domain or conservation easements and have experience in appraising agricultural property with and without conservation easements.

5-5

The cooperating entities must submit four copies of each appraisal to NRCS no less than 90 days before the proposed closing date for administrative and technical review. Easements will not be closed until administrative and technical reviews are completed on each appraisal and any deficiencies are resolved.

VI. COOPERATING ENTITIES' CONTRIBUTION

The **SELTNH** and the **MWW**, herein the Cooperating Entities, or their designated escrow agent must disburse 100 percent of the payment, representing the easement purchase price, to the landowner at the time of closing. The Cooperating Entities must contribute in cash at least 25 percent of the purchase price (appraised fair market value minus the landowner donation) of the easement.

Prior to NRCS accepting the conservation easement and issuing a payment, the **SELTNH** and the **MWW** shall self-certify on the NRCS CPA-230, Confirmation of Matching Funds, that the **SELTNH** and the **MWW**'s share of matching funds have not come from additional donations, payments, loans or fees made by or charged to the Grantor of the Conservation Easement, immediate family members, or organizations controlled by or funded by the Grantor of the Conservation Easement grantor, either through formal or informal agreements.

The Cooperating Entities must make all contributions in accordance with the policies and procedures in the NRCS Conservation Programs Manual, Part 519.

The Cooperating Entities must have an appraisal of the conservation easement performed by a certified general appraiser in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) OR the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) (Interagency Land Acquisition Conference, 2000) AND policies and procedures in the NRCS Conservation Programs Manual, Part 519. The appraisal must have an effective date that is within twelve months of the closing date. For appraisals conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), the appraiser must have completed training in using the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) as well as either eminent domain or conservation easements and have experience in appraising agricultural property with and without conservation easements. For appraisals conducted in accordance with Uniform Standards for Professional Appraisal Practice (USPAP), the appraiser must have completed training in either eminent domain or conservation easements and have experience in appraising agricultural property with and without conservation easements. The Cooperating Entities must make all contributions in accordance with the policies and procedures in the NRCS Conservation Programs Manual, Part 519.

VII. PAYMENTS

The **SELTNH** and/or the **MWW** shall notify the United States when the CCC funds are to be paid. CCC funds shall be paid to the **SELTNH** and/or the **MWW** when the United States is provided a copy of the recorded Conservation Easement Deed and the **SELTNH** and/or the **MWW** has paid the landowner(s). Where the **SELTNH** and/or the **MWW** cannot obtain 100

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percent of the funds to be paid at closing to the landowner(s) and requires the United States to make its payment at closing rather than on a reimbursable basis, the SELTNH and/or the MWW may request a waiver for the United States to pay their share of the Conservation Easement purchase at closing. When a waiver is requested, the SELTNH and/or the MWW shall notify the United States at least 60 days prior to closing, and the United States will make payment to an authorized closing agent via electronic transfer. The closing agent will hold the funds in escrow for a period not to exceed 14 calendar days. Upon receipt of the funds, the closing agent will sign a payment receipt form and return it to the United States. If interest is earned on CCC funds, the closing agent must return any interest earned to the United States.

All Conservation Easement Deeds used by the SELTNH and the MWW must be approved by NRCS prior to purchase of the conservation easement. All conservation easement deeds or templates must be submitted to NRCS 90 days before the intended closing date of the first parcel for which the deed will be used. Deeds prepared with an approved template must be reviewed for compliance with the template and approved by NRCS.

In order to obtain payment of FRPP funds, the SELTNH and/or the MWW will submit Form SF-270 (Request for Advance/Reimbursement of Funds), and the information specified below to the New Hampshire NRCS State Office. Prior to submitting the SF-270 for an advance of funds, the SELTNH and/or the MWW must also request a copy of closing agent requirements from the United States and ensure that the closing agent meets these requirements. The SELTNH and/or the MWW may submit the Form SF-270 prior to closing when a payment is issued at closing, after all the deeds have been recorded and the landowner has been paid, or on a quarterly basis for each quarter that Conservation Easement Deeds have been recorded and the landowner(s) have been paid.

At a minimum, the following information shall be included in, or attached to, the SF-270, prior to NRCS accepting the conservation easement and disbursing payment: (1) the name of the SELTNH or the MWW; (2) this Cooperative Agreement number; (3) Conservation Easement numbers (if applicable); (4) landowner name; (5) landowner's tax identification number (TIN) or social security number; (6) total amount of dollars paid the landowner for each conservation easement, specifying the CCC share and the non-CCC share of the Conservation Easement cost; (7) term of conservation easement; (8) acres acquired for each Conservation Easement; (9) Tax Identification Number (TIN) for SELTNH or the MWW; (10) Federal Information Processing Standards (FIPS) number for SELTNH or the MWW; (11) bank routing number and account number for desired deposit location; (12) copy of the recorded Conservation Easement Deed(s) for each easement; and (13) NRCS CPA-230, Confirmation of Matching Funds for each easement; and (14) a copy of the ALTA title insurance policy for each Conservation Easement.

VIII. CONSERVATION EASEMENT REQUIREMENTS.

The SELTNH and the MWW shall ensure that conservation easements acquired under this agreement:

1. run with the land in perpetuity or the maximum allowable under State law, where State law prohibits a permanent easement.

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2. protect agricultural use and related conservation values by limiting nonagricultural uses of the land;
3. provide for the administration, management, and enforcement of the Conservation Easement by the SELTNH and the MWW;
4. require management of highly erodible land on the property in accordance with a conservation plan that is developed utilizing the standards and specifications of the NRCS field office technical guide, 7 CFR part 12. The following paragraphs shall be included in all Conservation Easements acquired using FRPP funds:

As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct agricultural operations on highly erodible land on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Conservation Easement Deed. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Protected Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, NRCS will inform Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Conservation Easement Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

5. where parcels are being enrolled in FRPP based on historical and archaeological resources include, at minimum, a paragraph identifying standards and guidelines for treatment and maintenance of these resources is required within the deed. These guidelines should be based on the Secretary of the Department of the Interior's Standards and Guidelines for Historic Preservation. The SELTNH and the MWW will ensure that title restriction to protect any historical and archaeological structure(s) is appended to the Conservation Easement Deed and included in any succeeding transfers; and
6. include the following "Right of Enforcement" provision:

Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United

States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the SELTNH and/or the MWW fail to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

7. include the following "General Indemnification" provision:

"General Indemnification. Grantor shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws."

8. include the following "Environmental Warranty" provision:

"Environmental Warranty. Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or

imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.”

9. include provisions regarding the amount of impervious surfaces permitted on the Property, in accordance with the NRCS Conservation Programs Manual, Part 519.
10. include signature of a responsible NRCS official on the Conservation Easement Deed, accepting the property interest of the United States.
11. Include other terms that may be required by OGC or FRPP policy, such as a general indemnification clause and hazardous materials warranty.
12. Address the following permitted uses of the Protected Property by the Grantor in the Conservation Easement Deed. Other permitted uses may be added if they do not conflict with the conservation values of the Protected Property. For further explanation of these provisions, see the NRCS Conservation Programs Manual, Part 519.64 B. 7.
 - a. Agricultural Production - the production, processing, and marketing of agricultural crops for the purposes consistent with the terms of the Conservation Easement Deed.
 - b. Forest Management and Timber Harvest - forest management and timber harvesting shall be performed in accordance with a written forest management plan consistent with the Conservation Easement Deed.
 - c. Wetland Pond Restoration and Creation - permitted if it is consistent with the terms and purposes of the Conservation Easement Deed.
 - d. Non-developed Passive Recreation and Educational Activities - permitted if it does not impact the soils and the agricultural operations and is consistent with the purpose of the Conservation Easement
 - e. Customary Rural Enterprises - permitted on the Protected Property and in the buildings constructed and maintained for the agricultural use of the Protected

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Property. Customary rural enterprises that require their own buildings are prohibited.

f. Agri-tourism - -Low impact agri-tourism activities are permitted, such as farm tours, work experiences, field trips, petting zoos, corn mazes, and hay rides.

g. Roads - permitted if they are already in place and any new roads necessary to carry out the agricultural operations on the Protected Property.

h. Fences - may be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Protected Property or to mark boundaries of the Protected Property.

i. Oil and Gas Exploration and Extraction - allowed if the method of extraction is from another parcel, or is limited in the number of wells (one per farm or ranch on farms and ranches of under 320 acres and one per 320 acres for farms and ranches larger than 320 acres) and the amount of disturbance associated with each well including access roads and construction disturbance (one acre per well), and thus has minimal impact on the Protected Property.

13. Include the following prohibited uses of the Protected Property and any other prohibited uses necessary to protect the conservation values of the Protected Property. The following activities may be prohibited subject to qualification. Other provisions may be added when they are necessary to protect the conservation values of the Protected Property. The introduction to this section of the Conservation Easement Deed must include a statement that all activities that are inconsistent with the purposes of the Conservation Easement are prohibited. For forms further explanation of these provisions, see the NRCS Conservation Programs Manual, Part 519.64 B. 6.

a. Industrial or Commercial Uses - prohibited unless expressly permitted for agricultural purposes.

b. Construction on the Protected Property - limited to structures and improvements that support the agricultural use of the Protected Property.

c. Mining – prohibited, except for limited mining to the extent that the materials mined (e.g. sand, gravel, or shale) are used for agricultural operations on the Protected Property. In that case, extraction must be limited to a small, defined area or acreage.

d. Motorized Vehicle Use - prohibited except to support agricultural use, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, and the residential and recreational uses permitted by the conservation easement deed,

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- e. Granting of easements for utilities and roads – prohibited when the utility or road will adversely impact the conservation values of the easement deed, including the land's use for agriculture.
- f. Waste and Dumping - prohibited. Composting and storage of manure and other agricultural wastes produced on the farm or ranch is permitted.
- g. Signage – prohibited except for signs to identify the farm or ranch, signs to advertise products or services provided by the farm or ranch, and signs to identify the farm or ranch as a participant in FRPP and the Local Grantee's program. Conservation easement deeds should specify limitations on sign size.
- h. Subdivision – generally prohibited unless required by state or local regulations to construct residences for employees working on the Protected Property.
- i. Surface Alteration – prohibited unless it is in accord with general agricultural uses of the Protected Property.

IX. RESPONSIBILITIES.

A. Those of the United States -

1. The United States, by and through the NRCS, shall provide technical and other services required to assist the landowner in developing an appropriate conservation plan in accordance with 7 CFR part 12. To ensure that the conservation plan is implemented in accordance with 7 CFR part 12, the NRCS will be provided the opportunity to conduct periodic field visits on lands that are enrolled in the FRPP and associated lands owned or managed by the landowner which are also subject to 7 CFR part 12.
2. The CCC shall, subject to the availability of funds, disburse the appropriate funds to the SELTNH and/or the MWW in accordance with Part IV and VII of this Cooperative Agreement.
3. Prior to NRCS accepting the conservation easement and processing the payment, NRCS shall: ensure that a conservation plan for highly erodible lands is developed in accordance with 7 CFR part 12 and that an AD-1026 has been filed; obtain approval of the conservation easement deed or Conservation Easement Deed template from the National Headquarters of the NRCS; and acquire: a signed letter from the closing agent indicating that the agent meets FRPP closing agent requirements, an executed NRCS CPA-230, Confirmation of Matching Funds, and a copy of the title commitment.
4. NRCS shall conduct administrative and technical reviews of appraisals in accordance with NRCS Conservation Programs Manual, Part 519.

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5. NRCS shall certify payment for all conservation easements for parcels listed on each attachment acquired by the fund disbursement deadline for each attachment..

B. Those of SELTNH and/or the MWW-

1. The SELTNH and/or the MWW shall perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid Conservation Easement Deeds.

2. The SELTNH and/or the MWW shall pay all costs of conservation easement procurement and will operate and manage each conservation easement in accordance with the SELTNH and/or the MWW program, this Cooperative Agreement, and 7 CFR part 1491. The United States shall have no responsibility for the costs or management of the conservation easements purchased by the SELTNH and the MWW unless it exercises its rights under a Conservation Easement Deed. The SELTNH and the MWW shall indemnify, and hold the United States harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the SELTNH and/or the MWW in connection with its acquisition and management of the conservation easements acquired pursuant to this Cooperative Agreement. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the SELTNH's and/or the MWW's agents, successors, assigns, employees, contractors, or lessees in connection with the acquisition and management of the conservation easements acquired pursuant to this Cooperative Agreement which result in violations of any laws and regulations which are now or which may in the future become applicable.

3. Non-governmental organizations shall continue to meet the requirements specified in Title II, Subtitle E, Section 2401 of the Food, Conservation, and Energy Act of 2008. The Act states that eligible organizations are "any organization that—

- (A) is organized for, and at all times since the formation of the organization has been operated principally for, 1 or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;
- (B) is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501 (a) of that Code;
- (C) is described in section 509 (a)(1) or (2) of that Code; or
- (D) is described in section 509(a) (3) of that Code and is controlled by an organization described in section 509 (a) (2) of that Code."

4. The SELTNH and the MWW shall address in each Conservation Easement Deed in which CCC funds are used as part of the acquisition the permitted/prohibited uses set forth in Part VIII of this Cooperative Agreement.

5. Prior to payment certification, the SELTNH and the MWW shall ensure that all lands for which a conservation easement has been acquired will have a conservation plan, as described in Part VIII of this Cooperative Agreement.

6. The SELTNH and the MWW shall prohibit all non-agricultural uses of the encumbered properties, except for recreational uses, such as hiking, hunting, fishing, boating,

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horseback riding to the extent those activities do not conflict with the purpose of Section 2401 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110 – 234).

7. At a minimum, the **SELTNH** and/or the **MWW** shall monitor FRPP Protected Properties on an annual basis to ensure that the Conservation Easement Deeds are being implemented according to the deed provisions. An annual report of the status of acquired Conservation Easements and Conservation Easements pending acquisition will be submitted to the NRCS representative at the State level. The NRCS representative will define the format of this report.

8. In acquiring Conservation Easements, the **SELTNH** and/or the **MWW** shall ensure that the title to the lands or interests therein shall be unencumbered or, if encumbered by outstanding or reserved interests, the **SELTNH** and/or the **MWW** shall ensure that any outstanding interests are subordinated to the Conservation Easement Deed or that any exceptions from this subordination requirement are approved by the NRCS and are consistent with the purposes of the Farm and Ranch Lands Protection Program. The **SELTNH** and/or the **MWW** shall provide to NRCS a copy of the title commitment or title report 90 days before the intended closing date and any other requested documentation related to title so that NRCS can review the title commitment to ensure that there are no encumbrances that would allow non-agricultural use of the property that are not acceptable to NRCS. The **SELTNH** and/or the **MWW** shall assure that proper title evidence is secured.

9. The **SELTNH** and/or the **MWW** shall have an appraisal conducted on the Protected Property prior to NRCS accepting an interest in the Conservation Easement. The appraisal shall be conducted by a certified general appraiser and shall conform to the Uniform Standards of Professional Appraisals Practices OR the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 2000).

10. The **SELTNH** and/or the **MWW** shall not use FRPP funds to place an easement on a property in which the **SELTNH**'s or the **MWW** employee or board member, with decision-making involvement in matters related to easement and acquisition and management, has a property interest. The **SELTNH** and/or the **MWW** shall not use FRPP funds to place an easement on a property in which a person who is an immediate family member or household member of an employee or board member, with decision-making involvement in matters related to easement acquisition and management, has a property interest. Further, the **SELTNH** and the **MWW** agree to generally conduct themselves in a manner so as to protect the integrity of conservation easement deeds which they holds as well as avoid the appearance of impropriety or actual conflicts of interests in their acquisition and management of conservation easements.

11. The **SELTNH** and the **MWW** agree that they will not at any time, when the **SELTNH** and/or the **MWW** is named as a Grantee on the Conservation Easement Deed, seek to acquire the remaining fee interest in the Protected Property. Likewise, if the **SELTNH** and/or the **MWW** enters into an agreement with another entity to manage/monitor the Conservation Easement, and the entity seeks to acquire the underlying fee, the **SELTNH** and the **MWW** agree to immediately terminate such a relationship and arrange for an uninterested party to manage/monitor the Conservation Easement.

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12. When a conservation plan violation is reported to the Cooperating Entity by NRCS, after all administrative and appeal rights have been exhausted by the landowner in accordance with 7 CFR part 12 and 7 CFR part 614, the SELTNH and/or the MWW shall implement easement enforcement procedures.

13. Paragraphs 2, 3, 6, 7, 10, 11, and 12 of this Section shall survive the termination or expiration of this agreement.

X. GENERAL PROVISIONS.

A. The term of this Cooperative Agreement shall be from the date of the last signature affixed hereto through September 30, 2014.

If Conservation Easements on all the parcels listed on Attachments A, B, and C or the replacements for those parcels are not closed or reimbursement is not requested by the dates indicated in Section III, any remaining funds will be released from this obligation unless the Cooperative Agreement is extended for specific Conservation Easements, as provided for in paragraph X(C).

B. No assignment in whole or in part shall be made of any right or obligation under this Cooperative Agreement without the joint approval of both the United States, the SELTNH, and the MWW. Nothing herein shall preclude the United States, the SELTNH, or the MWW from entering into other mutually acceptable arrangements or agreements, except as identified in Part IX of this cooperative agreement. Such documents shall be in writing, reference this Cooperative Agreement, and shall be maintained as part of the official Cooperative Agreement file.

C. This Cooperative Agreement may be amended or modified by written amendment signed by the authorized officials of the United States, the SELTNH, and the MWW. The Cooperative Agreement may only be extended with the permission of the Deputy Chief for Programs of the Natural Resources Conservation Service and only if extenuating circumstances occur with the individual Conservation Easements for which an extension is requested.

D. The United States may terminate this Cooperative Agreement if the United States determines that the SELTNH and/or the MWW has failed to comply with the provisions of this Cooperative Agreement or if it determines that it is in the best interests of the United States to terminate. In the event that this agreement is terminated for any reason, the financial obligations of the parties will be as set forth in 7 CFR parts 1403, 3016 and 3019, as applicable.

E. This Cooperative Agreement constitutes financial assistance and, therefore, falls under the Uniform Federal Assistance Regulations at 7 CFR parts 3015, 3016 and 3019. For the purposes of administering this Cooperative Agreement, the procedures set forth at 7 CFR parts 3015, 3016 and 3019 as well as OMB Circular A-122 apply, as applicable.

1. 7CFR, Part 3017, Government Debarment and Suspension;

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2. 7CFR, Part 3021, Government-wide Requirements for a Drug-free Workplace;
3. 7CFR, Part 3052, Audits of Institutions of Higher Learning and Non-Profit Institutions;
4. 2CFR, Part 215, Uniform Administrative Requirements (Grants and Agreements with Institutions of Higher Learning, Hospitals, and Other Non-profit Organizations);
5. Office of Management and Budget (OMB) Circulars A-110 and A-122, Cost Principles for Non-Profit Organizations; and
6. Treasury Circular 1075, Withdrawal of Cash from Treasury for Advance under Federal and Other Programs

F. It is the intent of the United States to fulfill its obligations under this Cooperative Agreement. However, NRCS cannot make commitments in excess of funds authorized by law or made administratively available. If NRCS cannot fulfill its obligations under this Cooperative Agreement because of insufficient funds, this Cooperative Agreement will automatically terminate.

G. The SELTNH and the MWW shall give CCC, the United States, or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this Cooperative Agreement.

H. The SELTNH and the MWW agree to comply with all applicable Federal, State, and local laws.

I. If any recipient of Federal funds under this Cooperative Agreement materially fails to comply with the terms of this Cooperative Agreement, the United States reserves the right to wholly or partially recapture funds provided in accordance with applicable regulations.

XII. PRINCIPAL CONTACTS.

The United States representative for this Cooperative Agreement is:

State Conservationist
Natural Resources Conservation Service
on behalf of the Commodity Credit Corporation
2 Madbury Road
Durham, NH 03824
(603) 868-7581

The **Southeast Land Trust of New Hampshire** representatives for this Cooperative Agreement are:

Brian Hart and Dave Viale
Southeast Land Trust of New Hampshire
12 Center Street
Exeter NH 03833
(603) 778-6088

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The **Manchester Water Works** representative for this Cooperative Agreement is:

Robert Beurivage
Manchester Water Works
281 Lincoln Street
Manchester NH 03103
(603) 624-6494

IN WITNESS WHEREOF, the following authorized representatives of the United States, the Southeast Land Trust of New Hampshire, and the Manchester Water Works have executed this Cooperative Agreement.

THE SOUTHEAST LAND TRUST OF NEW HAMPSHIRE

By: Brian Hart, Executive Director
Southeast Land Trust of New Hampshire

THE MANCHESTER WATER WORKS

By: Lewis C. D'Allesandro, President
Board of Water Commissioners

**UNITED STATES OF AMERICA
COMMODITY CREDIT CORPORATION**

By: George W. Cleek, IV
State Conservationist

Fund Code(s) _____
BOC _____ TSP Code _____ Rptg. Code _____
County _____ Date _____ Amount _____
Obligation Document # <u>7314281005</u> _____
Signature: _____
Budget Officer
NRCS Internal Use Only -- Funding Authority

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Attachment A
List of Pending Conservation Easement Offers on Which the Obligation of FY 2010 Funds is Based

Landowner's Name and Address	Acres	Estimated Conservation Easement Value	Estimated Federal Contribution to the Estimated Conservation Easement Value (no greater than 50% of the Estimated Value)
Audubon Society Mike Bartlett 84 Silk Farm Road Concord NH 03301	51	\$750,000	\$375,000

***DRAFT COPY – DOCUMENT SUBJECT TO CHANGE UPON APPROVAL BY LCHIP’S BOARD OF DIRECTORS**

Please return to:

Ray Ilg
c/o LCHIP
13 West Street, Suite 3
Concord, NH 03301



NH Land and Community Heritage Investment Program (LCHIP)
13 West Street, Suite 3, Concord, NH 03301
(603) 224-4113

PROJECT AGREEMENT

Between LCHIP, the Southeast Land Trust of New Hampshire, Manchester Water Works and the
Town of Auburn

Municipality: Auburn

Target Properties: Massabesic Partnership (129 acres on Battery Point)

Interest to be conveyed: Conservation Easement

LCHIP Grant Recipient:

Town of Auburn
PO Box 309
Auburn, NH 03032

Grantor – Conservation Easement:

The Audubon Society of NH
84 Silk Farm Road
Concord, NH 03301

Grantee – Conservation Easement (Forest Parcel)

Manchester Water Works
281 Lincoln Street
Manchester, NH 03103

Grantee – Conservation Easement (Farm Parcel)

Southeast Land Trust of New Hampshire
PO Box 675
Exeter, NH 03833

Executory Interest:

State of New Hampshire
NH Land & Community Investment Program
13 West Street
Concord, NH 03301

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Project Scope:

The Town of Auburn Audubon Society of NH is granting a conservation easement to the Southeast Land Trust of New Hampshire (SELTNH) and to Manchester Water Works. SELTNH will be the primary easement holder on the farm parcel with LCHIP, the Town of Auburn and Manchester Water Works having Executory Interest. Manchester Water Works will be the primary easement holder on the forest parcel with LCHIP, the Town of Auburn and SELTNH having Executory Interest.

Summary of Project Costs:

Type	Name	Acres	Cost to LCHIP
Target	Massabesic Partnership (Battery Point)	129	\$200,000.00
	LCHIP endowment contribution (from LCHIP's Trust Fund) *		\$25,025.00
	Total		\$225,025.00

Amount to be authorized:

Check to be made payable to The Town of Auburn up to the amount of \$200,000.00 upon closing of the project

*Transfer to LCHIP Endowment: \$25,025.00 (Subject to change upon submission and review of the final appraisal)

The State of New Hampshire, its successors and assigns, represented by the Executive Director of the NH Land and Community Heritage Investment Program (LCHIP), The Town of Auburn, (the RECIPIENT), Southeast Land Trust of NH and Manchester Water Works mutually agree to perform this Project Agreement, as described herein, in accordance with New Hampshire RSA chapter 227-M; all applicable sections of the *Criteria, Guidelines, and Procedures* of LCHIP, and all other applicable laws.

The Land and Community Heritage Investment Program hereby obligates for payment from the LCHIP Trust Fund the amount specified above in the form of one check made payable to The Town of Auburn as specified above in this contract, at the place and time of closing mutually agreed upon between LCHIP and The Town of Auburn.

As recipient of the grant award for the Massabesic Partnership (the property), the Town of Auburn accepts the following obligations:

Termination Clause:

The RECIPIENT must fully complete the project as described below in this Project Agreement, and must act in compliance with all statutory and guideline requirements of LCHIP. Prior to any disbursement of grant award funds, the RECIPIENT must provide LCHIP all necessary due diligence for Natural and Cultural Resource Projects. These due diligent items are clearly outlined in LCHIP's *Criteria, Guidelines, and Procedures (CGP)* and must be provided at least **4 weeks** prior to request for

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disbursement of funds. LCHIP shall determine, at its sole discretion, whether the project and completed work are consistent with this Project Agreement, the Project Application and all statutory and guideline requirements of LCHIP. If LCHIP determines the project and completed work are inconsistent with the foregoing requirements then the LCHIP Board of Directors has the right to terminate the grant award.

Notwithstanding anything in this agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability of funds, and in no event shall the State be liable for any payments hereunder in excess of such available funds. In the event of a reduction or termination of such funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this agreement immediately upon giving the RECIPIENT notice of such termination. The State shall not be required to transfer funds from any other account to the LCHIP trust fund in the event funds in that account are reduced or unavailable.

Grantees' Covenants

1. To utilize the funds herein provided by the State of New Hampshire, acting through LCHIP, for the acquisition of the interest referenced in this contract as soon as possible, time being of the essence. The project shall be completed within 18 months of the notification of the grant award.
2. To return to LCHIP any funds herein provided to the extent of any loss due to any title that proves to be less than clear and marketable for all properties protected under this contract;
3. To return to LCHIP any funds herein provided to the extent of any loss due to material misrepresentations during the application process or in completion of this project by the Town of Auburn regarding the properties protected by this contract.

As Grantees' of the Conservation Easement of the Massabesic Partnership (the property) acquired through the execution of this project, the Southeast Land Trust of New Hampshire and Manchester Water Works accepts the following obligations:

Recipient's Covenants

1. To limit the use of the Property as hereinafter defined to conservation purposes in perpetuity as specified by New Hampshire RSA chapter 227-M, the *Criteria, Guidelines, and Procedures* established by LCHIP and any other applicable laws;
2. That the property acquired through this project (hereinafter "the Property") will be monitored on an annual basis in accordance with the *Standards and Practices* for stewardship of the Land Trust Alliance, and LCHIP's *Criteria, Guidelines and Procedures* to ensure that the terms of the Warranty Deed are being adhered to, and to ensure that no actions are occurring which could be detrimental to the values of the Property. The Southeast Land Trust of New Hampshire agrees to submit a copy of the annual monitoring report for the Farm parcel and Manchester Water Works agrees to submit a copy of the annual monitoring report for the Forest parcel to LCHIP to document the actions taken;
3. The Grantees' agree to place a sign, to be provided by LCHIP, at a prominent location on the Property. The sign should contain as a minimum the LCHIP logo and the following statement: "This property (name of property may be used) has been protected with assistance from the NH Land and Community Heritage Investment Program." Should the LCHIP sign be damaged or destroyed, the Grantees' agree to repair or replace it with identical signage and absorb any costs associated with that

DRAFT

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repair or replacement. The Grantees' also agree that where significant signage is placed at major access points, the Land and Community Heritage Investment Program will be identified as a contributing partner to the acquisition of easement interests and the long-term protection of the Property;

4. That any materials produced after notification of grant award to promote or publicize the Property will include the following statement: "This property (name of property may be used) has been protected with assistance from the NH Land and Community Heritage Investment Program." The Grantees' agree to include the LCHIP logo or appropriate mention of LCHIP participation on significant signage placed at major access points and on major written material in which the logos of other contributing organizations are used;

5. That all public access provided for in the terms of the Easement will be in accordance with all federal and state policies of non-discrimination in public accommodation.

The Town of Auburn

By: _____

Print Name: _____

Date: _____

WITNESS:

Print Name: _____

Date: _____

THE STATE OF NEW HAMPSHIRE
_____(COUNTY), SS.

On the ___ day of ___ 20___, before me personally appeared _____, known to me (or satisfactorily proven) to be the person whose name appears above, and s/he acknowledged that s/he executed this document in the capacity indicated above.

Notary Public/Justice of the Peace
My commission expires:

Manchester Water Works

By: _____

Print Name: _____

Date: _____

WITNESS:

Print Name: _____

Date: _____

THE STATE OF NEW HAMPSHIRE
_____(COUNTY), SS.

On the ___ day of ___ 20___, before me personally appeared _____, known to me (or satisfactorily proven) to be the person whose name appears above, and s/he acknowledged that s/he executed this document in the capacity indicated above.

Notary Public/Justice of the Peace
My commission expires:

DRAFT

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Southeast Land Trust of New Hampshire

By: _____

WITNESS: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____

THE STATE OF NEW HAMPSHIRE
_____(COUNTY), SS.

On the ____ day of ____ 20__, before me personally appeared _____, known to me (or satisfactorily proven) to be the person whose name appears above, and s/he acknowledged that s/he executed this document in the capacity indicated above.

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

Land and Community Heritage Investment Program

By: _____
Deborah Turcott Young, Executive Director
Land and Community Heritage Investment Program
For the State of New Hampshire

WITNESS: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____

THE STATE OF NEW HAMPSHIRE
_____(COUNTY), SS.

On the ____ day of ____ 20__, before me personally appeared Deb Turcott Young, known to me (or satisfactorily proven) to be the person whose name appears above, and s/he acknowledged that s/he executed this document in the capacity indicated above.

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

DRAFT
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Beaurivage, Robert

From: David Viale [dviale@seltnh.org]
Sent: Thursday, May 27, 2010 4:50 PM
To: Beaurivage, Robert; 'Bill Herman'; 'Michael Bartlett'
Cc: 'Ray Ilg'
Subject:
Attachments: Project Agreement_LCHIP_Draft.doc

Hi folks - here is a DRAFT cooperative agreement from LCHIP. My understanding from Ray is that this DRAFT is subject to change and approval by the LCHIP board, which meets on June 11th. I am forwarding this agreement draft so that you may have time to review the document and address any major issues or concerns that your respective approval committees may have.

I hope to send out draft easements by the end of the week.

Have a good holiday weekend,
Dave

David Viale
Land Protection & Stewardship Specialist

Southeast Land Trust of New Hampshire
PO Box 675
12 Center Street
Exeter, NH 03833
p 603-778-6088
f 603-778-0007
dviale@seltnh.org
www.seltnh.org

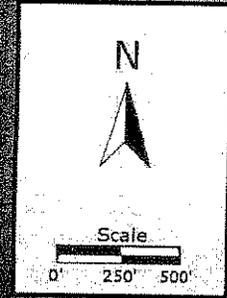
5-24

Massabesic Audubon Center and Wildlife Sanctuary



THE AUDUBON SOCIETY OF NEW HAMPSHIRE

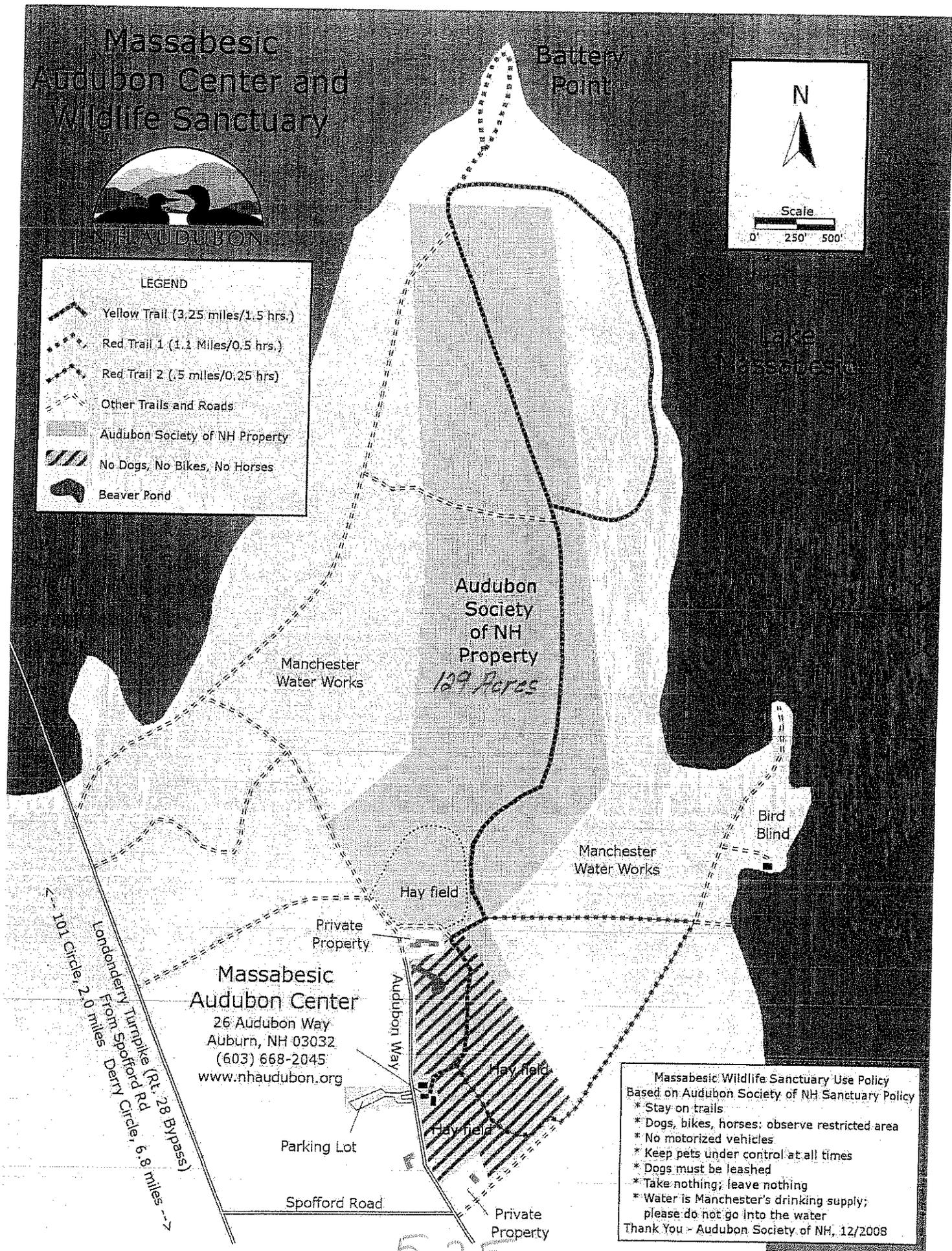
Battery
Point



LEGEND

- Yellow Trail (3.25 miles/1.5 hrs.)
- Red Trail 1 (1.1 Miles/0.5 hrs.)
- Red Trail 2 (.5 miles/0.25 hrs)
- Other Trails and Roads
- Audubon Society of NH Property
- No Dogs, No Bikes, No Horses
- Beaver Pond

Lake
Massabesic



**Massabesic
Audubon Center**
26 Audubon Way
Auburn, NH 03032
(603) 668-2045
www.nhaudubon.org

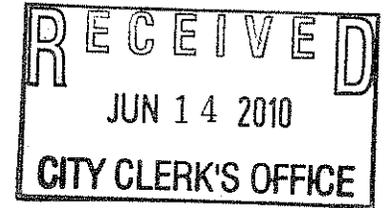
Massabesic Wildlife Sanctuary Use Policy
Based on Audubon Society of NH Sanctuary Policy

- * Stay on trails
- * Dogs, bikes, horses; observe restricted area
- * No motorized vehicles
- * Keep pets under control at all times
- * Dogs must be leashed
- * Take nothing; leave nothing
- * Water is Manchester's drinking supply; please do not go into the water

Thank You - Audubon Society of NH, 12/2008

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Memo



June 14, 2010

TO: MATT NORMAND
CITY CLERK'S OFFICE

FROM: *RB* ROBERT BEAURIVAGE, P.E., ASSISTANT DIRECTOR

RE: CONSERVATION EASEMENT INFORMATION FOR JUNE 21ST
LANDS AND BUILDINGS COMMITTEE

Please find attached a document we just received titled "CONSERVATION EASEMENT DEED". This document should also be attached to the package of information that I sent you on June 2nd for the June 21st Lands and Buildings Committee.

RB:edg

Manchester Water Works

281 Lincoln St., Manchester, NH 03103, tel. 603-624-6494, fax: 603-628-6020

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Deed Template Subject to Review by the Regional Office
of the USDA Office of General Counsel

This conveyance is exempt from the New Hampshire Real Estate Transfer Tax pursuant to N.H. RSA 78-B:2 I, II.

CONSERVATION EASEMENT DEED
and DEED RESTRICTION

THE AUDUBON SOCIETY OF NEW HAMPSHIRE, a New Hampshire non-profit corporation with a mailing address of 84 Silk Farm Road, Concord, New Hampshire, their beneficiaries, heirs, successors, assigns or administrators, hereinafter referred to as the "Grantor", for Consideration of \$ (Amount of Money Paid for the Conservation Easement) [DVI] grants with warranty covenants a Conservation Easement in perpetuity to the SOUTHEAST LAND TRUST OF NEW HAMPSHIRE, a not-for-profit corporation duly organized and existing under the laws of the State of New Hampshire for the public benefit consistent with New Hampshire R.S.A. 477:46 and I.R.C. Section 501 (c) (3) with its principal place of business at 12 Center Street, P.O. Box 675, Exeter, New Hampshire, ~~(Cooperating Entity's Name)~~, a not-for-profit corporation duly organized and existing under the laws of the State of New Hampshire for the public benefit consistent with New Hampshire R.S.A. 477:46 and I.R.C. Section 501 (c) (3) with its principal place of business at ~~(Address of the Cooperating Entity)~~ hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

and an Executory Interest therein to the MANCHESTER WATER WORKS, a municipal corporation with a principal place of business at 281 Lincoln Street, City of Manchester, County of Hillsborough, State of New Hampshire, 03103, and a governmental body eligible to hold a "Conservation Easement" within the meaning of N.H. RSA 477:45-47, as further described in Section 10 below,

and an Executory Interest therein to the TOWN OF AUBURN, a New Hampshire municipal corporation duly organized, with a principal place of business at 47 Chester Road, Town of Auburn, County of Rockingham, State of New Hampshire, 03032, a "qualified organization" within the meaning of Section 170 (b)(1) of the Internal Revenue Service Code of 1986, as amended, and a governmental body eligible to hold a "Conservation Easement" within the meaning of N.H. RSA 477:45-47, as further described in Section 10 below,

and with a Right of Enforcement to the UNITED STATES OF AMERICA (hereinafter referred to as the "United States", which term shall include its assigns), acting by and through the United States Department of Agriculture, Natural Resources Conservation Service (hereinafter referred

to as the "NRCS", which term shall include its assigns), on behalf of the Commodity Credit Corporation for the rights described herein in Section 9 below, and to the UNITED STATES OF AMERICA (hereinafter referred to as the "United States", which term shall include its assigns), acting by and through the United States Department of Agriculture, Natural Resources Conservation Service (hereinafter referred to as the "NRCS", which term shall include its assigns), on behalf of the Commodity Credit Corporation for the rights described herein, [the Conservation Easement hereinafter described with respect to that area of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon, consisting of approximately (Number of Acres) acres situated in (Name of Town and County), State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof and an Executory Interest therein to the TOWN OF (Name of Town), a municipal corporation with its principal mailing address (Address of Town), New Hampshire (hereinafter referred to as the "Executory Interest Holder"), as further described in Section 10 below.]

and pursuant to New Hampshire RSA chapter 227-M, the Property is subject to an Executory Interest conveyed by through this Conservation Easement by the Grantor to the State of New Hampshire, acting through the New Hampshire Land and Community Heritage Investment Authority (referred to herein as Executive Interest holder).

The Grantee and Grantors are hereinafter referred to collectively as the "Parties" and the TOWN OF AUBURN, MANCHESTER WATER WORKS, and STATE OF NEW HAMPSHIRE, acting through the New Hampshire Land and Community Heritage Investment Authority are hereinafter referred to collectively and individually as the "Executive Interest Holder".

The Conservation Easement granted hereunder is conveyed subject to the Rights of Enforcement of the United States of America. These rights are more fully described in Section 9.

The Conservation Easement hereinafter described with respect to that area of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon, consisting of approximately [Insert Survey Acreage] acres situated in the Town of Auburn, Rockingham County, State of New Hampshire, as shown on a plan titled "[Insert Title]", dated [Insert Date], prepared by Duval Survey, Inc., and recorded in the Rockingham County Registry of Deeds as Plan D [Insert Plan #], hereinafter referred to as the "Plan" and more particularly bounded and described in Appendix "A" attached hereto and made a part hereof; and

the Deed Restriction hereinafter described with respect to the remainder of the Grantor's property that is excluded from this Conservation Easement and shown as "[insert area name] on said Plan and shown as "[insert area name] on said Plan, and more particularly bounded and described in Appendix "B" attached hereto and made a part hereof (together, the parcels bounded and described in Appendices "A" and "B" comprise the Grantor's property in its entirety).

This Conservation Easement is being purchased with funds provided, in part, by the Farm and Ranch Lands Protection Program (hereinafter referred to as "FRPP"), pursuant to 16 U.S.C. 3838h and 3838i. Specifically, the FRPP is providing \$ (Amount of FRPP Funding for the Easement Acquisition) toward the purchase of this Conservation Easement. Under FRPP, the Secretary of the United States Department of Agriculture, through the NRCS acting on behalf of the Commodity Credit Corporation is authorized to provide funding for the purchase of

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conservation easements for the purpose of protecting agricultural use of the land by limiting non-agricultural uses of the land.

1. PURPOSES

The Conservation Easement hereby granted is pursuant to NH RSA 477:45-47 and to NH's RSA Chapter 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." [DVS] and is exclusively for the following conservation Purposes (herein referred to as the "Purposes") for the public benefit:

- A. To protect the agricultural soils, including Twenty Three and 6/10th's (23.6) (Number of Acres) acres of prime farmland soils, (Number of Acres) acres of unique farmland soils, (Number of Acres) sixty two hundredth's (0.62) of an acre of agricultural soils of statewide importance and (Number of Acres) one and 4/10th's (1.4) [DVS] acres of agricultural soils of local importance, the agricultural viability and the agricultural productivity (hereinafter referred to as the "Conservation Values") of the Property in perpetuity. No activity which shall significantly impair the actual or potential use of the Property for agricultural production shall be permitted. To the extent that the preservation and protection of additional conservation attributes of the Property listed in 1.B., 1.C., 1.D., 1.E., and 1.F. are consistent with the primary purpose of protecting the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity, it is also the purpose of this Conservation Easement to protect those additional conservation attributes of the Property, and to such extent, no activity that shall significantly impair those additional conservation attributes of the Property shall be permitted.
- B. The conservation and protection of open spaces, particularly the conservation of the productive farm and forest land of which the Property consists, which includes highly productive forest soils as well as important agricultural soils, and of the wetland and upland wildlife habitat thereon, and the long-term protection of the Property's capacity to produce economically valuable agricultural and forestry products; and
- C. The enjoyment of the general public of the scenic rural views, including the more than XXX feet of frontage on Audubon Way Road and more than XXX feet of frontage on XXX Road.
- D. The protection of the Property for outdoor recreation by and/or the education of the general public thereon, as set forth in Section 2.K below.
- E. The preservation and protection of the quality of surface water on the Property and

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ground water resources on and under the Property.

- F. The conservation and management of the Property for the protection of water quality and aquatic habitat in Lake Massabesic and its watershed.

In accordance with RSA 227-M:14, notwithstanding any other provision of law relating to the disposal of publicly-owned real estate, no deviation in the 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 public trust is prohibited, except as provided in RSA 227-M:13. (RSA 227-M:14) [DV7]

The specific Conservation Values of the Property are more particularly documented in a Baseline Documentation Report, prepared by Grantee and signed and acknowledged by the Grantors, which establishes the baseline condition of the property at the time of this grant. The Baseline Documentation consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of this contract, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Easement. The Baseline Documentation Report shall be held by the Grantee with copies provided to NRCS, and the Executive Interest Holder.

The above Purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in September, 2007 Master Plan of the Town of Auburn, which recognizes "the important contribution that the town's natural resources and cultural and historic amenities make to the overall character and well-being of the town" and which states the objective to "preserve the natural and cultural features that contribute to Auburn's character, such as...prime agricultural land..."the ~~(Date of Master Plan) Master Plan Update of the Town of (Name of Town), which states that "prime/high quality agricultural land" is "highest priority" identified for protection in the Town of (Name of Town) Open Space Plan~~[dv8], and with New Hampshire 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, agricultural and wildlife resources."

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

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

2. PROHIBITED USES (Subject to the reserved rights specified in Section 3 below)

The Property shall be maintained in perpetuity as open space for the purposes set forth by the NH Investment Program established by RSA 227-M and [dv9]subject to the following use limitations:

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- A. Land Use Prohibition. The Property shall be maintained in perpetuity as open space without there being conducted thereon any residential, industrial or commercial activities except agriculture and forestry or other permitted uses as described in ~~Reserved Rights~~ Section 4, -A., and provided that the future capacity of the Property to produce forest and/or agricultural crops shall not be degraded by on-site activities. Such on-site agricultural and forestry activities shall not cause significant soil erosion or significant pollution or degradation of surface waters, subsurface waters or soil.
- B. Subdivision. The Property shall not be subdivided or conveyed in any form in separate parcels. In connection therewith, the Grantors further covenant and agree not to undertake any action that would have the effect of subdividing or conveying any part of the Property, except that the lease of any portion of the Property for any use permitted by this Conservation Easement shall not violate this provision.
- C. Structures and Improvements. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the agricultural, forestry, conservation, or habitat management and which may include but not be limited to a road, dam, fence, utility line, bridge, culvert, barn, maple sugar house, or shed; and ii) not detrimental to the Purposes of this Conservation Easement. Structures and improvements with impervious surfaces shall be located within the Building Envelope as shown on the Plan recorded herewithin, and further described in ~~indesignated in~~ [DV10] Appendix B [DV11]. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the following structures or improvements: dwelling, mobile home, cabin, driveways not necessary for agricultural purposes, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, or aircraft landing area.
- D. Soil Disturbance. 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 agricultural, forestry, conservation, or 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/or natural communities; and
 - iii. are not detrimental to the Purposes of this Conservation Easement.
- Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.
- E. Advertising Structures. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural,

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forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such structures are not detrimental to the Purposes of this Conservation Easement. No sign on the Property shall exceed twelve (12) square feet in size, and no sign shall be artificially illuminated.

- F. Mining. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except as necessary to carry out the permitted uses herein. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.
- G. Waste Disposal. There shall be no dumping, storage, injection, burning or burial of man-made materials, building demolition materials, construction debris, trash, tires, vehicle bodies or parts or similar materials, or materials known to be hazardous to human health or the environment, and no storage of snow that has been moved or transported onto the Property. However, the storage and spreading of compost, manure, or other fertilizer for use on the Property; the storage of pesticides for use on the Property; the storage of feed for use on the Property; the temporary storage of trash that is generated on the Property in sound receptacles for periodic off-site disposal; or leaving of slash after harvested timber on the Property are permitted, provided however that the aforesaid spreading, storage or leaving of slash is done in accordance with the then-current scientifically based practices recommended by, as appropriate, the University of New Hampshire Cooperative Extension, NRCS, New Hampshire Department of Agriculture, Markets and Food Manual of Agricultural Best Management Practices (BMPs) in the State of New Hampshire and those recommendations (in addition to any and all label requirements) of the United States Environmental Protection Agency, or other government or private, nonprofit natural resource conservation and management agencies then active are permitted.
- H. Rights-of-Way and Easements. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, under, over, or across the Property except those of record as of the execution of this Conservation Easement Deed and those specifically permitted in the provisions of this Conservation Easement Deed. The Grantors shall not sell, lease, or grant an easement covering any portion of the Property where such sale, lease, or easement is for the purpose of construction and installation of underground or above-ground public utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations, windmills, commercial satellite dishes, and cellular telephone or other communication towers. The Grantors may install utilities necessary for permitted agricultural structures. [DV12]
- I. Water Rights. The title to that quantity of water rights necessary for present or future agricultural production on the Property and shall not be transferred, encumbered, leased, sold or otherwise separated from title to the Property.
- J. Impervious Surface. The maximum allowable impervious surface coverage on the Property shall not exceed two percent ~~(Number of Acres)~~ [DV13] acres (~~Number of Square Feet~~ 43,560) square feet). The total impervious surface coverage shall include all existing and future structures, driveways, roads, parking facilities and other paved or

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impervious surfaces, as well as any temporary structures even if the soil surface is not disturbed, including, but not limited to, plastic greenhouses and farm structures with or without a floor. Any such structure, facility or impervious cover shall be subject to this impervious surface limitation unless said structure, facility or impervious surface cover is specifically identified in the NRCS Conservation Plan and is an approved conservation practice, and/or is necessary to be in compliance with the Conservation Plan as determined solely by the NRCS.

K. Posting. ~~The~~ The Property shall not be posted against except as described below and in 6.C. Affirmative Rights of the Grantee, and the Grantors shall keep access to and use of the Property open to the public for pedestrian [DV14] non-motorized, non-commercial, outdoor recreational and outdoor educational purposes, such as but not limited to hiking, wildlife observation, cross-country skiing, fishing, and hunting, and transitory passive recreational purposes. [DV15] but not for camping. However, the Grantee shall be under no duty to supervise said access, use, or purpose. The Grantors reserve the right to post the Property against hunting on active livestock fields [DV16] and the Property against public access to agricultural cropland during the planting and growing season, to lands while being grazed by livestock, and to forestland during harvesting or other forest management activities.

~~(Applies only if public access is part of easement acquisition; remove if the Grantee has not acquired the right for public access)~~ [DV17]

L. Motorized Vehicle Use. Grantors shall ~~neither~~ grant permission ~~nor use for~~ motorized vehicle use on the Property, except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or conservation uses of the Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Property and the Purposes of this Conservation Easement; however, notwithstanding the foregoing, use of snowmobiles on snow is allowed on the Property.

~~M. Open Space Requirements. The Property shall in no way be used to satisfy the density requirements of any applicable zoning ordinance or subdivision regulation with respect to the development or use of any other property.~~

~~N. Stewardship Fees. These conditions will not necessarily preclude the Grantor from collecting reasonable fees in support of the stewardship of the property. However, activities for which fees are charged shall be consistent with the intent of the New Hampshire Land and Community Heritage Investment Program.~~

[DV18]

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3. DEED RESTRICTION GRANTED ON EXCLUSION AREA AND WILDLIFE CONSERVATION EASEMENT AREA

For the benefit and in aid of the Conservation Easement granted hereby and running therewith, the Grantor hereby also grants to the Grantee the right to enforce the following Deed Restriction with respect to the Exclusion Area and the Wildlife Conservation Easement Area:

The Exclusion Area and/or the Wildlife Conservation Easement Area shall not be sold separately or subdivided from the Property.

[DV19]

4. RESERVED RIGHTS

A. Agriculture and Forestry. Grantors reserve the right to engage in agriculture and forestry.

i. Definitions. For the purposes hereof, and except as further specified below, "agriculture" and "forestry" shall include but not be limited to a nursery, an orchard, animal husbandry, floriculture, horticulture and the production of plant and animal products for domestic or commercial purposes; for example the growing, stocking, cutting, and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; and the cutting and sale of products produced on the Property or products which are produced locally (such as fruits, vegetables, maple syrup and small craft items) all as not detrimental to the Purposes of this Conservation Easement. A farm roadside stand (as defined by RSA 21:34 A and herewithin as by RSA 21:34 a or successor legislation) remaining an agricultural operation and not be considered commercial, provided that at least thirty five (35) percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner. [DV20] is allowed.

ii. Conservation Plan

As required by section 1238I of the Food Security Act of 1985, as amended, the Grantors, their heirs, successors, or assigns, shall conduct agricultural operations on highly erodible land on the Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the ~~(Name of Rockingham County Conservation District)~~ County Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of signing of this Conservation Easement Deed. However, the Grantors may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Property with advance notice to the Grantors, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantors to explore methods of compliance and give the Grantors a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantors do not

comply with the conservation plan, NRCS will inform Grantee of the Grantors' noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantors to correct such noncompliance, and (c) Grantors have exhausted their appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantors to develop and implement a revised conservation plan. The provisions of this subsection c. apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantors may be or become subject.

iii. Forestry. [DV2U]

Any and all Commercial and Non-commercial Forestry shall be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations, and, to the extent reasonably practicable, 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, 2004), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (New Hampshire Forest Sustainability Standards Work Team, 1997), or similar successor publications.

iv. Commercial Forestry.

In addition to the requirements outlined in Section 2.A.iii above, Commercial Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the wildlife and other non-timber values are important components of the forest. To the extent reasonably practicable, Commercial Forestry shall meet the following goals:

a. The goals are:

- maintenance of soil productivity;
- protection of water quality, wetlands, and riparian zones;
- maintenance or improvement of the overall quality of forest products;
- conservation of scenic quality;
- protection of unique or fragile natural areas;
- protection of unique historic and cultural features; and
- conservation of native plant and animal species.

- b. Any and all Commercial Forestry shall be performed in accordance with a written forest management plan (hereinafter referred to as "Forest Management Plan") consistent with this Conservation Easement, prepared by a licensed professional forester, or by some other qualified person approved in advance and in writing by the

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Grantee. Said Forest Management Plan shall have been prepared not more than ten years prior to the date any harvesting is expected to commence, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to said harvest.

- c. Said Forest Management Plan shall include a statement of landowner objectives, and shall specifically address:
- the accomplishment of those Purposes for which this Conservation Easement is granted; and
 - the goals in Section 2.A.iv.a above.
- d. At least thirty (30) days prior to any commercial timber harvest, Grantors shall submit to Grantee a written certification, signed by a licensed professional forester, or by some other qualified person approved in advance and in writing by the Grantee, that the Forest Management Plan has been prepared in compliance with the terms of this Conservation Easement. Grantee may request the Grantors to submit the plan to the Grantee within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forest management activities in compliance with this Conservation Easement, and that the actual activities will determine compliance therewith.
- e. Timber harvesting with respect to such Commercial Forestry shall be conducted in accordance with said Forest Management Plan and be supervised by a licensed professional forester, or by another qualified person approved in advance and in writing by the Grantee.

~~Access Road. Grantors reserve the right to use for access to the residences and agricultural buildings excluded from this Conservation Easement a road shown as (Name of Road) on the Appendix C, as well as the right to grant others the same restricted use, but in no event shall such use adversely impact the farmland subject to this Conservation Easement. (This paragraph may be deleted if it does not apply))~~

B. Leach Field. This provision is an exception to Sections 2.A, 2.C, 2.D, 2.F, and 2.G. above. The Grantor reserves the right to maintain, repair, and replace the leach field, a portion of which is currently located within the Property and shown on the Plan as [insert area name] [DV22] identified in the Baseline Documentation Report, a copy of which is on file with the Grantor, Grantee, and Executory Interest Holder, subject to the following conditions:

- i. Said leach field shall serve only the buildings and structures located on the Property, Exclusion Area, and land now of New Hampshire Audubon and formerly of James C. Wood and Phyllis I. Wood, as identified on Auburn Tax Map 4 as Lot 5-1 and shown on Plan [XXX] [DV23]
- ii. Should said leach field fail and require replacement, the Grantor agrees first, that if, at the time of proposed replacement of the leach field, a sanitary sewer line along the Property's boundary with Audubon Way Road has been extended prior to the

proposed exercise of this right or will be extended along the Property's boundary with Audubon Way Road within six (6) months of the proposed exercise of this right, the Grantor will forego the replacement of said leach field and connect to the sewer line. Said leach field shall be removed from the Property and properly disposed of and the Property returned to a natural condition.

- iii. Further, if the sewer line has not been extended or will not be extended within six (6) months of the proposed exercise of this right, the Grantor shall next evaluate the relocation of the leach field outside the Property [b]v24], or within the Leach Field Envelope Area. Should the Grantor be unable to locate an acceptable replacement area for the leach field outside of the Property, the Grantor may then replace the leach field on the portion of the Property subject to this Conservation Easement.
- iv. To exercise this right of maintenance or replacement of the leach field within the portion of the Property subject to this Conservation Easement, the Grantor shall provide written notice to the Grantee at least thirty (30) days prior to the submission of the initial application to the Planning Board or other authority having jurisdiction over such structures. Said notice shall justify the placement of said leach field inside of the Property and shall include the specific details of said exercise, including but not limited to the proposed location of the leach field.
- v. The Grantee shall approve the proposed exercise in writing to the Grantor only if the Grantor demonstrates that no extension of the sanitary sewer line has occurred or is planned along the Property's boundary with Audubon Way Road within six (6) months of the proposed exercise of this right, and that no reasonable, acceptable location can be identified outside the Property or within the Leach Field Envelope Area or Building Envelope Area for said leach field. Grantee shall approve or disapprove prior to final action by the authority having jurisdiction over such structures. Such approval shall not be unreasonably withheld. Grantor and Grantee shall join in recording a notice at the Rockingham County Registry of Deeds.

5. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantors agree to notify the Grantee in writing at least ten (10) 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.
- C. Grantors agree to incorporate by reference the terms of this Conservation Easement Deed in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

6. BENEFITS AND BURDENS

The burden of the Conservation Easement conveyed hereby shall run with the Property and

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shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Conservation 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 United States, or any subdivision of either of them, consistent with Section 170(c)(1) of the United States 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, agrees to and is capable of protecting the Conservation Purposes of this Conservation Easement, and has the resources to enforce the restrictions of this Conservation Easement. Any such assignee or transferee shall have like power of assignment or transfer.

7. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee 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 Conservation Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Conservation Easement.
- B. To facilitate such inspection and to identify the Property as conservation land protected by the Grantee, the Grantee shall have the right to place signs, each of which shall not exceed 24 square inches in size, along the Property's boundaries.
- C. The grantee may post against or limit such access, with prior approval of the authority, if such activities become inconsistent with the purposes for protecting the property and/or when public safety would be at risk. [DV25]

8. RESOLUTION OF DISAGREEMENTS

- A. The Grantors and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Conservation Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantors and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Conservation Easement Deed, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantors agree not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in (Name of Town) Exeter, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

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- C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement shall be submitted to binding arbitration in accordance with New Hampshire RSA 542. The Grantors and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in ~~(Name of Town), Exeter~~, New Hampshire, or such other location as the parties shall agree to. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Conservation Easement.
- D. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Conservation Easement, if the Grantee believes that some action or inaction of the Grantors or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Conservation Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.
- E. If the United States exercises its rights under this Conservation Easement Deed, this provision (Section 7.A-D) will not apply.

8. BREACH OF CONSERVATION EASEMENT – GRANTEE’S REMEDIES

- A. If the Grantee determines that a breach of this Conservation Easement has occurred or is threatened, the Grantee shall notify the Grantors in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantors shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantors shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantors fail to perform their obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantors’ name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to

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require the restoration of the Property to the condition that existed prior to any such injury.

- D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section 8 without prior notice to the Grantors or without waiting for the period provided for cure to expire.
- E. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Conservation Easement Deed or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantors' liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- F. The Grantee's rights under this Section 8 apply equally in the event of either actual or threatened breach of this Conservation Easement Deed, and are in addition to the provisions of the Section 7 which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.
- G. The Grantors and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Conservation Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in paragraph C of this Section 8 both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Conservation Easement Deed, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section 8 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- H. Provided that the Grantors are directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Conservation Easement Deed against the Grantors, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantors' breach of this Conservation Easement shall be borne by the Grantors; and provided further, however, that if the Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantors to enforce this Conservation Easement Deed, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantors' reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Conservation Easement Deed in the event of any breach of any term thereof by the Grantors shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the

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same or any other term of this Conservation Easement Deed or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantors shall impair such right or remedy or be construed as a waiver. The Grantors hereby waive any defense of laches or estoppel.

J. Nothing contained in this Conservation Easement Deed shall be construed to entitle the Grantee to bring any action against the Grantors for any injury to or change in the Property resulting from causes beyond the Grantors' 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 Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantors reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section 8 against any third party responsible for any actions inconsistent with the provisions of this Conservation Easement Deed.

9. RIGHTS OF ENFORCEMENT OF THE UNITED STATES OF AMERICA

A. Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will exercise these rights under the following circumstances: In the event that the Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State law.

B. The United States shall have reasonable access to the Property and all of its parts for such inspection as necessary to determine compliance with and enforce the terms of this Conservation Easement Deed, and to exercise the rights conveyed hereby and to maintain Conservation Easement boundaries if the United States desires.

10. EXECUTORY INTEREST

A. Contingent Right of LCHIP: If the Grantee ceases to enforce the Conservation Easement conveyed hereby or fails to enforce it within 30 days after the receipt of written notice from the Land and Community Heritage Investment Program Authority (LCHIP), requesting such enforcement delivered in hand or by certified mail, return receipt requested, LCHIP shall have the right to enforce this Conservation Easement. All reasonable costs of such enforcement shall be paid by the Grantee. In such circumstance the LCHIP shall then have the right to terminate the interest of the Grantee in the Property by recording a notice to that effect in the Registry of Deeds referring hereto and shall thereupon assume and thereafter have all interests, rights, responsibilities and duties granted to and incumbent upon the Grantee in this Conservation Easement, except that the LCHIP shall not have the right to terminate the contingent right granted herein to the United States of America. The interest held by LCHIP is

assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified above with the consent of the United States of America. Any assignee or transferee shall have like power of assignment or transfer.

If the (Conservation Easement Holder) fails to enforce any of these terms, the said Secretary of Agriculture and his or her successors and assigns [DV26] have the right to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State law.

[DV27]

- B. The Executory Interest Holder shall have reasonable access to the Property and all of its parts for such inspection as necessary to determine compliance with and enforce the terms of this Conservation Easement Deed if the Grantee ceases to enforce the Conservation Easement Deed as explained further in Section 10.C, below, and to exercise the rights conveyed hereby, to carry out the duties assumed by the Executory Interest Holder and to maintain the Conservation Easement boundaries if the Executory Interest Holder identifies a failure of the Grantee, as described in Section 10.C, below, to maintain such boundaries.
- C. If Grantee ceases to enforce the Conservation Easement conveyed hereby or refuses to enforce it within thirty (30) days after receipt of written notice, delivered in hand or certified mail, return receipt requested, from the Executory Interest Holder, identifying (a) specific breach of conduct; (b) the specific failure on the part of the Grantee to enforce; and (c) requesting such enforcement and the United States declines to exercise its rights set forth at Section 9 above, then said Executory Interest Holder shall have the right to enforce this Conservation Easement, pursuant to Section 8 above. In such circumstance, the Executory Interest Holder shall then also have the right to request that a Court of competent jurisdiction terminate the interest of the Grantee in the Property by filing an action to quiet title in the appropriate Court. If said Court determines that the Grantee has failed to substantially enforce this Conservation Easement, then the rights and obligations under this Conservation Easement shall immediately vest in the Executory Interest Holder who shall then assume all interests and responsibilities granted to the Grantee in this deed. However, any such transfer shall not divest the United States of its Grantee status and the rights granted under the terms of this Conservation Easement Deed.
- D. The interests held by the Executory Interest Holder are assignable or transferable with advance permission of the United States to any party qualified to become the Grantee's assignee or transferee as specified in Section 5, above. Any such assignee or transferee shall have like power of assignment or transfer.

11. NOTICES

All notices, requests and other communications, required to be given under this Conservation Easement Deed 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 Grantors 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.

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Notices, requests and other communication shall be directed to:

If to Grantor:

Audubon Society of New Hampshire
84 Silk Farm Road
Concord, NH,

With a copy to:

[insert copy info] [DV28]

If to Grantee:

Southeast Land Trust of New Hampshire
PO Box 675
Exeter, NH 03833

with a copy to:

Charles F. Tucker
225 Water Street
Exeter, NH 03833

If to Executive Interest Holder:

Town of Auburn
47 Chester Road
Auburn, NH, 03032

With a copy to: [insert copy info] [DV29]

And to:

Manchester Water Works
281 Lincoln Street
Manchester, NH 03103

With a copy to: [insert copy info] [DV30]

12. SEVERABILITY

If any provision of this Conservation Easement Deed, 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 Conservation

Easement Deed 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 Conservation Easement conveyed hereby, or whenever all or a part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of exercise of eminent domain, the Grantors 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. Due to the federal interest in this Conservation Easement, the United States must consent to any condemnation action.
- B. The balance of the land damages recovered from such taking or lawful sale in lieu of condemnation or exercise of eminent domain shall be divided between the Grantors, the Grantee, the United States of America, and the Executory Interest Holder, in proportion to the fair market value of their respective interests in that part of the Property condemned. For this purpose, and that of any other judicial extinguishment of this Conservation Easement Deed in whole or in part, the Grantors' interest shall be the amount by which the fair market value of that part of the Property condemned in exercise of eminent domain exceeds the value of the use limitations imposed by the Conservation Easement Deed at the time of the condemnation as determined by an appraisal at condemnation or extinguishment. The Grantors, the Grantee, the United States of America, and the Executory Interest holder agree the portion of damages recovered that are attributed to the Conservation Easement shall be divided as follows: the Grantee's interest shall be ___%, the United States' interest shall be ___%, and the Executory Interest Holder's interest shall be ___%. This percentage value is based on an appraisal dated _____ by _____, an appraiser licensed in the State of New Hampshire, which appraisal determined the purchase price for this Conservation Easement. Any increase in value attributable to improvements made after the date of the Conservation Easement Deed shall accrue to the party who made the improvements.
- C. The Grantee shall use its share of the proceeds resulting from condemnation or extinguishment in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

14. ADDITIONAL CONSERVATION EASEMENT

Should the Grantors determine that the expressed Purposes of this Conservation Easement could better be effectuated by the conveyance of an additional easement, the Grantors may execute an additional instrument to that effect, provided that the conservation purposes of this Conservation Easement are not diminished thereby and that a public agency or qualified organization described in the Section "Benefits and Burdens," above, accepts and records the additional easement. Any easement arising after the date of execution of this Conservation Easement Deed will be subordinated, by operation of law or otherwise to this Conservation Easement.

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Any additional conservation easement on the Property shall require prior approval of the Executory Interest 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)(1) of the U.S. 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.

The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

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 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 Grantee's rights or remedies or be construed as a waiver.

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15. NO MERGER

- A. The Grantors and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Conservation Easement Deed 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, the Executory Interest Holder or the United States or any successor or assignee shall be deemed to eliminate these Conservation Easement terms, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine.
- B. In the event the Grantee takes legal title to Grantors' interest in the Property, the Grantee shall commit the monitoring and enforcement of the Conservation Easement to the Executory Interest Holder (or alternatively, to another qualified organization within the meaning of Section 107(h) (3) of the U.S. Internal Revenue Code (1986), which organization has among its purposes the conservation and preservation of land and water areas until Grantee conveys title away to a successor Grantee.

16. COSTS, LIABILITY AND INDEMNIFICATION

Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

- A. *Taxes.* Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority

(collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Grant.

- B. *General Indemnification.* Grantors shall indemnify and hold harmless the Grantee and the United States, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the Grantee and the United States may be subject or incur relating to the Property, which may arise from, but is not limited to, Grantors' negligent acts or omissions or Grantors' breach of any representation, warranty, covenant, agreements contained in this Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.
- C. Grantors warrant to the best of Grantors' knowledge that Grantors are in compliance with and shall remain in compliance with, all applicable Environmental Laws, except as noted. Grantors warrant that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantors warrant that they have no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantors hereby promise to indemnify and hold harmless the Grantee and the United States against all costs, claims, demands, penalties and damages, including reasonable attorneys fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantors or any other prior owner of the Property. Grantors' indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantors with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

For the purposes of this section C.,

- i. Environmental Law or Environmental Laws means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.
- ii. Hazardous Materials means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances,

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toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

17. TITLE WARRANTY

Grantors warrant that they have good title to the Property and shall defend against all claims that may be made against it; that they have the right to convey this Conservation Easement; and that the Property is free and clear of any encumbrances.

18. SUBORDINATION.

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

19. BASELINE DOCUMENTATION AND STEWARDSHIP RESPONSIBILITIES OF THE GRANTEE

The Grantee with the cooperation of the grantor has developed a baseline documentation report which documents the values as well as the natural and man-made characteristics of the property.

To facilitate the fulfillment of its responsibilities under this Conservation Easement, the Grantee shall, among its other obligations:

- i. Maintain baseline information and provide an annual annually monitoring inspection of the Property in accordance with applicable policies and guidelines, such as the Standards and Practices of the Land Trust Alliance and those required by the United States of America in the Cooperative Agreement by and between the United States of America and the Grantee, dated [DV32] and that confirms that the interests acquired as part of an LCHIP project are being protected and maintained according to the terms of the Conservation Easement. [DV33]
- ii. Provide annual contact with the property owners to inform them of their obligations under the terms of the Conservation Easement. [DV34]
- iii. Respond to Grantors requests for approvals required under this Conservation Easement Deed; and investigate potential Conservation Easement violations and/or encroachments and responding accordingly; and
- iv. Provide an annual monitoring report to the Executory Interest Holder, to NRCS or its successor agency, or to another agency as instructed by the NRCS or successor agency, indicating compliance with the terms of this Conservation Easement Deed and/or actions necessary for compliance. In addition, said monitoring report shall contain the following:
 - a. description of the inspection conducted
 - b. a description of any physical changes to the property

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- c. a description of any contacts made with the property owners, including their current name and address information
- d. a description of any conditions or activities on the property, including those which violate or may violate the intent of the Conservation Easement
- e. an explanation of the current status of previously identified violations and any remedial steps taken
- f. steps to be taken by property owners to bring property into compliance with the terms of the Conservation Easement.

Copies of the Baseline Documentation Report shall be held by the Grantee, and the NRCS, and the Executive Interest Holder.

20. AMENDMENT

This Conservation Easement Deed may be amended only if in the sole and exclusive judgment of the Grantee and the United States such amendment furthers or is not inconsistent with the Purposes of this Conservation Easement Deed. Any such amendment must be mutually agreed upon by the Grantee, the Grantors and the United States, signed and duly recorded by the parties and comply with all applicable laws and regulations. Grantee must provide to NRCS timely notice in writing of the amendment.

21. CONTROLLING LAWS AND LIBERAL CONSTRUCTION / INTERPRETATION

This Conservation Easement Deed shall be interpreted under the laws of the State of New Hampshire and the United States. Any general rule of construction to the contrary notwithstanding, this Conservation Easement Deed shall be liberally construed to affect the purposes of the Conservation Easement Deed. If any provision in said Deed is found to be ambiguous, an interpretation consistent with the purposes of said Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

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The Grantee, by accepting and recording this Conservation Easement Deed, 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 Conservation Easement Deed is delivered.

IN WITNESS WHEREOF, We have hereunto set our hands this _____ day of _____, 200__

(Name of First Grantor)

(Name of Second Grantor)

The State of New Hampshire
County of _____

Personally appeared _____, and, _____
this _____ day of _____, 200__, and respectively acknowledged the foregoing to be their voluntary act and deed.

Before me, _____
Notary Public

My commission expires: _____

ACCEPTED: (Name of Grantee)

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire

County of _____

Personally appeared _____
Print Name & Title

of the __ (Name of Grantee) _____, this ____ day of

_____, 200__ and acknowledged the foregoing on behalf of

__ (Name of Grantee) _____

Before me, _____
Notary Public

My commission expires: _____

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ACCEPTED: TOWN OF _____ BOARD OF SELECTMEN

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire
County of _____

Personally appeared _____
Print Name & Title

of the Town of _____ Board of Selectmen, this _____ day of

_____, 200__ and acknowledged the foregoing on behalf of the

Town of _____ Board of Selectmen.

Before me, _____
/Notary Public

My commission expires: _____

5-51

The State of New Hampshire
County of _____

Personally appeared _____
Print Name & Title
of the Town of _____ Board of Selectmen, this _____ day of
_____, 200__ and acknowledged the foregoing on behalf of the Town of
_____ Board of Selectmen.

Before me, _____
/Notary Public

My commission expires: _____

The State of New Hampshire
County of _____

Personally appeared _____
Print Name & Title
of the Town of _____ Board of Selectmen, this _____ day of
_____, 200__ and acknowledged the foregoing on behalf of the Town of
_____ Board of Selectmen.

Before me, _____
/Notary Public

My commission expires: _____

5-52

ACCEPTANCE OF PROPERTY INTEREST BY THE UNITED STATES OF AMERICA

The United States of America acting by and through the United States Department of Agriculture, Natural Resources Conservation Service, an agency of the United States Government, on behalf of the Commodity Credit Corporation hereby accepts and approves the foregoing Conservation Easement Deed, and the rights conveyed therein.

State Conservationist

State of New Hampshire
County of _____

On this ____ day of _____, 200__, before me, the undersigned, a Notary Public in and for the State, personally appeared _____, known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that (s)he is the New Hampshire State Conservationist of the Natural Resources Conservation Service, United States Department of Agriculture, and as such is authorized to sign on behalf of the United States of America.,

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of New Hampshire

5-53

APPENDIX A

(Legal Description of Property)

5-54

APPENDIX B

(Legal Description of the Building Envelope)

5-55

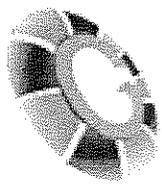
APPENDIX C

(Legal Description of the Access Road)

5-56

1119110 Tabled

RECEIVED
DEC 02 2009
CITY CLERK'S OFFICE



Goodman Networks

Network Knowledge... Delivered.

December 1, 2009

The Honorable Mayor Frank C. Guinta
City of Manchester
One City Hall Plaza
Manchester, NH 03101

Re: Thomas Donnelly Field
Clearwire NH-MAN 5127 B
975 Beech Street
Manchester, NH 03103

Dear Mayor Guinta:

Goodman Networks, Inc., has been retained to perform site acquisition, planning and permitting functions for the development of Clearwire wireless telecommunications antenna sites in the Manchester, NH, area. Your City's property has been identified as a candidate for a wireless facility.

As a result of the initial inspections and testing by the Clearwire radio-engineering department, it has been determined that your site is feasible for network development. The following are the basic business points of a proposed lease transaction:

Space:

A 40' x 40' area located in the area adjacent to the the baseball fields. The antennas will be mounted on a 150' monopole/field light structure approximately as shown on the attached exhibit, together with the associated lines and cables connecting the equipment with the antennae arrays.

Equipment:

Clearwire proposed 9 antennas (three per sector). All installations will comply with the design guidelines set forth by the city in which the property is located. Additionally two radio equipment cabinets approximately 3' wide by 3' deep by 5' high will be placed in the equipment leased area. All installations are certified by a structural engineer and an architect. Also, the utilities serving the equipment location shall be separately metered, and the costs (installation and or extension from the street ROW to the leased area and the monthly operation) of said utilities shall be borne solely by

7-1

Mayor Frank C. Guinta

December 1, 2009

Page 2 of 2

Clearwire.

Lease Term:

A five (5) year primary term, with four (4) options to extend the lease of five (5) years each.

Rent:

Clearwire proposes a monthly rental of One Thousand Four Hundred Dollars (\$1,400.00).

Periodic Rent Escalations:

The rental shall be escalated by Ten percent (10%) each option period

Maintenance, Taxes & Utilities:

All paid by Clearwire.

Access:

7/24/365 access is required by the Clearwire® maintenance department with notice. Clearwire agrees to reimburse your organization for actual security costs incurred in connection with after-hour, emergency maintenance events.

Insurance:

Clearwire will provide a \$2,000,000 liability policy and will name the landlord as an additional insured party.

All costs of constructing the facility, permitting and applications fees will be processed by Goodman Networks, Inc., and will be paid for by Clearwire. As landlord all that is required of you is a signed and notarized letter authorizing Goodman Networks, Inc., to act on your behalf in making the necessary applications. Prior to the processing of any permit the landlord will be presented with a set of plans for approval.

The above is intended only to be a basic overview of the lease terms and process. The engineers at Clearwire have designed numerous installations nationwide and are able to accommodate almost any situation. Please review the attached plans and call me with any questions, comments or requests for additional information.

Thank you for your consideration. Again, should you have any questions or require further information, please don't hesitate to call. Please contact me at your earliest convenience. I can be reached at (310) 259-4285.

Sincerely,

Jack M. Baringer
Site Acquisition Manager

CC: NH-MAN 5127 B file

7-2



EXISTING ACCESS DRIVE

PROPOSED 130'± MONOPOLE

PROPOSED CLEARWIRE 50'X50' LEASE AREA

APPROX. TRUE NORTH



SITE PLAN
SCALE: NTS



APPROVALS:

LANDLORD: _____

FIELD CONST. MGR: _____

RF ENGINEER: _____

SITE ACQUISITION AGENT: _____

SHEET 1 OF 3



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blocke@aerialspectrum.com

clearwire®

4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
RAW LAND

PROJECT INFORMATION:

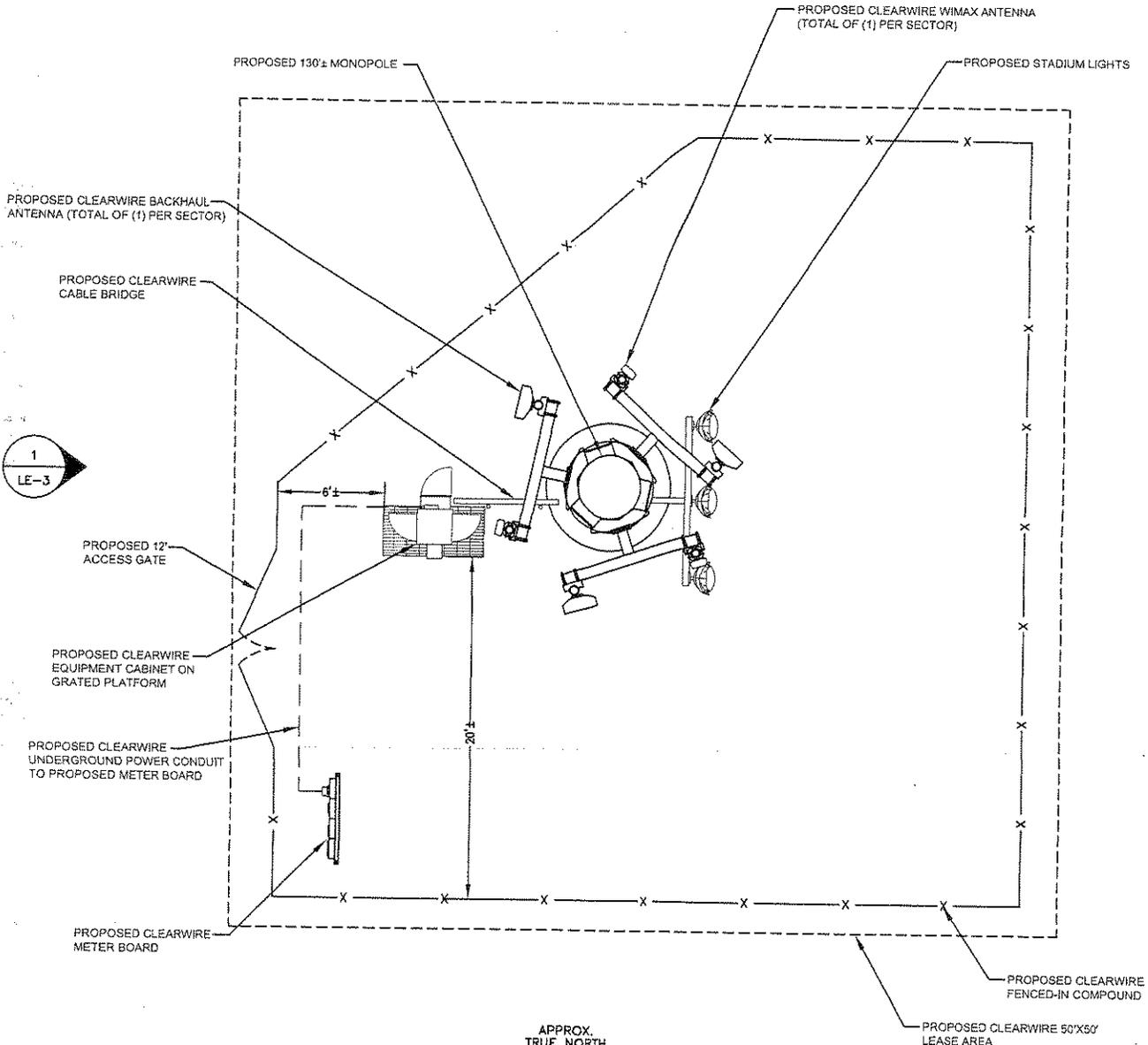
SITE #: NH-MAN5127-B
SITE NAME: THOMAS DONNELLY FIELD
SITE ADDRESS: 975 BEECH STREET
MANCHESTER, NH

REVISIONS:

REV.#	DATE	DESCRIPTION
A	11/30/09	ISSUED FOR REVIEW

DRAWN BY: KAP

7-3



APPROX. TRUE NORTH



COMPOUND PLAN



SCALE: 1"=10'-0"

APPROVALS:

LANDLORD: _____

FIELD CONST. MGR: _____

RF ENGINEER: _____

SITE ACQUISITION AGENT: _____



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blocke@airalspectrum.com



4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
RAW LAND

PROJECT INFORMATION:

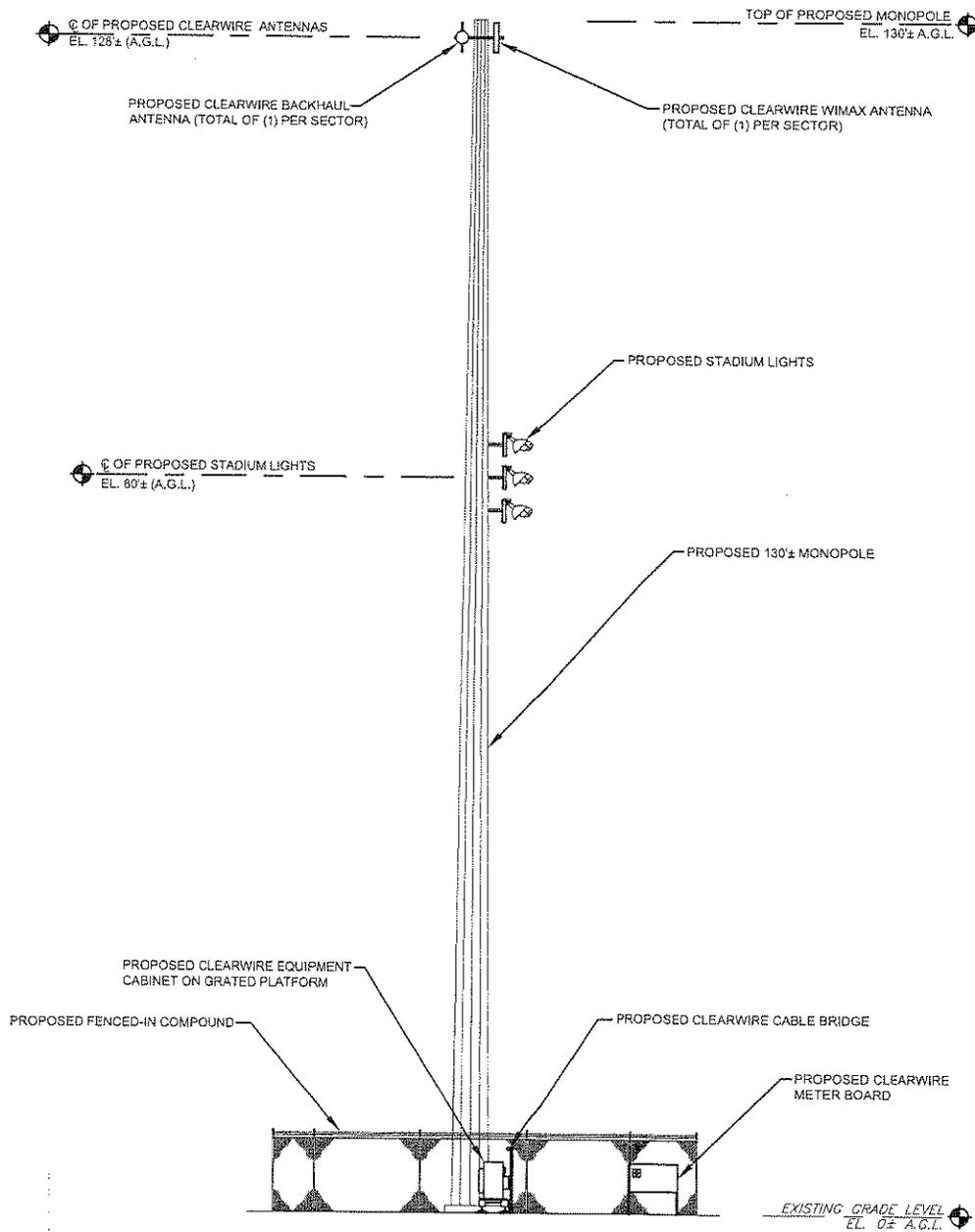
SITE #: NH-MAN5127-B
SITE NAME: THOMAS DONNELLY FIELD
SITE ADDRESS: 975 BEECH STREET
MANCHESTER, NH

REVISIONS:

REV.#	DATE	DESCRIPTION
A	11/30/09	ISSUED FOR REVIEW

DRAWN BY: KAP

7-4



APPROVALS:

LANDLORD: _____

FIELD CONST. MGR: _____

RF ENGINEER: _____

SITE ACQUISITION AGENT: _____

ELEVATION
SCALE: 1"=20'-0"



SHEET 3 OF 3



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blocke@aerialspectrum.com

clearwire®

4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
RAW LAND

PROJECT INFORMATION:

SITE #: NH-MAN5127-B
SITE NAME: THOMAS DONNELLY FIELD
SITE ADDRESS: 975 BEECH STREET
MANCHESTER, NH

REVISIONS:

REV.#	DATE	DESCRIPTION
A	11/30/09	ISSUED FOR REVIEW

DRAWN BY: KAP

1-5

Tabled 1/19/10



Goodman Networks

Network Knowledge... Delivered.

January 17, 2010

The Honorable Mayor Ted Gatsas
City of Manchester
One City Hall Plaza
Manchester, NH 03101

Re: Rock Rimon Park
Clearwire NH-MAN 5143 B
299 Moore Street
Manchester, NH 03103

Dear Mayor Gatsas:

Goodman Networks, Inc., has been retained to perform site acquisition, planning and permitting functions for the development of Clearwire wireless telecommunications antenna sites in the Manchester, NH, area. Your City's property has been identified as a candidate for a wireless facility.

As a result of the initial inspections and testing by the Clearwire radio-engineering department, it has been determined that your site is feasible for network development. The following are the basic business points of a proposed lease transaction:

Space:

A 40' x 40' area located in the area adjacent to the wooded area by the baseball fields. The antennas will be mounted on a 150' monopole structure approximately as shown on the attached exhibit, together with the associated lines and cables connecting the equipment with the antennae arrays.

Equipment:

Clearwire proposed 9 antennas (three per sector). All installations will comply with the design guidelines set forth by the city in which the property is located. Additionally two radio equipment cabinets approximately 3' wide by 3' deep by 5' high will be placed in the equipment leased area. All installations are certified by a structural engineer and an architect. Also, the utilities serving the equipment location shall be separately metered, and the costs (installation and or extension from the street ROW to the leased area and the monthly operation) of said utilities shall be borne solely by Clearwire.

7-6

Mayor Ted Gatsas

January 17, 2010

Page 2 of 2

Lease Term: A five (5) year primary term, with four (4) options to extend the lease of five (5) years each.

Rent: Clearwire proposes a monthly rental of One Thousand Four Hundred Dollars (\$1,400.00).

Periodic Rent Escalations: The rental shall be escalated by Ten percent (10%) each option period

Maintenance, Taxes & Utilities: All paid by Clearwire.

Access: 7/24/365 access is required by the Clearwire® maintenance department with notice. Clearwire agrees to reimburse your organization for actual security costs incurred in connection with after-hour, emergency maintenance events.

Insurance: Clearwire will provide a \$2,000,000 liability policy and will name the landlord as an additional insured party.

All costs of constructing the facility, permitting and applications fees will be processed by Goodman Networks, Inc., and will be paid for by Clearwire. As landlord all that is required of you is a signed and notarized letter authorizing Goodman Networks, Inc., to act on your behalf in making the necessary applications. Prior to the processing of any permit the landlord will be presented with a set of plans for approval.

The above is intended only to be a basic overview of the lease terms and process. The engineers at Clearwire have designed numerous installations nationwide and are able to accommodate almost any situation. Please review the attached plans and call me with any questions, comments or requests for additional information.

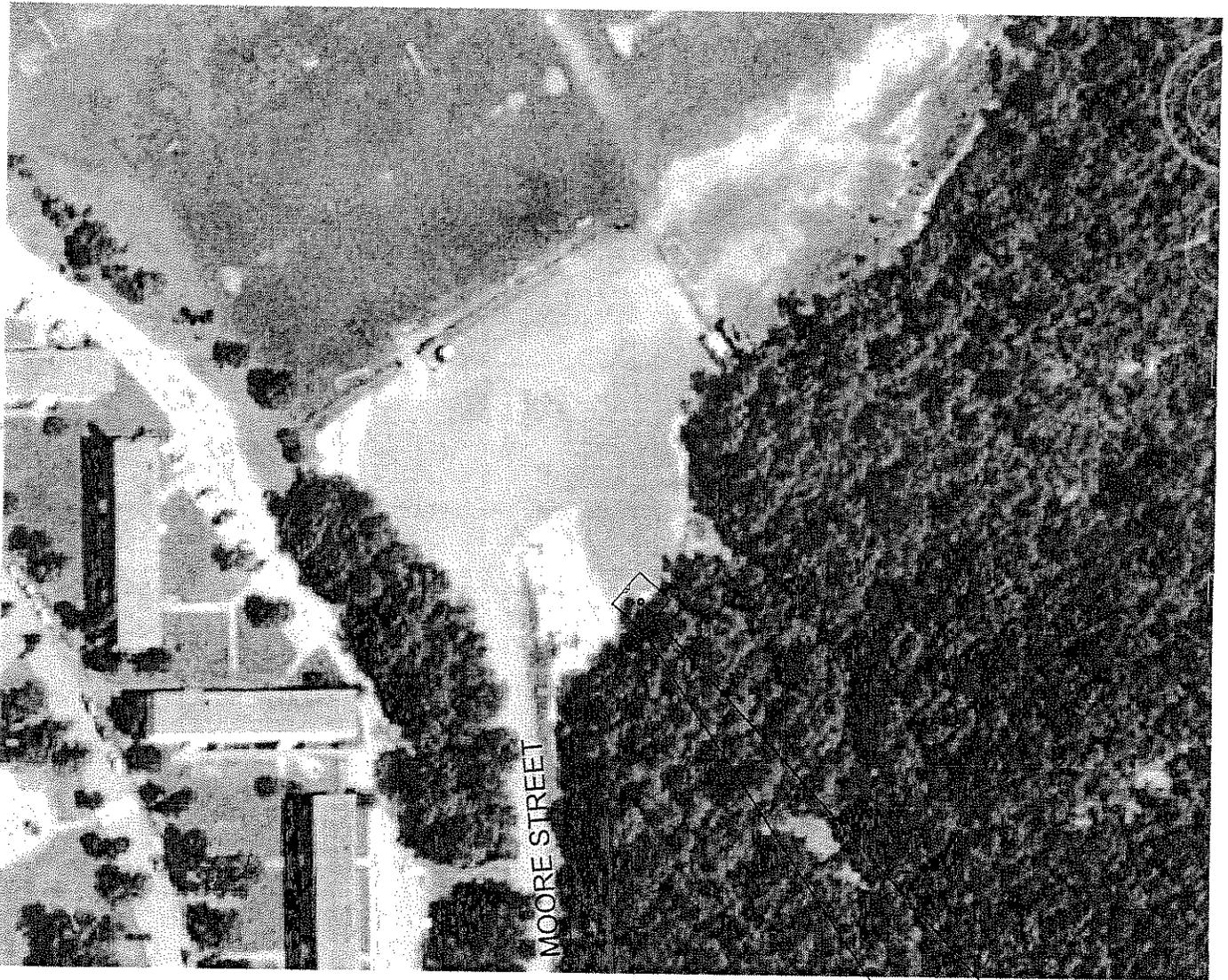
Thank you for your consideration. Again, should you have any questions or require further information, please don't hesitate to call. Please contact me at your earliest convenience. I can be reached at (310) 259-4285.

Sincerely,

Jack M. Baringer
Site Acquisition Manager

CC: NH-MAN 5143 B file

7-7



PROPOSED 150' MONOPOLE

PROPOSED CLEARWIRE
51'X51' LEASE AREA

1
LE-2

APPROVALS:

LANDLORD: _____
 FIELD CONST. MGR: _____
 RF ENGINEER: _____
 SITE ACQUISITION AGENT: _____

SITE PLAN
SCALE: NTS



APPROX.
TRUE NORTH



SHEET 1 OF 3



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blocke@aerialspectrum.com

clearwire®

4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
RAW LAND

REVISIONS:

PROJECT INFORMATION:

SITE #: NH-MAN5143A
 SITE NAME: ROCK RIMMON PARK
 SITE ADDRESS: 299 MOORE STREET
 MANCHESTER, NH

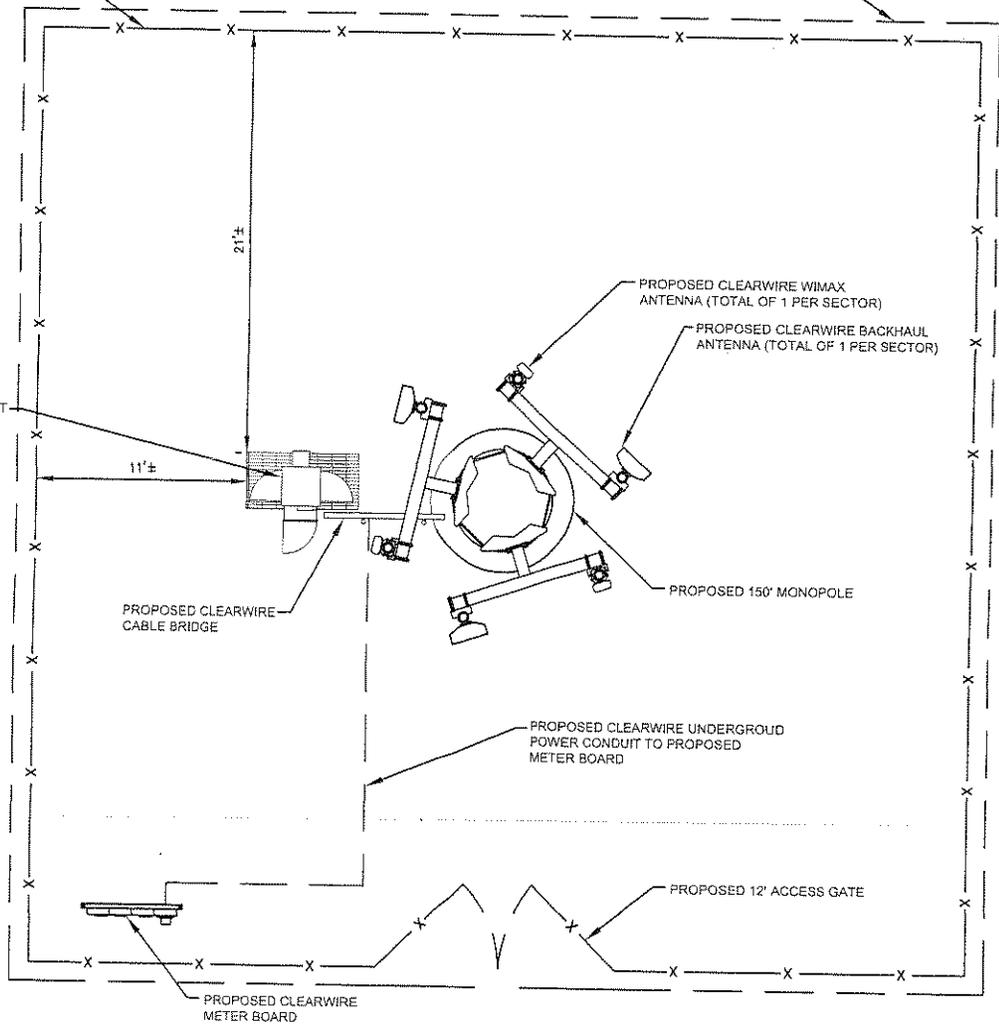
REV.#	DATE	DESCRIPTION
0	8/19/09	FINAL

DRAWN BY: STB

7-8

PROPOSED CLEARWIRE
50'x50' FENCED-IN
COMPOUND

PROPOSED CLEARWIRE
51'x51' LEASE AREA



APPROVALS:

COMPOUND PLAN
SCALE: 1"=10'-0"



LANDLORD: _____
FIELD CONST. MGR: _____
RF ENGINEER: _____
SITE ACQUISITION AGENT: _____

SHEET 2 OF 3



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blockc@airalspectrum.com

clearwire®

4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
RAW LAND

PROJECT INFORMATION:

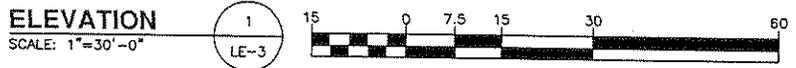
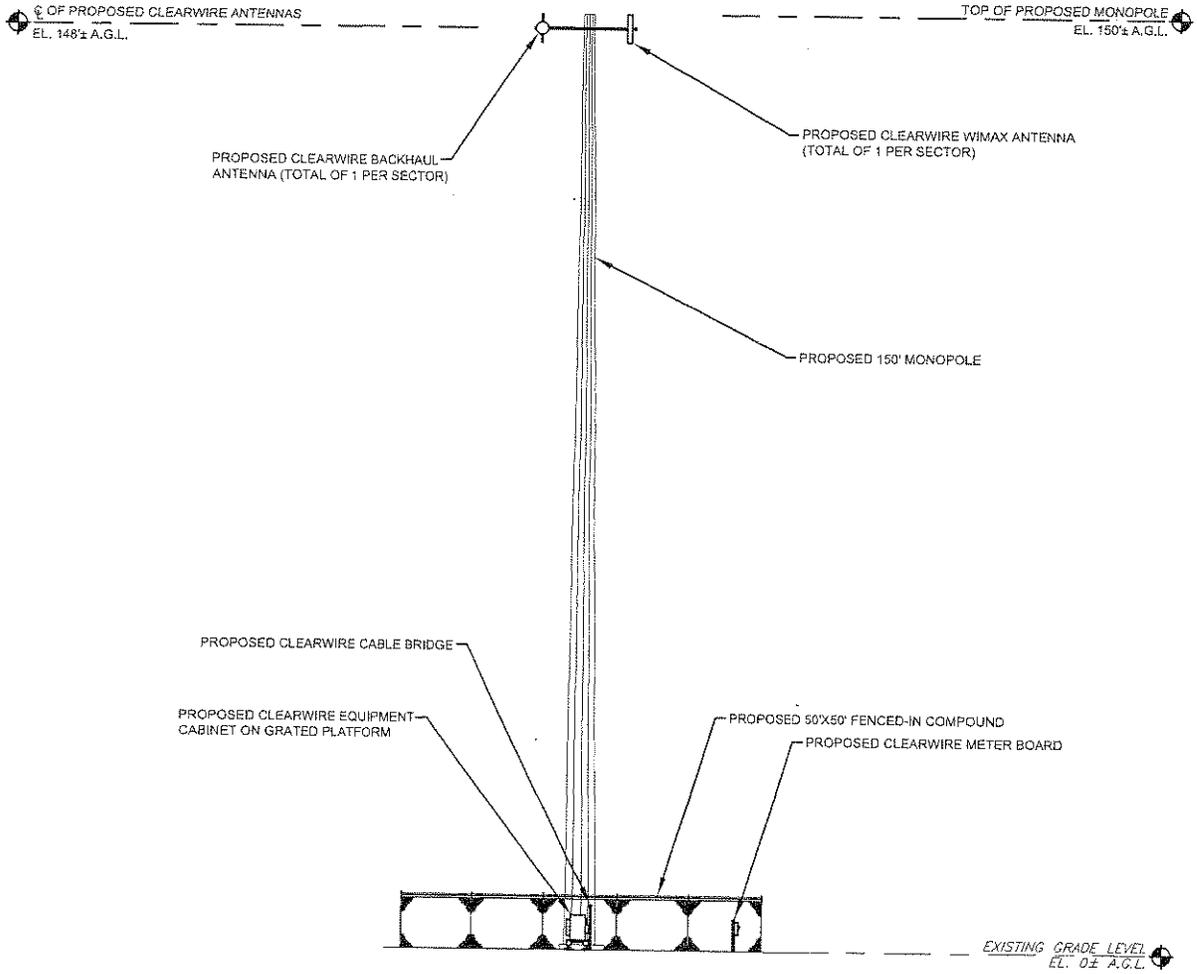
SITE #: NH-MANS143A
SITE NAME: ROCK RIMMON PARK
SITE ADDRESS: 299 MOORE STREET
MANCHESTER, NH

REVISIONS:

REV.#	DATE	DESCRIPTION
0	8/19/09	FINAL

DRAWN BY: STB

7-9



APPROVALS:

LANDLORD: _____

FIELD CONST. MGR: _____

RF ENGINEER: _____

SITE ACQUISITION AGENT: _____



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blocke@airalspectrum.com

clearwire®

4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
RAW LAND

PROJECT INFORMATION:

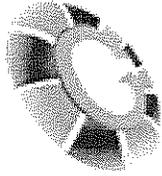
SITE #: NH-MAN5143A
SITE NAME: ROCK RIMMON PARK
SITE ADDRESS: 299 MOORE STREET
MANCHESTER, NH

REVISIONS:

REV.#	DATE	DESCRIPTION
0	8/19/09	FINAL

DRAWN BY: STB

7-10



Goodman Networks

Network Knowledge... Delivered.

January 17, 2010

The Honorable Mayor Ted Gatsas
City of Manchester
One City Hall Plaza
Manchester, NH 03101

Re: Manchester Memorial High School
Clearwire NH-MAN 5126 A
1 Crusader Way
Manchester, NH 03103

Dear Mayor Gatsas:

Goodman Networks, Inc., has been retained to perform site acquisition, planning and permitting functions for the development of Clearwire wireless telecommunications antenna sites in the Manchester, NH, area. Your City's property has been identified as a candidate for a wireless facility.

As a result of the initial inspections and testing by the Clearwire radio-engineering department, it has been determined that your site is feasible for network development. The following are the basic business points of a proposed lease transaction:

Space:

A 20' x 20' area located in an area adjacent to the school parking lot. The antennas will be mounted within a proposed 150' stealth flagpole structure approximately as shown on the attached exhibit, together with the associated lines and cables connecting the equipment with the antennae arrays.

Equipment:

Clearwire proposed 9 antennas (three per sector). All installations will comply with the design guidelines set forth by the city in which the property is located. Additionally two radio equipment cabinets approximately 3' wide by 3' deep by 5' high will be placed in the equipment leased area. All installations are certified by a structural engineer and an architect. Also, the utilities serving the equipment location shall be separately metered, and the costs (installation and or extension from the street ROW to the leased area and the monthly operation) of said utilities shall be borne solely by

7-11

Mayor Ted Gatsas

January 17, 2010

Page 2 of 2

Clearwire.

Lease Term:

A five (5) year primary term, with four (4) options to extend the lease of five (5) years each.

Rent:

Clearwire proposes a monthly rental of One Thousand Six Hundred Dollars (\$1,600.00).

Periodic Rent Escalations:

The rental shall be escalated by Ten percent (10%) each option period

Maintenance, Taxes & Utilities:

All paid by Clearwire.

Access:

7/24/365 access is required by the Clearwire® maintenance department with notice. Clearwire agrees to reimburse your organization for actual security costs incurred in connection with after-hour, emergency maintenance events.

Insurance:

Clearwire will provide a \$2,000,000 liability policy and will name the landlord as an additional insured party.

All costs of constructing the facility, permitting and applications fees will be processed by Goodman Networks, Inc., and will be paid for by Clearwire. As landlord all that is required of you is a signed and notarized letter authorizing Goodman Networks, Inc., to act on your behalf in making the necessary applications. Prior to the processing of any permit the landlord will be presented with a set of plans for approval.

The above is intended only to be a basic overview of the lease terms and process. The engineers at Clearwire have designed numerous installations nationwide and are able to accommodate almost any situation. Please review the attached plans and call me with any questions, comments or requests for additional information.

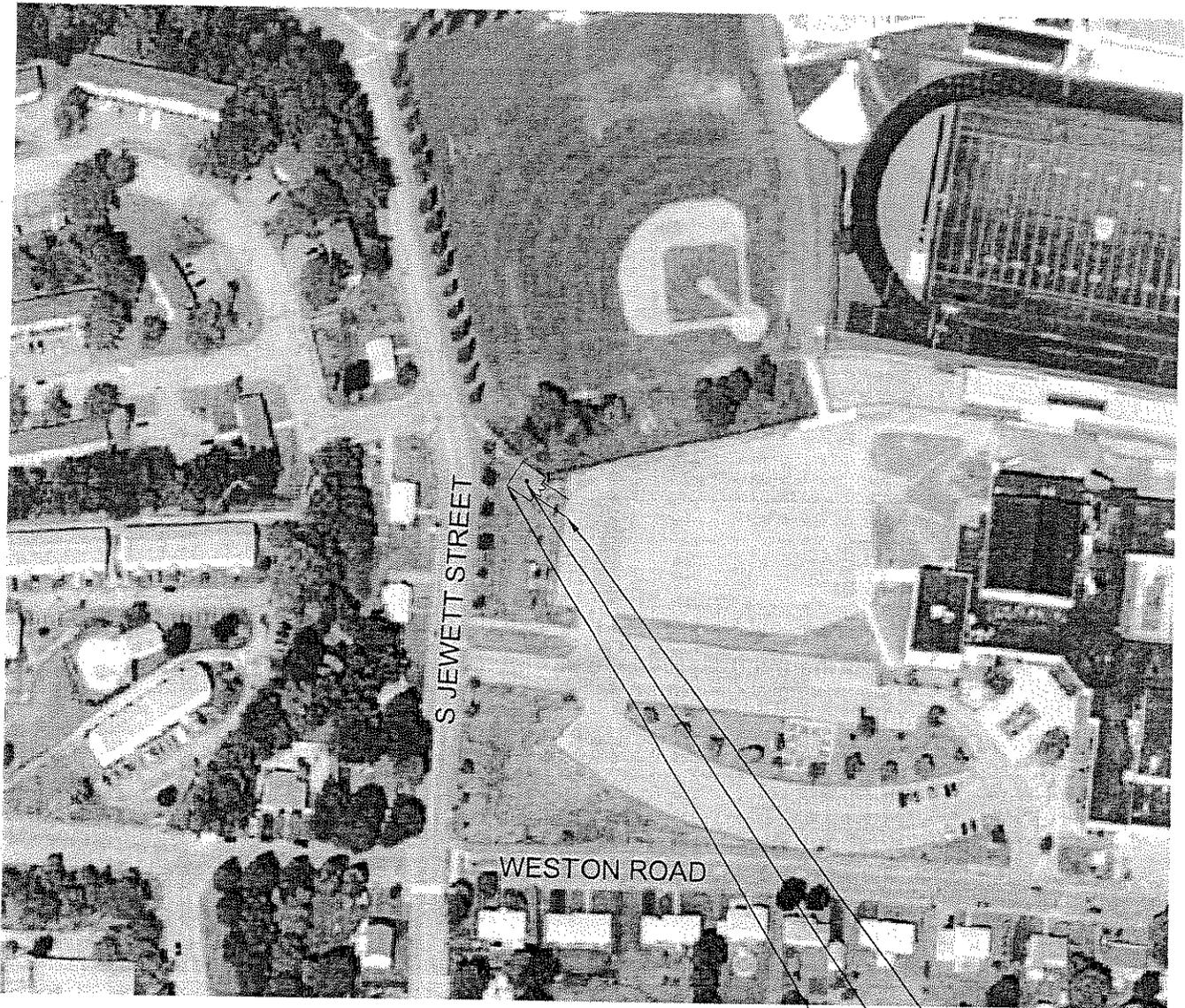
Thank you for your consideration. Again, should you have any questions or require further information, please don't hesitate to call. Please contact me at your earliest convenience. I can be reached at (310) 259-4285.

Sincerely,

Jack M. Baringer
Site Acquisition Manager

CC: NH-MAN 5126 A file

7-12



APPROVALS:

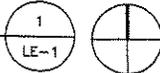
LANDLORD: _____

FIELD CONST. MGR: _____

RF ENGINEER: _____

SITE ACQUISITION AGENT: _____

SITE PLAN
SCALE: NTS



PROPOSED ACCESS DRIVE FROM EXISTING PARKING LOT

PROPOSED 150'± STEALTH POLE

PROPOSED CLEARWIRE 30'X30' LEASE AREA



NOTE: EXISTING TREES TO BE RELOCATED AS NECESSARY

SHEET 1 OF 3



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blocke@airalspectrum.com

clearw're®

4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
RAW LAND

PROJECT INFORMATION:

SITE #: NH-MAN5126A

SITE NAME: MANCHESTER
HIGH SCHOOL

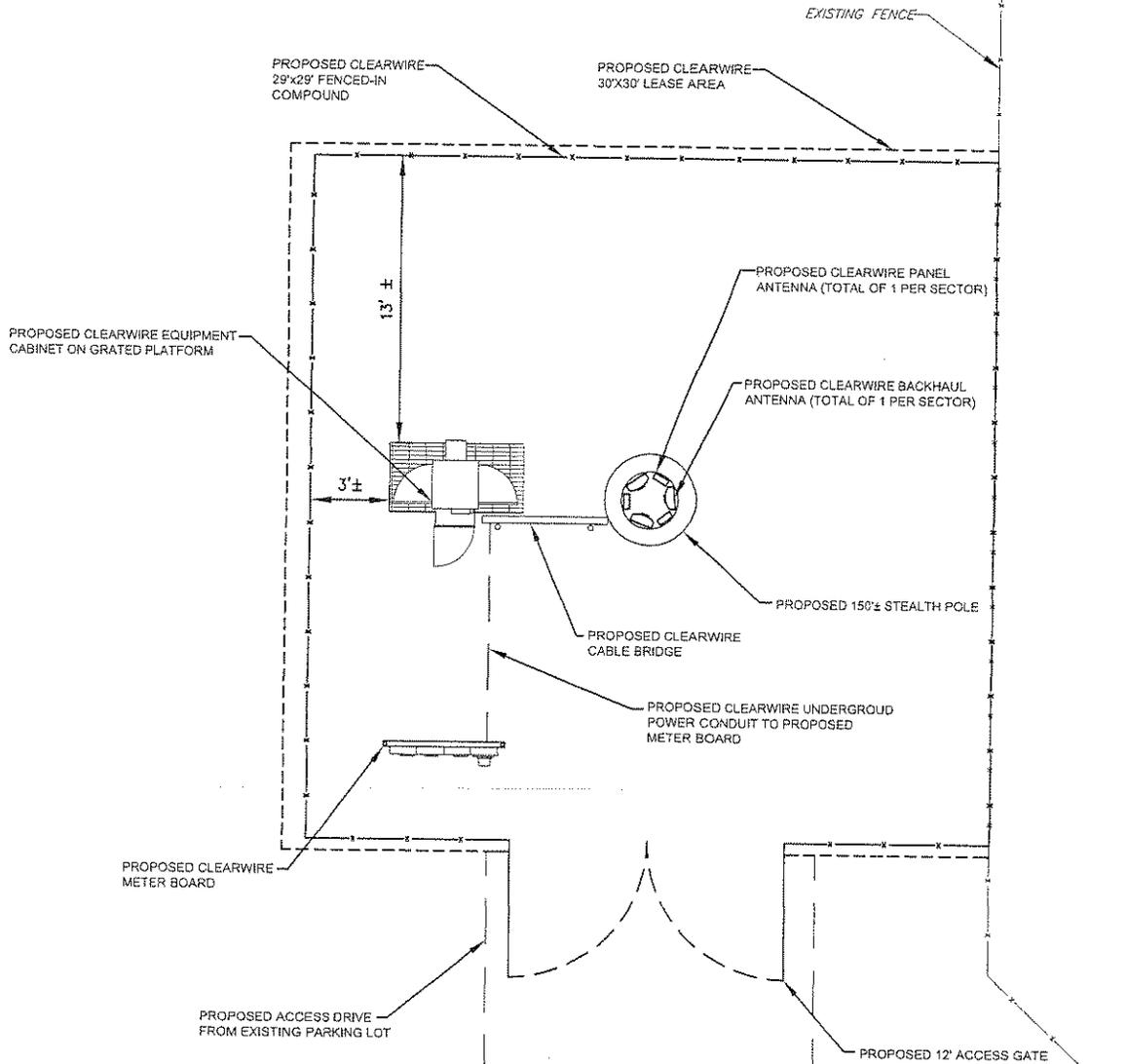
SITE ADDRESS: 1 CRUSADER WAY
MANCHESTER, NH 03101

REVISIONS:

REV.#	DATE	DESCRIPTION
0	8/31/09	FINAL

DRAWN BY: KAP

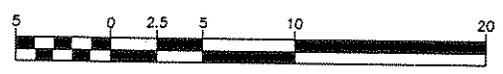
7-13



COMPOUND PLAN
SCALE: 1"=10'-0"



APPROX. TRUE NORTH



APPROVALS:

LANDLORD: _____

FIELD CONST. MGR: _____

RF ENGINEER: _____

SITE ACQUISITION AGENT: _____



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blockc@airalspectrum.com

clearw're®

4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
RAW LAND

PROJECT INFORMATION:

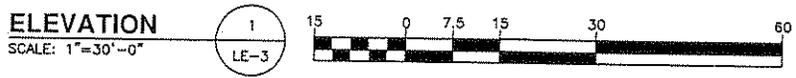
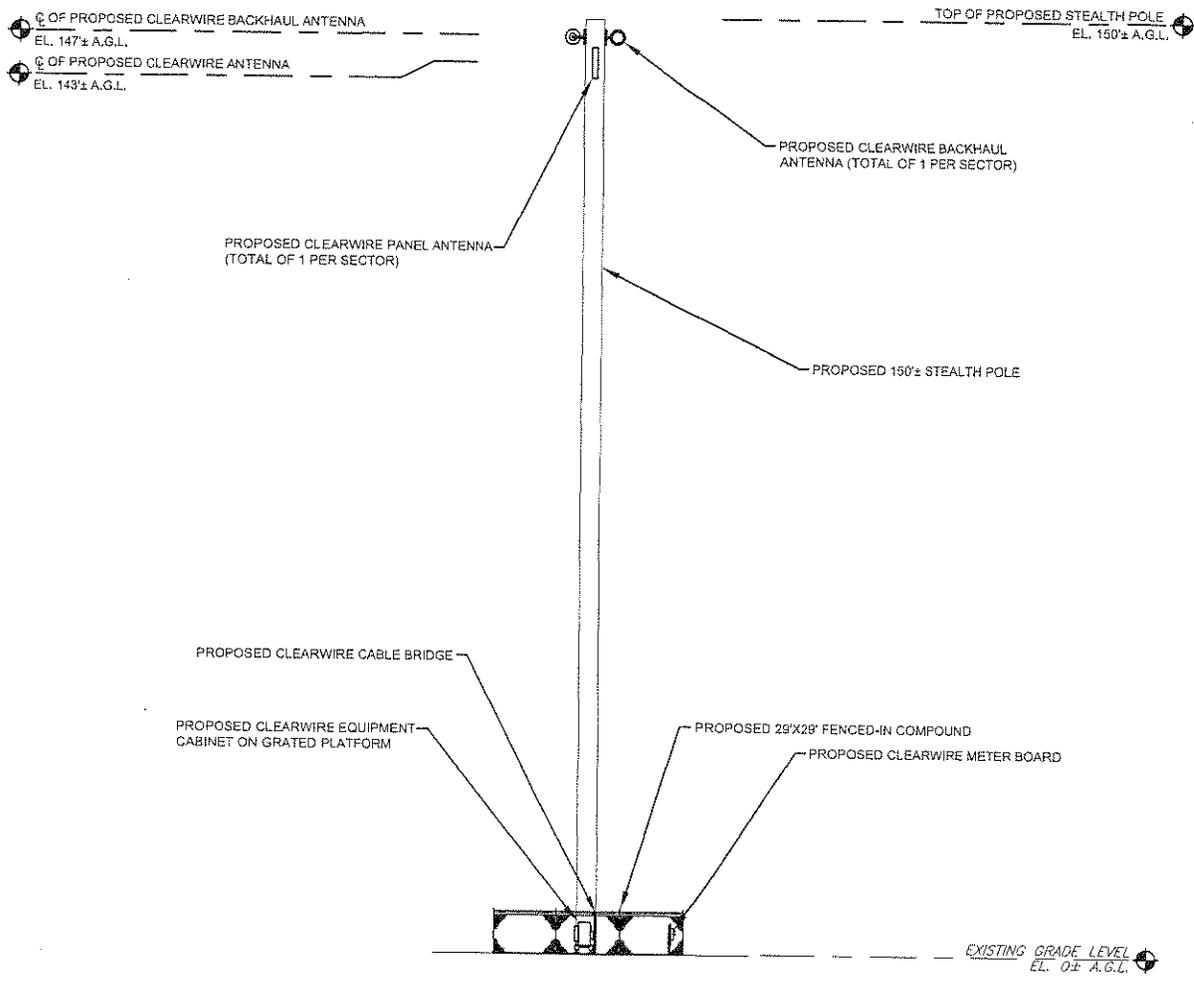
SITE #: NH-MAN5126A
SITE NAME: MANCHESTER HIGH SCHOOL
SITE ADDRESS: 1 CRUSADER WAY
MANCHESTER, NH 03101

REVISIONS:

REV.#	DATE	DESCRIPTION
0	8/31/09	FINAL

DRAWN BY: KAP

7-14



APPROVALS:

LANDLORD: _____

FIELD CONST. MGR: _____

RF ENGINEER: _____

SITE ACQUISITION AGENT: _____



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blocke@aerialspectrum.com

clearwire®

4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
RAW LAND

PROJECT INFORMATION:

SITE #: NH-MAN5126A
SITE NAME: MANCHESTER HIGH SCHOOL
SITE ADDRESS: 1 CRUSADER WAY
MANCHESTER, NH 03101

REVISIONS:

REV.#	DATE	DESCRIPTION
0	8/31/09	FINAL

DRAWN BY: KAP

7-15



Goodman Networks

Network Knowledge... Delivered.

January 17, 2010

The Honorable Mayor Ted Gatsas
City of Manchester
One City Hall Plaza
Manchester, NH 03101

Re: Tower Hill Water Reservoir
Clearwire NH-MAN 5134 A
10 Tower Hill Drive
Manchester, NH 03103

Dear Mayor Gatsas:

Goodman Networks, Inc., has been retained to perform site acquisition, planning and permitting functions for the development of Clearwire wireless telecommunications antenna sites in the Manchester, NH, area. Your City's property has been identified as a candidate for a wireless facility.

As a result of the initial inspections and testing by the Clearwire radio-engineering department, it has been determined that your site is feasible for network development. The following are the basic business points of a proposed lease transaction:

Space:

A 7' x 7' area located in the current tower compound adjacent to the City reservoir. The antennas will be mounted at the 100' level on an existing lattice tower approximately as shown on the attached exhibit, together with the associated lines and cables connecting the equipment with the antennae arrays.

Equipment:

Clearwire proposed 9 antennas (three per sector). All installations will comply with the design guidelines set forth by the city in which the property is located. Additionally two radio equipment cabinets approximately 3' wide by 3' deep by 5' high will be placed in the equipment leased area. All installations are certified by a structural engineer and an architect. Also, the utilities serving the equipment location shall be separately metered, and the costs (installation and or extension from the street ROW to the leased area and the monthly operation) of said utilities shall be borne solely by

7-16

Mayor Ted Gatsas

January 17, 2010

Page 2 of 2

Clearwire.

- Lease Term:** A five (5) year primary term, with four (4) options to extend the lease of five (5) years each.
- Rent:** Clearwire proposes a monthly rental of One Thousand Six Hundred Dollars (\$1,600.00).
- Periodic Rent Escalations:** The rental shall be escalated by Ten percent (10%) each option period
- Maintenance, Taxes & Utilities:** All paid by Clearwire.
- Access:** 7/24/365 access is required by the Clearwire® maintenance department with notice. Clearwire agrees to reimburse your organization for actual security costs incurred in connection with after-hour, emergency maintenance events.
- Insurance:** Clearwire will provide a \$2,000,000 liability policy and will name the landlord as an additional insured party.

All costs of constructing the facility, permitting and applications fees will be processed by Goodman Networks, Inc., and will be paid for by Clearwire. As landlord all that is required of you is a signed and notarized letter authorizing Goodman Networks, Inc., to act on your behalf in making the necessary applications. Prior to the processing of any permit the landlord will be presented with a set of plans for approval.

The above is intended only to be a basic overview of the lease terms and process. The engineers at Clearwire have designed numerous installations nationwide and are able to accommodate almost any situation. Please review the attached plans and call me with any questions, comments or requests for additional information.

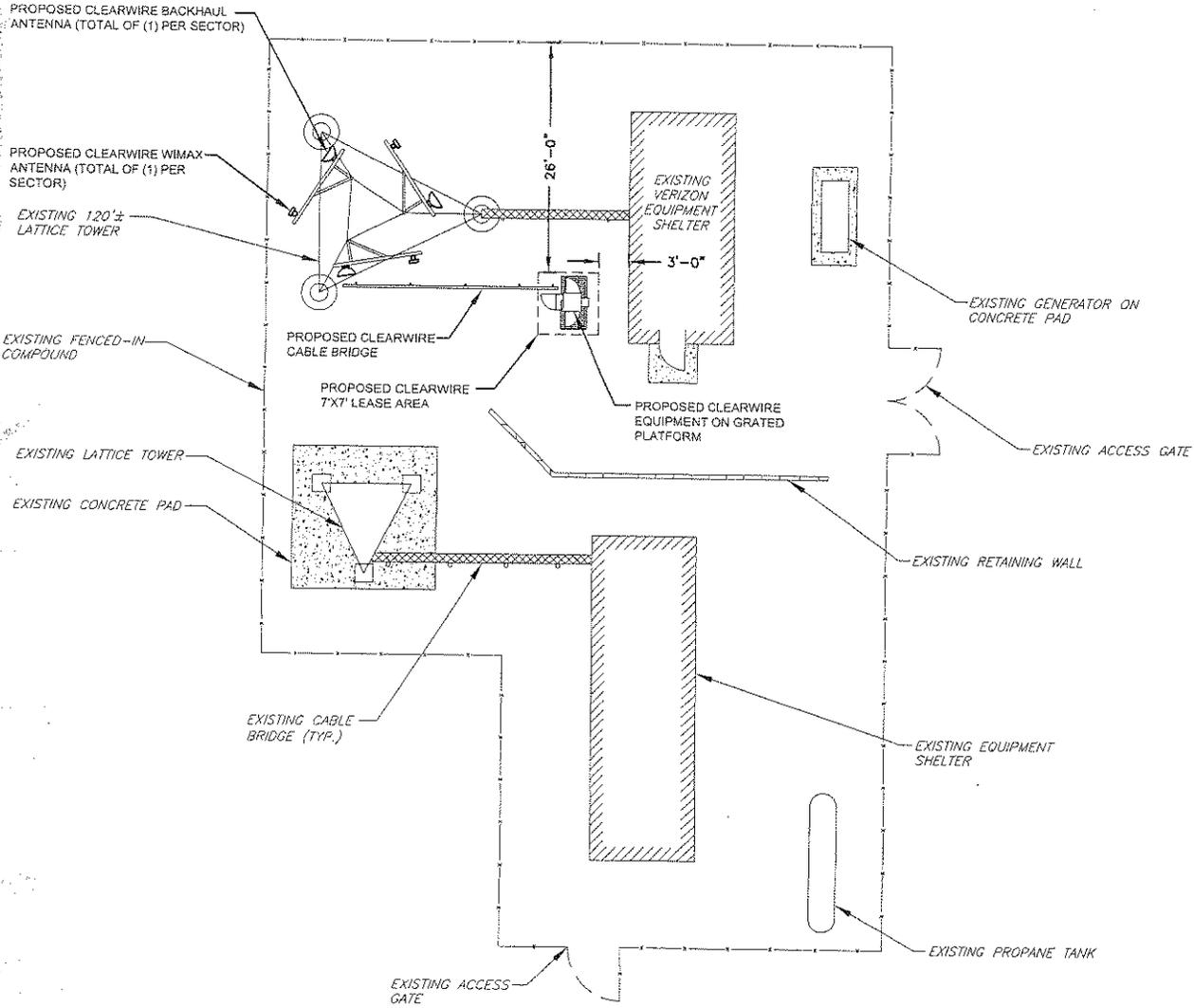
Thank you for your consideration. Again, should you have any questions or require further information, please don't hesitate to call. Please contact me at your earliest convenience. I can be reached at (310) 259-4285.

Sincerely,

Jack M. Baringer
Site Acquisition Manager

CC: NH-MAN 5134 A file

7-17



COMPOUND PLAN

SCALE: 1"=20'-0"



APPROX. TRUE NORTH



APPROVALS:

LANDLORD: _____

FIELD CONST. MGR: _____

RF ENGINEER: _____

SITE ACQUISITION AGENT: _____

SHEET 1 OF 2



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blocke@aerialspectrum.com

clearwire®

4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
CO-LOCATION

REVISIONS:

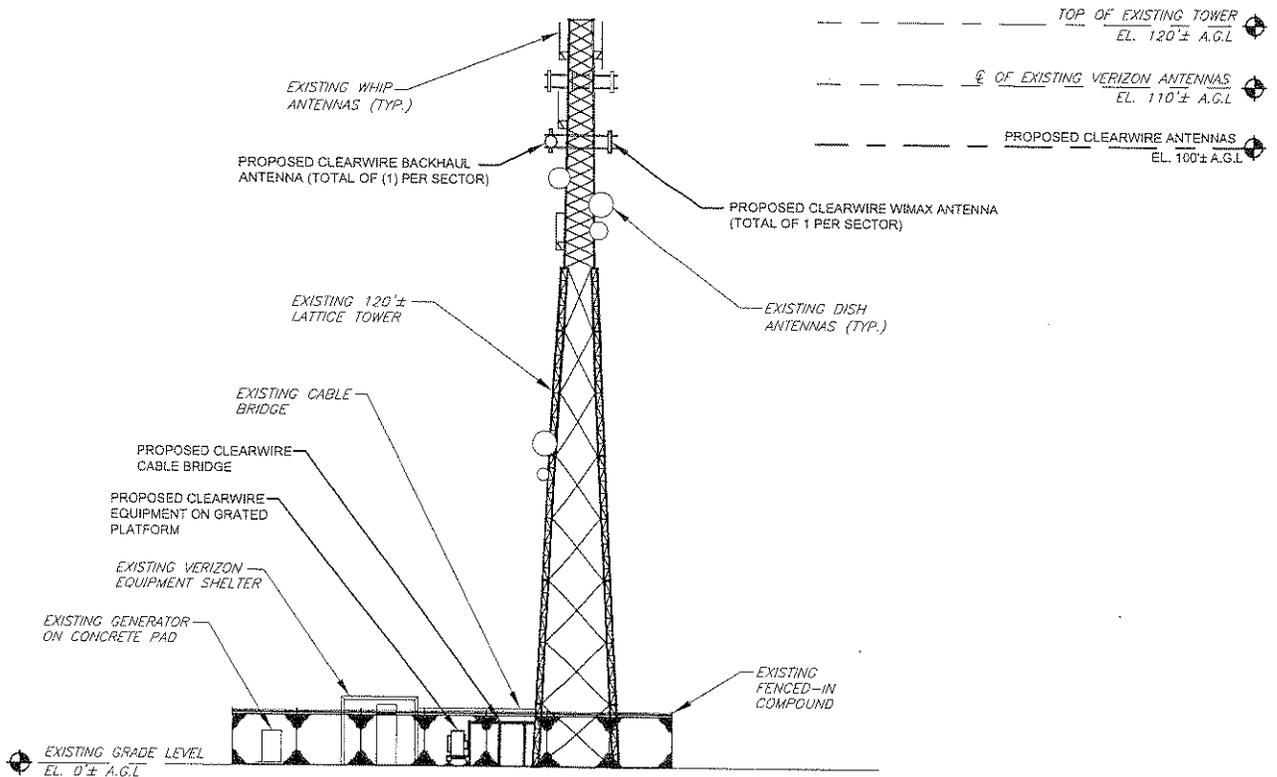
PROJECT INFORMATION:

SITE #: NH-MAN5134A
SITE NAME: MANCHESTER WATER RESERVOIR
SITE ADDRESS: TOWER HILL ROAD
MANCHESTER, NH

REV.#	DATE	DESCRIPTION
0	8/31/09	FINAL

DRAWN BY: DJW

7-18



ELEVATION
SCALE: 1"=30'-0"



APPROVALS:

LANDLORD: _____

FIELD CONST. MGR: _____

RF ENGINEER: _____

SITE ACQUISITION AGENT: _____

SHEET 2 OF 2



LAKESIDE OFFICE PARK
599 NORTH AVE., SUITE 8
WAKEFIELD, MA 01880
tel. (781) 295 0818
fax (781) 295 0825
e-mail: blocke@airalspectrum.com

clearwire®

4400 CARILLON POINT
KIRKLAND, WA 98033

SITE TYPE:
CO-LOCATION

PROJECT INFORMATION:

SITE #: NH-MAN5134A
SITE NAME: MANCHESTER WATER RESERVOIR
SITE ADDRESS: TOWER HILL ROAD
MANCHESTER, NH

REVISIONS:

REV.#	DATE	DESCRIPTION
0	8/31/09	FINAL

DRAWN BY: DJW

7-19