

Minutes of the Meredith Conservation Commission Meeting May 28, 2009

The meeting was called to order by Chairman MacFarlane at 7:00 PM.

Members attending: Don MacFarlane, John Sherman, Peter Miller, Robert LeCount, Paula Wanzer

Alternate members attending: Mark Billings, Robert Davis, Dan Heyduk.

Guest: Mr. Louis Kahn, Arbutus Hill Road, Meredith. Mr. Kahn is the spouse of longstanding Conservation Commission member Barbara (“Bobby”) Smyth, who recently passed away.

Item of Business: Proposed Barbara R. Smyth Conservation Easement

With the assistance of Lou Kahn, property owner and grantor, the commission reviewed the survey and deed of this proposed easement, to be granted in perpetuity to the Town of Meredith. The deed was written by Mr. Kahn with input from commission members Sherman and Pisapia, and it has been reviewed, amended, and approved by town counsel Lee Mattson.

The commission reviewed the wording of the deed paragraph by paragraph, focusing mostly on Section II, Use Limitations, Section IV, Rights of the Grantee, and Section XIV, Reserved Portions.

A complete copy of the draft of the deed is attached to these minutes.

The easement property includes a total of approximately 150 acres, with more than a mile of frontage on the Hamlin and Eames Town Forests.

19 +/- acres are located on lot R19-13, situated north and west of Arbutus Hill Road. This land may be used for agriculture or forestry. The 2 +/- acre homestead (Parcel B on survey) is excluded from the easement. Parcel B may not be sold separately from the balance of lot R19-13.

131 +/- acres are located on lot R19-1, situated south and east of Arbutus Hill Road. All of this land except survey Parcel A may be used only for forestry and for recreation (as explained below).

The 26 +/- acres of Parcel A, lot R19-1, may be used for agriculture or forestry. This land is currently orchard or field and is situated in the northeast quadrant of the easement property.

Up to 20 acres of Parcel A may be subdivided into not more than 2 lots, which may be developed as allowed by zoning ordinance or Zoning Board of Adjustment approval. Up to 3 acres of each lot may be developed and excluded from the easement. The remaining acreage is subject to the terms of the easement. The excluded portion of each lot may not be sold separately from the balance of the lot.

The town, through its Conservation Commission, has the right to build and maintain a recreational trail through the south portion of the easement property connecting the trails of the Eames Town Forest with the trails of the Hamlin Town Forest. This trail may be temporarily closed or relocated due to forestry but is otherwise perpetual. The trail will be signed at boundaries and will be subject to the use limitations of the Hamlin and Eames trails (see deed for more details).

At the discretion of the grantor, the Conservation Commission may build and maintain other trails on the easement property.

In consideration of the right of public access granted to the town, the town shall install a “Barbara R. Smyth Conservation Easement” sign at the entrance to the Hamlin Town Forest parking lot on Chemung Road.

The draft of the deed identifies two findings made by the Conservation Commission, Section I-C-1-(b), that the preservation of the property will enhance the scenic enjoyment of the public, and Section I-C-2-(d), that the preservation of the property will protect its conservation values as identified in the Town of Meredith Natural Resource Inventory.

By motion of LeCount, seconded by Sherman, the commission confirmed the findings referred to in the Barbara R. Smyth Conservation Easement deed by a vote of 5 – 0, with no abstentions.

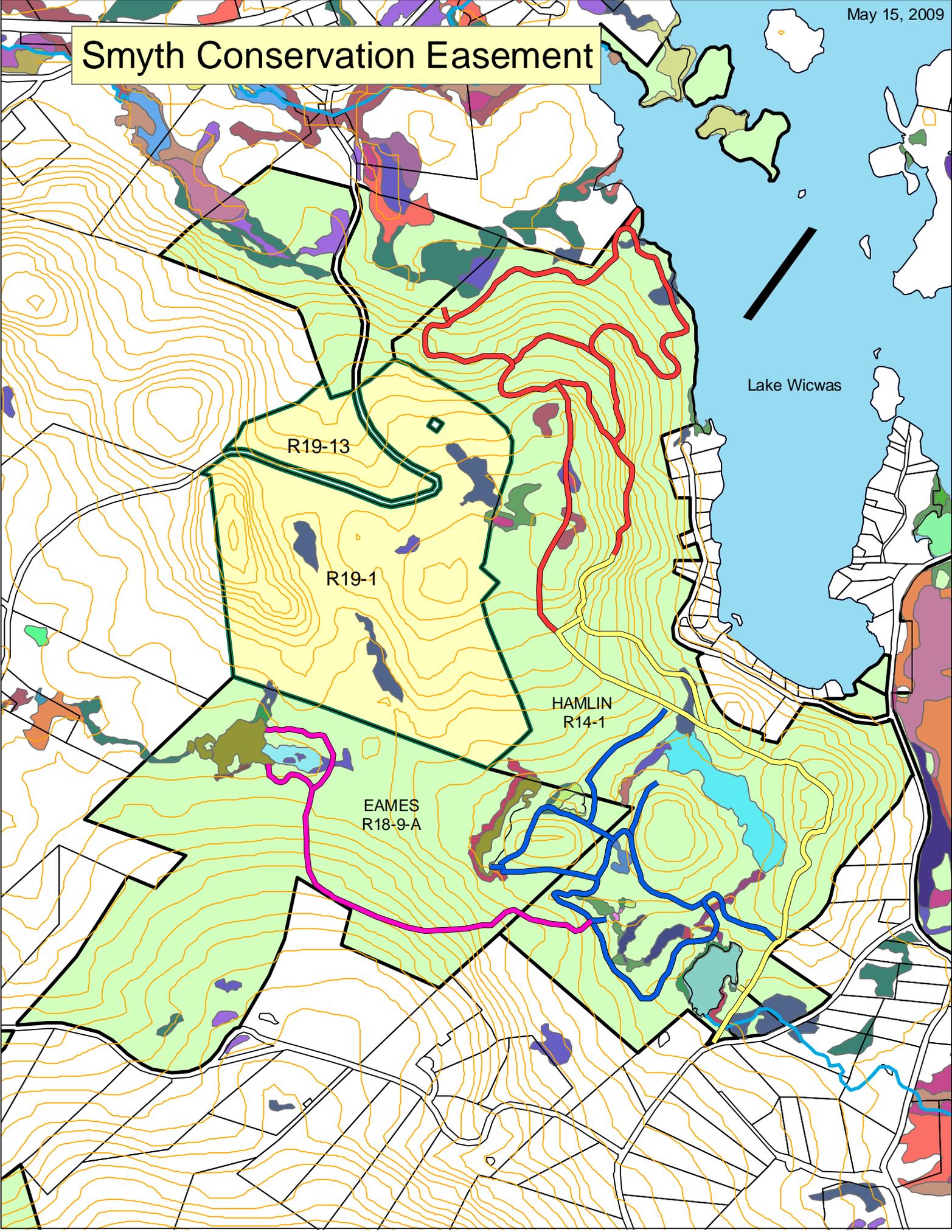
My motion of Miller, seconded by Sherman, the commission approved the wording of the Barbara R. Smyth Conservation Easement deed without amendment by a vote of 5 – 0, with no abstentions.

Meeting adjourned at 8:30 PM.

Respectfully submitted,

Peter Miller, Secretary

Smyth Conservation Easement



Draft 5/28/09(3)

CONSERVATION EASEMENT DEED

LOUIS KAHN, with a mailing address of P. O. Box 1625, Meredith, New Hampshire 02353 and street address of 49 Arbutus Hill Road, Meredith, New Hampshire ("Grantor," which term shall include Grantor's successors and assigns with respect to the parcels hereinafter described in Exhibit A hereto), for consideration paid, hereby grants to the TOWN OF MEREDITH, a municipal corporation chartered by the State of New Hampshire, with a mailing address of 41 Main Street, Meredith, New Hampshire 03253 ("Grantee"), acting through the Conservation Commission of the Town of Meredith (the "Conservation Commission"), pursuant to New Hampshire RSA 36-A:4, an easement (the "Easement") on those parcels of land located on Arbutus Hill Road in the Town of Meredith, County of Belknap, State of New Hampshire, described in Exhibit A hereto (the "Property"). As used herein, the portion of the Property south and east of Arbutus Hill Road (Lot R19-1 on the tax map of the Town of Meredith, comprising approximately 131 acres, more or less) shall be referred to as "Lot 1," and the portion of the Property west and north of Arbutus Hill Road (Lot R19-13 on such tax map), comprising approximately 19 acres, more or less), shall be referred to as "Lot 13." Notwithstanding the foregoing, except as specifically provided herein, the Property subject to the Easement shall not include, and the restrictions of the Easement shall not apply to (i) the Reserved Portion of Lot 13, as defined in Section XIV hereof, and (ii) any portion of Lot 1 that, subject to the provisions set forth in Section XIV, becomes a Reserved Portion of such Lot.

I. CONSERVATION PURPOSES

A. The Easement is granted pursuant to New Hampshire RSA 477:45-47, exclusively for the following conservation purposes: the preservation of open space (including farmland and forest land), of which the greatest part of the Property consists, both pursuant to clearly delineated state and local governmental conservation policies and for the scenic enjoyment of the general public.

B. Preservation of open space is within the conservation policy of the State of New Hampshire and yields a significant public benefit as evidenced by New Hampshire RSA 79-A:1, which states "It is hereby declared to be in the public

interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources." New Hampshire RSA Chapter 79A provides a system of property taxation that accords preferential tax assessment to land that is maintained as open space. More than 98% of the Property currently is accorded such preferential tax assessment.

C. Preservation of the Property as open space is (i) for the scenic enjoyment of the general public and (ii) within the conservation policy of the Town of Meredith, and, in each case, will yield a significant public benefit, as evidenced by the following:

1. Scenic Enjoyment.

(a) The Community Plan, adopted November 12, 2002, by the Planning Board of the Town of Meredith, pursuant to New Hampshire RSA 674:4 (the "Master Plan"), states that "The visual landscape of Meredith . . . make[s] Meredith special among the towns in the Lakes Region." The Master Plan shows the Property to be within a "Critical Viewed Area," associated with "highly significant viewpoints" (as such terms are defined in the "Town of Meredith Visual Resource Inventory and Assessment," Thomas Kokx Associates, revised December 18, 2000) that are located on New Hampshire Route 104 (the heavily-traveled, principal access road from Meredith village to Interstate Route 93), Meredith Center Road, Corliss Hill Road and Pease Road. The Property is visible from such viewpoints because it contains one of the highest points on Arbutus Hill, with an elevation of approximately 910 feet.

(b) The Property abuts the Town of Meredith Hamlin and Eames Town Forests for over one and one-quarter miles. The Conservation Commission, which administers the Town Forests, has found that preservation of the Property as open space will enhance the scenic enjoyment of the public using such Forests, by protecting against visual intrusion on such Town Forests by development, and therefore will yield a significant public benefit. The provision in Section IV hereof for a trail on the Property that will be available for use by the public will permit the public scenic enjoyment of the Property and therefore yield a significant public benefit.

2. Conservation Policy.

(a) The Master Plan states that the portion of the total land area in the Town constituting open space protected against development is well below that suggested as appropriate by a leading New Hampshire conservation organization. The Master Plan states that "permanent protection of land is one of the most important outcomes of the open space plan." The Easement will permanently protect the Property as open space, adding significantly to the protected land in the Town and yielding a significant public benefit. The

combination of the Property with the Hamlin and Eames Town Forests and other abutting land under existing conservation easement will yield approximately 700 contiguous protected acres, the largest protected area in the Town of Meredith.

(b) The Master Plan shows the Property to be part of one of the largest unfragmented forest lands in Meredith, stating that "Large expanses of contiguous forests . . . represent significant wildlife habitat in the community." The Easement will insure that the land subject thereto remains an unfragmented forest.

(c) A Natural Resources Inventory of the Town of Meredith ("NRI") was completed in 2005 for the Meredith Planning Department and the Conservation Commission. The Planning Department and Conservation Commission subsequently commissioned a field review of the NRI findings, which review found that the Property lies within and adjacent to, and links, three of the ten high-value co-occurrence areas (areas where valuable natural resources overlap) found to exist in Meredith, namely the Blake Brook/Wicwas, Leavitt Mountain and Pemigewasset Lake areas. The ecologist conducting such field review has made the following further findings regarding the conservation values of the Property:

1. The Property lies in the heart of one of the richest wildlife habitat areas in Meredith;
2. It immediately abuts two critical conservation lands owned by the Town, the 306-acre Hamlin Town Forest and the 190-acre Francis Eames Town Forest;
3. The Property spans two major watersheds above heavily used recreational areas, that of Lake Wicwas to the east and Pemigewasset Lake to the west;
4. The property offers unmitigated passage of wide-ranging wildlife between these upper watershed areas;
5. The property includes four forested wetlands, each of which includes valuable vernal pool habitat for obligate vernal pool amphibians;
6. The property encompasses the 910-foot high summit of Arbutus Hill that is within at least two important, potentially developable viewshed areas in Meredith;
7. The property lies within the forestry conservation zoning district, which has as one its primary goals the protection of harvestable timber tracts; and

8. The property partially fulfills a critical link of conserved land between the ecologically sensitive Lake Wicwas and the highest elevation ridge in Meredith, Leavitt Mountain.

(d) The Conservation Commission found that (i) permanent protection by the Easement of the Property as open space would protect the conservation values of the Property stated in the Community Plan and the NRI and found by the ecologist conducting the field review for purposes of the NRI and would enhance the conservation value of the contiguous Hamlin and Eames Town Forests, by providing a buffer against development and by protecting and expanding the unfragmented natural habitats of the Town Forests, (ii) in the absence of the Easement, the Property, by reason of the age and condition of the forest on the Property, would be highly desirable for clear-cut logging and for subsequent development because of the views that would be obtained through logging of the White and Ossipee Mountains, its location abutting the Hamlin and Eames Town Forests, and its proximity to Route 104 and Interstate Route 93, (iii) the costs to the Conservation Commission to enforce the restrictions of the Easement are not likely to be extensive because of the Conservation Commission's existing programs of monitoring the abutting Hamlin and Eames Town Forests and compliance with similar easements abutting the Property and in other portions of the Town, and (iv) in view of the foregoing, the Easement would yield a significant public benefit.

II. USE LIMITATIONS.

Subject to the reserved rights specified in Section III hereof, the Easement hereby granted with respect to the Property shall be as follows:

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture and forestry ("Permitted Uses"). Notwithstanding the foregoing, agriculture shall be conducted only on Lot 13 and in the portion of Lot 1 shown as "Parcel A" on Exhibit B hereto. As used in this Easement Deed, the term "agriculture" shall include animal husbandry (including, but not limited to, horse stables and horseback riding), floriculture and horticulture activities, the production of plant and animal products for domestic or commercial purposes, the growing, stocking, cutting and sale of Christmas trees and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup), but excluding aquaculture. The term "forestry" shall include the growing, stocking, cutting and sale of forest trees of any size capable of producing timber or other forest products. All permitted activities shall be carried on in a manner not detrimental to the conservation purposes of the Easement.

B. Agriculture on that portion of the Property where permitted shall be conducted, to the extent reasonably practicable, in accordance with a

coordinated management plan for the sites and soils of the Property. Agricultural management activities shall be in accordance with then-current, scientifically-based, best management practices and shall not be detrimental to the conservation purposes of the Easement, nor materially impair the scenic quality of the Property as viewed from public roads and hiking trails.

C. Forestry on the Property shall be conducted, to the extent reasonably practicable, in accordance with the following goals and in a manner not detrimental to the conservation purposes of the Easement: maintenance of soil productivity; protection of water quality, wetlands and riparian zones; conservation of scenic quality; protection of unique or fragile natural areas; and conservation of native plant and animal species.

Timber harvesting with respect to such forestry shall be conducted in accordance with a written forest management plan, prepared by a licensed professional forester or other qualified person (such other person to be approved in advance and in writing by the Conservation Commission), which plan shall have been prepared not more than 10 years prior to the date such harvesting is expected to commence, or shall have been reviewed and updated by such a forester or such other qualified person at least 30 days prior to such date. At least 30 days prior to the commencement of such harvesting, Grantor shall submit to the Conservation Commission a written certification, signed by a licensed professional forester or such other qualified person, that such plan has been prepared (and if required hereby, updated) in compliance with the terms hereof and, if requested by the Conservation Commission, shall submit the plan (and any such update) to the Conservation Commission within 10 days of such request.

Timber harvesting with respect to such forestry shall be supervised by a licensed professional forester or such other qualified person, and shall be carried out in accordance with all applicable laws, 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, and, in areas visible from public roads and hiking trails, the best logging aesthetics practices then current.

D. Except as provided in Section XIV with respect to Lot 1, the Property shall not be subdivided. Nothing herein shall prohibit the sale or transfer of either Lot 1 or Lot 13 separate from the other Lot. Notwithstanding any provision hereof, there shall not be more than one residence on Lot 13 or more than two residences on land contained in Lot 1 at the date hereof.

E. No structure or improvement, including, but not limited to a dwelling, septic system (or portion thereof), tennis court, swimming pool, aircraft landing area, tower or communications facility or mobile home, shall be constructed, placed, introduced or maintained on the Property, except that structures and

improvements, including but not limited to roads, dams, fences, bridges, culverts, barns, maple sugar houses, sheds and utilities, may be constructed, placed, introduced or maintained as necessary or desirable in the accomplishment of the Permitted Uses and provided that they are not detrimental to the conservation purposes of the Easement. To the extent practicable, structures and improvements constructed, placed or introduced on the Property shall be sited so as to minimize their impact on the conservation values of the Property and the views from the viewpoints referred to in Section I(C)(1)(a) hereof and from the Hamlin and Eames Town Forests. No agricultural structure shall be placed on the Property other than on Lot 13 or Parcel A of Lot 1. Without the consent of Grantee, no structure shall have a footprint exceeding 5,000 square feet. Grantor shall provide Grantee with 30 days' written notice prior to commencing construction, placement or introduction on the Property of any structure or improvement permitted by this paragraph

F. No removal, filling or other disturbance of soil surface, mining, quarrying, excavation, or any changes in topography, surface or natural subsurface water systems, wetlands, or natural habitat shall be made unless all necessary federal, state and local permits and approvals are secured and unless such activities (i) are reasonably necessary in the accomplishment of the Permitted Uses, (ii) would not harm state or federally recognized rare, threatened or endangered species, such determination of harm to be based on information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species, and (iii) are not detrimental to the conservation purposes of the Easement. Nothing in this Section II shall prohibit the cutting of trees or the removal and burial of stumps in connection with any activity permitted by the Easement or, in areas where permitted by the terms of the Easement, to establish pastures, hayfields, or corrals, or to obtain and maintain views from the Reserved Portions to the north and east. For the purposes of obtaining and maintaining such views, a sale or transfer of Lot 13 or of a Reserved Portion of Lot 1 may include a view easement on Lot 1, permitting the cutting of trees for such purposes.

G. No outdoor advertising structures such as signs and billboards shall be displayed on the Property except as necessary or desirable in the accomplishment of the Permitted Uses, and except that signs may be posted (i) by and enforced by Grantor regarding hunting, trapping, trespassing, and motorized vehicles or snowmobiles or to warn of hazards on the Property, or (ii) pursuant to Section IV hereof.

H. There shall be no storage (except as such materials are stored in reasonable quantities for use reasonably necessary in Permitted Uses), or dumping, injection, burning or burial on the Property of man-made materials or materials then known to be environmentally hazardous.

I. The Property shall not be used to meet any open space requirements in connection with any subdivision approval or land use regulation process, in calculating any allowable unit density or in determining whether any land of the Grantor, other than the Property, satisfies any area, setback or dimensional standard. Nothing herein shall prohibit any subdivision of Lot 1 permitted by Section XIV.

J. As promptly as practicable after the execution of this Conservation Easement Deed, Grantee will document the condition and conservation values of the Property in a baseline documentation report, which shall include such ecological assessment, maps, photographs and other pertinent information as Grantee deems appropriate to provide an accurate representation of the condition of the Property at the time this Conservation Easement Deed was entered into. Such report, copies of which shall be provided to the Grantor and filed at the offices of the Grantee, shall serve as an objective information baseline for monitoring compliance with the terms of the Easement. The existence of the report shall not preclude the use of other evidence to establish the condition of the Property at such time.

III. RESERVED RIGHTS.

All rights not expressly granted to the Grantee are reserved to the Grantor. In addition, the Grantor reserves the right (i) to cut trees or remove or bury stumps in connection with any activity permitted by the Easement, to establish pastures, hay fields or corrals, or to obtain or maintain views, all as permitted by the terms hereof, (ii) to maintain as such non-forested portions of the Property, (iii) upon at least 30 days' prior written notice to the Grantee, to maintain, repair or replace (of like size and kind) those structures and utilities existing on the date of the Easement, (iv) to construct and maintain ponds for Permitted Uses, recreation, fire protection or wildlife habitat enhancement, in accordance with plans developed by the U. S. Natural Resources Conservation Service or approved by the New Hampshire Department of Environmental Services, and (v) to grant such easements as may be reasonably necessary in connection with the furnishing of utility services.

IV. RIGHTS OF THE GRANTEE.

Upon reasonable prior notice to the Grantor (which may be given by telephone or e-mail or by other electronic means then currently in general use to the Grantor or to any other persons residing on the Property), the Grantee shall have reasonable access to the Property for such inspection as is necessary to determine compliance with and to enforce the terms of the Easement, to exercise the rights conveyed hereby and to fulfill the responsibilities and carry out the duties assumed by the acceptance of the Easement. Except as herein specifically provided, the Easement does not grant to the public access to or across the Property. The Grantee, with the approval of the Grantor as to number,

size, placement and content, which approval will not be unreasonably withheld, may place signs on the Property regarding the existence of the Easement. Notwithstanding the foregoing, the Grantee shall place and maintain such signs at the locations where the trail hereinafter referred to crosses into the Property from the Hamlin and Eames Town Forests, such signs to refer to the Property as the "Barbara R. Smyth Conservation Easement managed by the Meredith Conservation Commission" and to contain such other or further content as the Grantor and Grantee shall agree. Except for the signs referred to in the preceding sentence, the Grantor shall not be obligated to agree to any sign having an area greater than 9"x12". The Grantor shall permit the Grantee to extend a hiking trail from the south boundary of the Property to the eastern portion of the Property so as to connect the trail system in the Eames Town Forest to the northerly trail systems in the Hamlin Town Forest. The exact location of such trail shall be subject to the agreement of the Grantor, which agreement will not be unreasonably withheld. No stone walls shall be removed or breached to position such trail, which trail shall be relocated or temporarily discontinued at the request of the Grantor to the extent reasonably necessary to permit or ensure the safety of logging operations. The Grantor may permit the Grantee to locate other trails on the Property, but shall not be obligated to do so. The location of any such other trail shall be at the absolute discretion of the Grantor, who may require any such trail to be relocated or discontinued at any time. No right of the public to access to the Property (other than with respect to use of the one trail referred to above) shall be implied by reason of any trail. Use of any trail established by the Grantee shall be subject to the same restrictions as the Grantee may impose on trails in the Hamlin and Eames Town Forests; provided that horseback riding shall be permitted on trails on the Property. In consideration of the grant of the right to establish and maintain a trail, whether or not established or maintained, the Grantee shall maintain a sign at the parking area for the Hamlin Town Forest, in the same location as the sign for the Hamlin Town Forest, which sign will indicate that the area is also for access to the "Barbara R. Smyth Conservation Easement." No provision shall be made for access to any trail from Arbutus Hill Road. Grantee shall maintain insurance covering liability for personal injury to persons using trails established by Grantee on the Property and shall, from time to time, at the request of Grantor, supply Grantor with evidence of such insurance.

V. NOTIFICATION OF TRANSFER; MAINTENANCE; TAXES.

A. Grantor shall notify the Grantee in writing no later than ten days after any transfer of title to the Property, including any transfer of either Lot or of any portion of Lot 1.

B. Grantee shall have no obligation to maintain the Property or to pay taxes or assessments thereon.

VI. BENEFITS AND BURDENS.

The burden of the Easement shall run with the Property and shall be enforceable against all future owners and tenants of the Property in perpetuity. The benefits of the Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to any qualified organization within the meaning of Section 170(h)(3) of the U. S. Internal Revenue Code of 1986, as amended, 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 assignment or transfer shall require the prior written approval of the Grantor, which approval shall not be unreasonably withheld. Any assignee or transferee shall have a like power of assignment or transfer.

VII. BREACH OF EASEMENT.

A. When a breach of the Easement, or conduct by anyone inconsistent with the Easement, comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach or conduct, delivered in hand or by certified mail, return receipt requested. Grantee and Grantor shall endeavor to resolve such matter through discussions.

B. If the Grantor shall have breached or taken action inconsistent with the Easement, the Grantor shall, or, if the Grantor shall not have so breached or taken such action, but any other person shall have so breached or taken such action, the Grantor, at the option of the Grantor, may, in either case within thirty days after receipt of such notice or after otherwise learning of such breach or conduct, undertake such action, including restoration, as may be reasonably calculated to cure swiftly such breach, or to terminate such conduct, and to repair any damage to the Property. The Grantor shall promptly notify the Grantee of its actions taken under this paragraph.

C. If the Grantor fails to take such action under the preceding paragraph to cure said breach, terminate such conduct or repair such damage, the Grantee shall, as appropriate for the purposes of the Easement, in the name of the Grantor or otherwise, undertake any actions that are reasonably necessary to cure such breach, terminate such conduct, or repair any damage. The cost thereof, including the Grantee's expenses, court costs and legal fees and expenses, shall be paid by the Grantee, unless the Grantor is directly or primarily responsible for the breach, in which case the Grantor shall pay for these costs.

D. Nothing contained in the Easement shall entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate significant injury to the

Property resulting from such causes.

E. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of the Easement.

F. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair Grantee's rights or remedies or be construed as a waiver.

VIII. DISCRETIONARY CONSENT.

A. If, due to unforeseen or changed circumstances, Grantor deems it desirable to engage in activities with respect to the Property not permitted by Section II, the Grantee may, in its sole discretion, grant permission for such activities, subject to the limitations herein. Any such request for permission shall be in writing and shall describe the proposed activity in detail sufficient to allow the Grantee to judge the consistency of the proposed activity with the conservation purposes of the Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (i) would not violate the conservation purposes of the Easement and (ii) either enhance or do not impair any significant conservation interest associated with the Property.

B. Notwithstanding the foregoing, the Grantee shall not agree to any activities that would result in the termination of the Easement or allow any residential, commercial or industrial structures, or any commercial or industrial activity, not permitted by the Easement.

IX. AMENDMENT.

At the request of Grantor, Grantor and Grantee shall amend this Easement for the exclusive purpose of qualifying, or maintaining the qualification of, this Easement as a qualified conservation contribution under the Internal Revenue Code. No such amendment shall impair the conservation purposes of the Easement.

X. NOTICES.

Except as otherwise provided herein, all notices, requests and other communications required or permitted to be given hereunder shall be in writing and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested, to the appropriate address set forth above or such other address as the Grantor or the Grantee may hereinafter designate by notice given in accordance herewith. Notice shall be deemed given when so delivered or

mailed.

XI. SEVERABILITY.

If any provision hereof, or its application to any person or circumstance, is found to be invalid by a court, the remaining provisions hereof, 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.

XII. CONDEMNATION OR EXTINGUISHMENT.

A. Whenever all or any part of the Property (not including any Reserved Portion) is taken in exercise of eminent domain by public, corporate or other authority so as to abrogate the Easement in whole or in part, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from the taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

B. Whenever the Easement is extinguished, whether in whole or in part, by judicial proceedings, and the Property is subsequently sold, the Grantor and the Grantee shall thereupon act jointly to recover the full proceeds of the Property subject to the Easement, resulting from any lawful sale of the property unencumbered by the Easement, together with all expenses incurred by them in connection with the sale to be paid out of the sale proceeds.

C. The balance of the land damages recovered, or the balance of the proceeds from any lawful sale of the Property unencumbered by the Easement, shall be divided between the Grantor and Grantee in proportion to the fair market value of their respective interests in the Property, as such values and interests existed immediately after the execution of this deed. For this purpose, the value of the Grantee's interest shall be the amount by which the fair market value of the Property immediately prior to the execution of this deed was reduced by the use limitations imposed hereby. The Grantor and Grantee intend to determine said reduction in value by referring to an appraisal prepared by a qualified appraiser for the Grantor's federal income tax purposes, which appraisal the Grantor will have submitted to the Grantee no later than sixteen months after the date hereof.

D. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes of the Easement.

XIII. ADDITIONAL EASEMENT.

If the Grantor determines that the expressed purposes of the Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished and that a qualified

organization described in Section VI accepts and records the additional easement.

XIV. RESERVED PORTIONS.

There shall constitute a Reserved Portion and be excluded from the Easement and the restrictions thereof a portion of Lot 13, consisting of 1.94 acres, more or less, described as "Parcel B" in Exhibit B hereto and shown as such on a plan provided to the Grantee. Such Reserved Portion may not be sold or transferred separately from the balance of Lot 13. Subject to such subdivision approvals as may be required by law (notice of the filing of any application for such subdivision being given to the Grantee), a portion, consisting of not more than 20 contiguous acres, of the portion, consisting of 26 acres, more or less, of Lot 1 described as "Parcel A" in Exhibit B hereto and shown as such on such plan, may be subdivided into not more than two additional lots. In such event, a portion of each such new lot not exceeding three acres per new lot may be used for any purpose permitted by law (either as of right or by special exception) in the applicable zoning district. The location of any such three-acre portion shall be established on a plan provided to Grantee and filed with the Registrar of Deeds. Any such three-acre portion thereafter shall constitute a Reserved Portion and be excluded from the Easement and the restrictions thereof. No such three-acre portion may be sold or transferred separately from the new lot of which it is part. The balance of any such new lot shall continue to be subject to the Easement. Alternatively, a residence may be placed on Parcel A within a three-acre portion the location of which shall be so established on such a plan, which three-acre portion shall constitute such a Reserved Portion. Such placement of a residence shall not prevent the subsequent subdivision of Lot 1 (within Parcel A) in accordance with the terms of this Section.

* * *

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

* * *

This conveyance is a non-contractual transfer exempt from taxation pursuant to New Hampshire RSA 78-B:2, IX.

IN WITNESS WHEREOF, I have hereunto set my hand this day of June, 2009.

Grantor

Notary Public