

MODEL

CONSERVATION EASEMENT

To Protect Land as Wild

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It is the purpose of this Easement to protect the Property as Forever Wild, to safeguard biological diversity by protecting the environments and ecological processes that support viable populations of native plants, animals and other organisms, and to preserve and restore the wild qualities and natural beauty of the Property as free from human disturbance, noise, artificial light and pollution as practicable.

FOREWORD

At the end of the last century we witnessed an explosion of conservation in the United States to protect scenic, recreational, ecological, timber and agricultural lands. However, the percentage of land protected for wild nature in New England remains relatively small (for instance, about two percent of Maine is protected as wild; in Vermont, one percent).

The need for strategic protection of wild lands and waters to ensure sufficient and balanced representation of wild nature has never been greater. Wild plants and animals are under pressure due to habitat loss and fragmentation, and are additionally stressed by atmospheric and climate changes. Without strong, science-based permanent protection, shortsighted political and economic decision-making may degrade ecosystems beyond redemption. We must protect wild places where natural processes shape the land's future, where whole systems may flourish and where diverse species are free to evolve. These wild areas will be source habitats and genetic repositories that may help restore and heal less wild places. On these lands people have the freedom to explore wildness and connect with other living species

Wild lands may be degraded from actions other than simple development. Logging can eliminate in a few days a wild forest shaped over centuries. New roads for cell towers, wind turbines, or motorized access may fragment surrounding wild lands or require bulldozing of soils never before disturbed by humans. Non-native invasive species may spread from disturbed areas, thereby displacing the animals that depend on native species for food and cover. Genetically engineered trees planted to maximize timber growth may interbreed with indigenous individuals of the same species, with unknown consequences for the species' ability to survive disease, insect attacks, extreme weather events, or disruption of critical ecosystem processes such as nutrient cycling

For many years Sweet Water Trust (SWT) and staff from The Nature Conservancy (TNC) have worked together to examine conservation easements as a tool for high quality land protection. We felt that the available model easements were not designed to chart a course of biotic protection and ecological healing into the future. Perhaps this is because easement statutes and many easement models were written when conservation biology was just emerging.

We grappled with two major issues as we drafted easements designed to incorporate the principles of ecology and conservation biology: how to write a comprehensive list of restricted uses without impeding management flexibility needed to address unknown ecological issues of the future; and how an easement can lay the basis for a management process based on sound conservation science.

This current model attempts to address these two issues and others. It incorporates the advice and improvements offered by many reviewers. We hope this model will be helpful to anyone working to save wild places anywhere, whether desert, forest, rivers or tundra, and we look forward to seeing the many improvements that will come as others test these ideas in their landscapes and offer their own experience, creativity and ideas.

ACKNOWLEDGEMENTS

We'd like to acknowledge and thank all the people who helped make this model easement possible. The list is topped by Sweet Water Trust's Trustee Walker Buckner, on whose land we honed our art, and who recognized the importance of creating this model.

We also wish to acknowledge *The Conservation Easement Handbook*, a joint project of the Trust for Public Land, San Francisco, California and the Land Trust Alliance, Washington D.C, 1988, written and edited by Janet Diehl, and Thomas Barrett. This book served as the basis for our Whereas Clauses, and works well as a general companion to this more specific easement model.

It is not everyone's wish to spend their spare time reviewing a conservation easement, yet many people took the time. Specifically, we wish to thank Stephen Small, who has written easements to protect wilderness and wild places for clients and suggested the management format we are using here. Others who gave us legal comment include: Eve Endicott, formerly of the Eastern Resource Office of TNC (synergistically, much of this language has found its way into conservation easements drafted by Eve, and her work has changed this model); Hans Birle, also of TNC's Eastern Resource Office; Janet Diehl at the California Coastal Conservancy who forwarded this to California lawyers; Karin Marchetti Ponte, who provided critical feedback in the early stages; Joel Lerner, Director of the Division of Conservation Services, Executive Office of Environmental Affairs, Commonwealth of Massachusetts for his expert review and for help provided in the *Massachusetts Conservation Restriction Handbook*; Kelly Custer, Trout Unlimited, Boulder, Colorado, who assessed the easement with an eye for the protection of Colorado streams and rivers.

Thanks to the following for their close attention to the nuance of ecological language: Rick van de Poll, at the time a professor at Antioch New England Graduate School, Keene New Hampshire; Tim Simmons, Massachusetts Natural Heritage and Endangered Species Program; Chris Haney, formerly an ecologist with the Wilderness Society; Henry Barbour, at that time with the Massachusetts Office of TNC and Doug Bechtel from TNC's New Hampshire Chapter.

Among land protection specialists and environmental advocates devoted to protecting ecosystems including Alaskan tundra, mature forests of the East and West, deserts, prairie, and wild rivers, we want to especially thank; Dave Dolan, then of the Vermont Housing and Conservation Board; Kurt Foreman, US Fish and Wildlife Service, South Dakota; Manley Fuller, Florida Wildlife Federation; Duane Hyde, TNC New Hampshire; Brian Hotz, Society for the Protection of New Hampshire Forests; Rick Klein, Ancient Forest International, California; Brad Meikljohn, The Conservation Fund, Alaska; Bob Miller, TNC New Hampshire; Ethan Parke, then of the Vermont Housing and Conservation Board; John Stokes, TNC, Colorado; Roger Sternberg, then of the Mendocino Land Trust; California; Greg Steveler, Glacier Bay National Park, Alaska; Dave Tobias, New York City, Dept. of Environmental Protection; Doug Thompson, National Wildlife Federation, Iowa; Wes Ward, The Trustees of Reservations, Massachusetts; Kathleen Fitzgerald, Steve Libby, John Roe, Daryl Burtnett, and Rick van de Poll (again) and others from the Northeast Wilderness Trust committee on conservation easements.

Thanks also to Sheryl Lechner for her editing skills, to George Wislocki and Tad Ames, Berkshire Natural Resources Council, Massachusetts who reviewed this idea at its concept; Sigrid Pickering, SWT, Boston for her editing and insight right along; Arthur Westing, Vermont; and the late John Post, Massachusetts Audubon, who also believed that conservation easements could be used to help save the natural world, and worked devotedly to that end.

Too numerous to list are all the folks who have embraced the idea of using a conservation easement similar to this one and who have put this kind of protection on the ground as of this writing. To mention a few of these folks: John Roe, TNC Vermont (again); Susan Shea and Ben Rose, Green Mountain Club, Vermont; folks at the Agency of Natural Resources, Vermont; Gil Livingston, Vermont Land Trust; Ann Faulkner and Bob King, Stoddard, New Hampshire; Daryl Burtnett, TNC New Hampshire; Tom Curran, Lakes Region Conservation Trust, New Hampshire; Peter Knauss, Damriscotta River Association; and Annette Lorraine and Jeannie McIntyre at the Upper Valley Land Trust, New Hampshire and Vermont; Henry Tepper, Jon Kaledin, Andy Beers, and others from TNC, New York; and all the LTA Rally workshop participants and others we do not have room to thank by name.

Nancy Smith

Kathy Orlando

Frank Lowenstein

January 2004

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GRANTOR CLAUSE

This Grant of Conservation Easement is made this ____ day of _____, 20____, by [Grantor's name], landowners, having an address at _____ (“Grantors”), in favor of [Grantee's Name], a non-profit [state of incorporation] corporation, qualified to do business in [State where Property is located], having its principal place of business at _____ (“Grantee”).

WITNESSETH:

[The WHEREAS clauses contain factual descriptions of the Property and its larger landscape context to provide the background, legal foundation, ecological context and public benefit rationale for the conservation easement and its restrictions. They provide future stakeholders with insight into the reasons the land was initially protected.

In this draft we incorporate sample WHEREAS clauses from the Land Trust Alliance publication: Thomas S. Barrett, Stefan Nagel. 1996. Model Conservation Easement and Historic Preservation Easement, 1996. Pp. 12-13 & 28-29. Most of the WHEREAS clauses refer to a fictitious island off the coast of Maine. We also provide sample clauses for large forested blocks of land (beginning on page 3) to demonstrate how this model can be altered to fit different ecosystems. Other WHEREAS clauses frame the conservation of the Property in an ecological context, including the decline and loss of ecological integrity and biodiversity due to habitat fragmentation. We think that the loss and impoverishment of our natural legacy is one of the most compelling arguments for the protection of natural areas. New clauses that have been added to the Land Trust Alliance publication are double ** asterisked. Altered clauses have a single * asterisk.

The following WHEREAS Clauses are examples from which you can pick and choose to customize your easement.]

***WHEREAS**, Grantor is sole owner in fee simple of approximately 50 acres of beach, meadow, wetlands and forest on the east side of Bay Lane on an island of approximately 72 acres in the Town of Big Bay, County of Harmony, State of Maine, being the same Property conveyed to the Grantor by deed recorded in the Harmony County Registry of Deeds, Book _____, Page _____ (the “Property”); more particularly described in Exhibit ____ attached hereto and incorporated by this reference on a plan entitled [plan name from survey or sketch with date, scale and who prepared it]; and

***WHEREAS**, the Property protects “a relatively natural habitat of fish, wildlife, or plants or similar ecosystem” under the terms of the Internal Revenue Service Code Section 170 (h) (4) (ii) and the Treasury Regulations Section 1.170.A-14 (d) (3) or successive regulations; and

***WHEREAS**, the Property also preserves open space for the enjoyment of the general public and “pursuant to a clearly delineated Federal, State or local government conservation policy and will yield a significant public benefit” under the terms of the Internal Revenue Service Code Section 170 (h) (4)

(A) (iii) (I) & (II) and Treasury Regulations Sections 1.170.A-14 (d) (4) (I) (ii) (iii) (iv) and (v) or successive regulations; and

[could also include 170 (h) recreational provisions].

***WHEREAS**, the Property possesses significant natural, ecological, scenic and open space values (collectively, “conservation values”) which reflect the unique character of the Town of Big Bay and are of great importance to the Grantee and to the people of Big Bay, Harmony County, and the State of Maine; and

****WHEREAS**, the fragmentation and loss of natural wildlife habitat due to human activity has affected many regions, fracturing wilderness systems and wildlife corridors, splintering natural communities and ecosystems and impeding their natural function, degrading air and water quality, and initiating a global species extinction crisis; and

****WHEREAS**, land conservation can be used to prevent further fragmentation and habitat loss, to restore Ecological Integrity, to protect scenic, cultural and historic values, and to provide opportunities for spiritual renewal, contemplation and other forms of non-intrusive, quiet recreation; and

****WHEREAS**, at least 80% of the coastline in the lower 48 states has been developed, as documented by Reed Noss and Robert Peters, *Endangered Ecosystems; A Status Report on America’s Vanishing Habitat and Wildlife*, Defenders of Wildlife, 1995; and as housing development on the coast of the Five Bay Tidal Region has increased 27% from 1982 to 1992 according to the *Five Bay Tidal Databook*, 1995 so that home building represents a serious threat to coastal, estuarine and island ecosystems; and

***WHEREAS**, in particular, the Maine coast, and that portion of the Maine coast in which the Property is located known as the Five Bay Tidal Region, is a relatively intact coastal ecosystem and, as such, provides important habitat for a wide variety of birds, fish, and both marine and terrestrial mammals and plants; and because of the integrated nature of that ecosystem, the use made of the Property will affect not only the conservation values of the Property but those of these neighboring properties, islands and aquatic ecosystems as well; and the Property comprises a critical part of this intact coastal ecosystem, due to its proximity to Eagle Island, Little Mar Island, and Whale Rock; and

***WHEREAS**, Eagle Island, Little Mar Island, and Whale Rock, are in public ownership by either the Maine Department of Inland Fisheries and Wildlife or the Maine Bureau of Public Lands, and the Property is also in close proximity to other conserved land protected by The Nature Conservancy, Maine Coast Heritage Trust, and the Harmony Land Trust; and

[Emphasize public and ecological values by indicating extent of and proximity to all public and non-profit conservation lands.]

WHEREAS, the Property, which exists in a substantially undisturbed natural state, harbors a diversity of plant and animal life in an unusually broad range of habitats for a property of its size, including a cobble barrier beach and associated wetlands, nesting ledges, a spruce fir forest, and open meadows; and

***WHEREAS**, in recognition of the importance of the Property as an ecological and scenic resource, the Property in its entirety and the surrounding islands of Great Bay have been designated a Critical Area by the State of Maine in the Register of Maine Critical Areas, which designation was supported by letters of endorsement from the Board of Selectmen, the Planning Board, the Wetlands Commission, the Governor of the State of Maine, and from many local, state and national organizations; and

[List a broad range of supporters for such designations and be sure to include federal, state and local designations such as Town comprehensive or open space and recreation plans.]

***WHEREAS**, these properties and islands contain nesting sites for a diversity of coastal water birds, including black guillemots, common eiders, common terns, least terns, and double-crested cormorants, as documented by the United States Fish and Wildlife Service, Biological Services Program, *Coastal Waterbird Colonies* (1977); and

****WHEREAS**, the Property supports populations of plants and animals protected by the Natural Areas Division of the Department of Conservation, State of Maine as endangered, threatened or of special concern, including a bald eagle which nests on the Property as documented by the Maine Eagle Project, a project of the Maine Department of Inland Fisheries and Wildlife and the Wildlife Division, College of Natural Resources, University of Maine at Orono; and

[One can choose examples from rare communities (i.e. coastal plain ponds, emergent marshes) plants, fungi, lichens etc. as well as declining populations of more common communities, plants and animals not yet considered imperiled but whose decline is well-documented, or exemplary common communities. The justification for an easement need to be broader than the existence of one or two rare species, which might disappear or recover. Cite reference sources.]

****WHEREAS** the Property supports exemplary occurrences of several natural communities and communities in decline that may require protection in the future, such as the native grasses, flowers, and ground nesting birds and/or mammals that depend upon this native plant life for their survival; and

[Vary WHEREAS clauses to fit the ecosystem type. For example you may want to consider the following clauses if you are protecting large forest blocks:]

****WHEREAS**, the Property is situated in the Red Mountains subregion of the Northern Appalachians/ Boreal Ecoregion which is a relatively intact ecosystem and, as such, provides important habitat for a wide variety of birds, fish, and both aquatic and terrestrial flora and fauna; and

****WHEREAS**, the Property comprises a critical part of the 120,000-acre Red Mountain/Silver River Matrix Block, due to its proximity to approximately 50,000 acres of conservation lands in this matrix block, including the 30,000-acre Silver River State Forest, the adjoining 5,000-acre tracts under Forest Legacy Easement, the 600-acre Endicott conservation easement held by the Red Mountains Land Conservancy; and

****WHEREAS**, because of the integrated nature of the northern hardwood and boreal ecosystems, the use made of the Property will affect not only the conservation values of the Property but those of these neighboring conservation lands as well; and

****WHEREAS**, the Property provides or potentially provides suitable habitat for many wide-ranging wildlife species of conservation interest including bobcat, pine marten, black bear, moose, Canada lynx peregrine falcon, Bicknell's thrush, three-toed woodpecker, and spruce grouse; and

****WHEREAS**, the Property includes extensive mountain ranges and connecting ridges that are the highest in elevation north of the Yellow Mountains, with five peaks over 3,000 feet and three peaks—Sunset, Wildcat and Salamander Mountains—over 3,300 feet; and

****WHEREAS**, the Property contains 16 miles of headwater stream and brook systems including Sage Brook and Mill Brook, which help to maintain water quality and aquatic habitat in the Upper Maine River; and

***WHEREAS**, the specific conservation values of the Property are further documented in a report on file at the offices of the Grantee and incorporated herein by this reference (the “Baseline Documentation”), which consists of documentation that the parties agree provides, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt non-profit organization and a qualified organization under Sections 501(c)(3) and 170(h), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, established to “[insert mission statement quote]”.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of [NAME]., Grantor hereby voluntarily grants and conveys to Grantee and the respective successors and permitted assigns of Grantee, a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the “Easement”).

I. DEFINITIONS

Terms defined for the purposes of this Easement:

“Forever Wild” is a designation for land protected in its natural condition. The Ecological Integrity and wild character of the land are preserved and protected in perpetuity. Forever Wild land should be as free from human manipulation and disturbance as possible, with management actions, if any, primarily limited to ecological restoration or to preservation of natural communities and rare species at risk. Natural occurrences such as floods, weather events, and fire and native insect outbreaks should continue to influence the land over time, creating at times areas of downed, dead wood or early succession habitat. Land managed as wild benefits the natural communities thereon as well as humans who may enjoy the scenic beauty and other wilderness values through minimal impact, non-mechanized nature recreation, such as wildlife observation.

“Ecological Integrity” describes a condition in which natural processes (e.g. floods, fire, drought, seed dispersal, nutrient cycling) are allowed to occur within their natural variation over time without human manipulation or suppression (i.e. the timing, duration and extent of a flood is allowed to run its course). These natural processes influence habitats that support native plants, animals and other organisms in groupings appropriate to the natural landscape. This dynamic and changing environment provides opportunities for biological evolution.

“Conservation Sciences” include scientific disciplines such as conservation biology, restoration ecology, hydrology, zoology, ecology and botany when they are applied to the study, documentation, protection, maintenance, and restoration of ecological and evolutionary processes that sustain species, natural communities and landscapes.

“Ecological Assessment and Inventory (EAI)” is a process of gathering and integrating background and field research about the Property and its surroundings to document the ecological composition and condition of the Property and to evaluate its management needs. The EAI may include information on the area’s physical, biological or chemical constituents, its bedrock and surface geology, soils, ground and surface water, plants, animals, fungi or other pertinent organisms. Depending on the magnitude of the proposed management actions and the potential impacts on the Property, the EAI may also address the surrounding context of the Property: the flow of energy, materials, water, organisms or genetic material onto and off of the Property.

“Invasive Species” are non-native animal, plant or other organisms that through their capacity to spread into native systems demonstrably or potentially threaten native species.

“Native Species” are those that were present in an area prior to Euro-American settlement or that have moved into an area since that time without direct or indirect human assistance.

II. PURPOSE

It is the purpose of this Easement to protect the Property as Forever Wild, to safeguard biological diversity by protecting the environments and ecological processes including those described in the Whereas Clauses above, that support viable populations of native plants, animals and other organisms, and to preserve and restore the wild qualities and natural beauty of the Property as free from human disturbance, noise, artificial light and pollution as practicable.

[Attention: make sure to include language or references that the Grantor might need to qualify for property tax benefits if they are being sought.]

III. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES:

A. Prohibited Acts and Uses.

To ensure the wild character of the Property, in accordance with the Purpose set forth above, and subject to the exceptions set forth in paragraph IIIB and IV, below, the following acts and uses are prohibited on, above, through or below the Property. Prohibitions include but are not limited to those acts and uses specifically listed below:

[Following are some options to consider.]

1. Constructing or placing any temporary or permanent structure, or expanding an existing structure including but not limited to, building, dwelling, mobile home, tennis court, landing strip, swimming pool, fencing, bridge, culvert, asphalt or concrete pavement or any other impervious surface, bulkhead, seawall, wind generating facility, hydropower generating facility, sign, billboard or other advertising display, antenna, utility pole, telecommunication or any other tower, conduit, utility line, piling, permanent lighting, parking lot, sewage disposal system;
2. Constructing or placing any temporary or permanent structure, facility or improvement that detracts from the wild character of the land; that may encourage

human use that is more than transient; that may encourage people to leave trash behind, requiring maintenance or that may invite nuisance animals or insects; including but not limited to picnic tables, trash cans, benches, tent platforms, latrines, docks or boardwalks;

3. Mining, excavating, dredging or removing from the Property soil, loam, peat, gravel, sand, rock, oil, gas or other mineral resource or natural deposit;
4. Constructing, bulldozing, disking; plowing, harrowing, ditching, scraping, excavating, drilling, stabilizing or terracing banks or other topography, or otherwise destroying or altering the natural topography or living soils of the Property;
5. Cutting, removing, digging, plowing, disking, harrowing, ditching, scraping or otherwise destroying trees or other vegetation;
6. Placing, filling, spraying, storing, injecting or dumping on or applying to the Property chemicals (including but not limited to fertilizers, insecticides and herbicides, as defined under applicable federal or state law), or any toxic or hazardous substance or materials;
7. Placing, filling, spraying, storing, injecting or dumping on or applying to the Property trash, vehicle bodies or parts, junk, waste, bio-solids, sludge, other debris or any other unsightly or offensive material, or the installation of underground storage tanks;
8. Polluting, altering, depleting, diverting, siphoning, channeling, leveling, filling, drilling, diking, ditching, damming, draining, extracting or manipulating of any surface and/or ground water or of any wetland area;
9. Altering or manipulating the hydrological regime (timing, duration, frequency, magnitude or extent of hydrological processes such as natural flooding or drying);
10. Conveying water rights for purposes other than ecological conservation;
11. Maintaining existing roads or trails on the Property or constructing new roads or trails subject to the provisions of Section IIIB and IV to allow roads to revert or be restored to a natural state;

[Specific trails or roads to be maintained, should be noted in IIIB (Reserved Rights) and included in the Management Plan with maintenance specifications. It should be mapped and included in the Baseline Documentation and other pertinent documents.]

12. Operating, allowing operation of or encouraging the use of motorized or mechanized vehicles, including but not limited to off-road vehicles, dune buggies, snowmobiles, trail or other bicycles, motorized boats, jet skis, all-terrain vehicles, aircraft or hang-gliders or drop zones for parachuting;
13. Recreational activities that might disturb animals and vegetation, or that would leave behind tools or structures, such as rock climbing, horseback riding, repeated camping, or clearing vegetation for camp sites;

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14. Activities that might damage or disturb cliff communities, including but not limited to rock or ice climbing;
 15. Purposefully introducing non-Native species of plant or animal as defined by currently published floras and faunas applicable to State, Region or Bioregion. [e.g. Weatherbee, Pamela B. 1996, *Flora of Berkshire County Massachusetts*, The Berkshire Museum, Pittsfield, MA;
[It is important that monitors are able to identify Invasive and rare species to facilitate work with Grantor.]
 16. Purposefully planting or broadcasting any genetically modified organisms, transgenic organisms, or organisms replicated through genetic manipulation such as cloning;
[For example, bio-engineered pesticide-laden trees may damage food chains for birds or disrupt bacteriological cycles in leaf decay. An engineered gene may travel on its own to closely related plants, with subsequent disruption of ecosystems.]
 17. Introducing boats or other crafts or flotation devices **(if allowed under Section IIIB, and if applicable)** to the Property without prior cleaning to remove potential invasive species or pollutants;
 18. Managing the Property for purposes other than ecological function and restoration, rare species or other uses permitted in Section III B, below; such prohibitions include but are not limited to managing for forest products or other natural resources extraction or primarily to favor game species;
 19. Trapping, or removal of animals or plants;
 20. Any activity that would cause harm, harassment, or disruption to plants animals or other organisms, especially during nesting season or other sensitive times in the life cycles of wild species, including but not limited to use of machines, access by domesticated animals or pets, or open fires. Harm or disruption may include direct harm such as trampling, or indirect harm such as that due to noise or artificial light disturbance;
[Special management of recreation should be considered during sensitive seasons for wildlife, For example, if bothered by outdoor recreationists, black bears have been known to enter dens a full month earlier than normal, which might be detrimental to females attaining sufficient weight to give birth that winter.]
[Be sure to add prohibition against more than de minimus recreational use if the donor may at some point want to qualify for IRC section 2032A tax benefits.]
 21. Any other use of or activity on, above, through or below the Property that, in the sole judgment of the Grantee, would materially impair its Ecological Integrity;
 22. The legal or *de facto* dividing, subdividing, or partitioning of the Property for any purpose, except to deed part of the land to another conservation organization for conservation purposes in keeping with the Purpose of this Easement;
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23. Including the Property as part of a gross tract area of another property for the purposes of determining density, lot coverage, open space or land area requirements, under otherwise applicable laws, regulations or ordinances controlling land use and building density, or transferring development rights which have been encumbered or extinguished by this Easement to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

B. Permitted Uses, and Exceptions to Otherwise Prohibited Acts and Uses.

Notwithstanding the above prohibitions in subparagraph A, the following acts and uses are permitted to the extent that such acts or uses do not materially impair the conservation values and interests of the Property and are not inconsistent with the Purpose as defined in Section II above. Any such act or use must be part of an approved Management Plan as specified under Section IV (Management Plan). The exercise of any right reserved by the Grantor shall be in compliance with all applicable federal, state, and local laws.

[Here are some sample optional reserved rights.]

1. Insofar as such activities are not inconsistent with the Purpose of this Easement, the Grantor **[and the public, if desired]** can be provided with the opportunity to enjoy and learn from the wild and scenic nature of the Property through minimal impact, non-mechanized nature recreation, such as wildlife observation, snowshoeing, cross-country skiing, swimming, ecological educational opportunities, low-impact camping, and the quiet enjoyment and contemplation of the Property. All uses are subject to the restrictions set forth in III(A) above, and any access to and use of the Property shall be under and in accordance with the Management Plan;
2. The right, under and in accordance with the Management Plan, to control or remove for ecological purposes, non-Native or pest species, including feral domesticated cats, or to control disease outbreaks. If such control or removal involves the use of insecticides, herbicides or other biocides, such application shall be by the narrowest spectrum, least persistent material appropriate for the target species, and shall be consistent with the Purpose of this Easement;
3. The right, under and in accordance with the Management Plan, to alter vegetation, topography or hydrology in order to maintain or restore the Ecological Integrity of the Property;
4. The right, under and in accordance with the Management Plan, to allow limited hunting, **[trapping could be included; otherwise prohibit it in IIIA]** and fishing on the Property, provided that the species are abundant or over-abundant within the Five Bay Tidal Region as determined by the Management Plan process section IV below, and that the species have a legally defined hunting, trapping or fishing season under Maine regulations;
5. The right, under and in accordance with the Management Plan, to maintain existing fields on the Property [if any] for ecological reasons, such as providing

habitat for grassland nesting birds, by mowing, cutting, burning, grazing (except in riparian zones) or other approved means;

6. The right under and in accordance with the Management Plan, to install gates, barriers, signs and sight-pervious fences necessary to guide allowed appropriate [public] access on the Property, except that such fences, gates and signs should minimize the impact to the wild and scenic nature of the Property;
7. The right, under and in accordance with the Management Plan and as approved by the Grantee, to maintain the trail and any associated foot bridges and boardwalks located _____ as further specified on Exhibit ____ attached hereto, not to exceed [two] feet in tread width and [three] feet in total width maintained clear of obstacles; all in a manner in keeping with the wild character of the Property. Any bridges or boardwalks will be constructed of benign materials (i.e. no pressure treated wood);

[Make sure to specify any existing roads, boardwalks or bridges that one might need to maintain, repair, replace or remove, since there is otherwise a blanket prohibition under IIIA.]

8. The right, under and in accordance with the Management Plan, to retire or allow to revert to a natural condition roads, building sites or other areas altered by human activity.
9. The right, with prior written consent, to conduct scientific research and monitoring activities so long as such activities do not involve (a) alteration of the physical features of the environment, including but not limited to soils, water flow, ground-water flow and topography; (b) alteration of vegetation in a total area larger than [X] acres; or, (c) installation of research equipment for more than a twelve month period. Scientific research activities not meeting the above criteria shall only be conducted if included in an approved Management Plan and directly relevant to the management of the Premises to achieve the purposes of the Easement.

[A science-based conservation organization like The Nature Conservancy, might want to reserve the right to conduct science on land owned by them without requiring a Management Plan.]

IV. MANAGEMENT PLAN

If the Grantor deems it necessary to take any actions to protect or restore the Property's Ecological Integrity as defined in Purpose (II), or to accommodate permitted human access to the Property as defined in Exceptions to Otherwise Prohibited Acts and Uses (IIIB) , or to allow an exception to prohibited activities as defined in Discretionary Consent (V), below, a Management Plan ("Plan") will be developed according to the procedures outlined in Exhibit A.

[If appropriate, reference a Grantee's Affirmative Rights section in which Grantee would reserve the right to commission and create the Management Plan, and to enter the Property to undertake actions relating to the Plan.]

The Plan will be prepared in consultation with one or more qualified conservation scientists (for example, a conservation biologist, forest ecologist or restoration ecologist) based on an Ecological Assessment and Inventory. The depth and extent of inquiry of the Plan and its level of specificity will be appropriate to the proposed activity and any ecological disturbance which might occur as a result of the proposed actions, as further described in Exhibit A. The Plan may consider the surrounding landscape context of the Property as well as the Property itself. It will include specific provisions for approval procedures, monitoring, evaluation, updates, notices, time frames and dispute resolution.

V. DISCRETIONARY CONSENT

Grantee's consent for an activity otherwise prohibited or possibly prohibited under Section III A (Prohibited Acts and Uses), above, or for any activity requiring Grantee's consent under Section III. B. (Permitted Uses and Exceptions to Otherwise Prohibited Acts and Uses) above, may be given only under the following conditions. If, owing to unforeseen or changed circumstances, such an activity is requested by the Grantor, the Grantee may, in its sole discretion, give permission only if the activity: (1) is consistent with the Purpose of the Conservation Easement as determined by the Grantee, (2) either enhances or does not impair the conservation values associated with the Property and (3) is an exception for one time only and 4) is deemed desirable by the Grantee. Such requests for permission shall be in writing and shall describe the proposed activity in sufficient detail, as determined by Grantee, to allow the Grantee to make the judgments listed above.

If permission for the activity is given by the Grantee, it shall be in writing and shall document how the activity meets the requirements of this section. The permission would allow the activity for one time only. If any such activity is determined by Grantee to have more than de minimus ecological impacts, then it must be part of an approved Management Plan developed according to Section IV (Management Plan) and the procedures in Exhibit A.

Notwithstanding the foregoing, the Grantee and/or Grantor have no right or power to agree to any activity that runs counter to the Purpose of the Easement or that would result in the Easement's termination or that would cause it to fail to qualify as a valid easement under the requirements of Section 170(h) or, the Internal Revenue Code governing "Qualified Conservation Contributions", including any regulations issued pursuant thereto, or under _____ [cite/state requirements if applicable]; nor to allow any commercial recreational activities that could be deemed more than de minimis, nor to allow any residential, commercial (other than de minimis recreational activities), or industrial structures or activities.

V. LEGAL REMEDIES OF THE GRANTEE

A. Notice and Demand

If the Grantee determines that the Grantor is in violation of this Easement, the Grantee shall provide written notice in accordance with Section XII, Notices, to the Grantor. The written notice will identify the violation and may request a meeting to discuss corrective action to cure the violation. However, if at any time the Grantee determines, at its sole discretion, that the violation constitutes immediate and irreparable harm, the Grantee may enter the property and

pursue its lawful remedies to mitigate or prevent harm to the conservation values protected by this Easement. No prior written notice would be required.

B. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this Easement by appropriate legal proceedings, **[you may want to include the phrase “including ex parte actions”. This gives you leverage to move ahead even if the landowner does not show up. This is not a very popular clause with landowners.]** and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Property to its condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

C. Reimbursement of Costs of Enforcement

The Grantor, and thereafter the successors and assigns of the Grantor, covenant and agree to reimburse the Grantee for all reasonable costs and expenses (including reasonable attorneys’ fees) incurred in enforcing this Easement or in remedying or abating any violation thereof.

D. Grantee’s Disclaimer of Liability

By its acceptance of this Easement, the Grantee does not undertake any liability or obligation relating to the condition of the Property.

E. Non-Waiver

The manner and timing of the enforcement of the terms of this Easement shall be at the reasonable discretion of the Grantee, and any forbearance by the Grantee to exercise rights under this Easement shall not be deemed or construed to be a waiver of such rights.

F. Acts Beyond Grantor’s Control

Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor’s control, including without limitation fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

VI. ACCESS

[On property open to the public, the following language would be modified. Whether the land is open to the public or not, the easement should set forth appropriate ecological parameters on access]:

The Easement hereby conveyed does not grant to the Grantee, to the general public, or to any other person any right to enter upon the Property except that there is granted to the Grantee and Grantee's respective representatives the right to enter the Property when:

(1) inspecting the same to determine compliance and consistency with the terms of this Easement; and

(2) enforcing the terms of this Easement; and

(3) taking any and all actions with respect to the Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof.

[optional: (4) with prior notice/approval, minimal impact pedestrian use of the Property for field trips, research and outdoor educational opportunities, so long as such activities do not negatively impact the ecological health of the property or the conservation purposes of this Easement.]

[optional: (5) with prior notice/approval the right to install signs to the effect that this property is protected by a Conservation Easement; any signs will be subject to the Management Plan process and will be designed and constructed in such manner that minimizes their impact to the wild nature of the Property.]

VII. EXTINGUISHMENT

A. Grantee's Receipt of Property Right

The Grantor and the Grantee agree that the granting of this Easement gives rise for purposes of this paragraph to a real property right, immediately vested in the Grantee.

B. Value of Grantee's Property Right

The real property rights arising from the granting of this Easement have a fair market value that is at least equal to the proportionate value that this Easement determined at the time of the conveyance bears to the value of the unrestricted Property at that time. Such proportionate value of the Grantee's property right shall remain constant.

C. Right of Grantee to Recover Proportionate Value at Disposition

If any occurrence ever gives rise to extinguishment or other release of this Easement under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

D. Grantor/Grantee Cooperation Regarding Public Action

If ever all or any part of the Property or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee

shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.

E. Allocation of Expenses upon Disposition

All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Grantee in shares equal to such proportionate value.

F. Continuing Trust of Grantee's Share of Proceeds of Easement Disposition

The Grantee shall use Grantee's share of the proceeds in a manner consistent with the conservation purposes of this Easement.

VIII. LIMITATION ON AMENDMENT

If owing to unforeseen or changed circumstances Grantor and Grantee agree that an amendment to, or modification of this Easement would be appropriate and desirable, Grantor and Grantee may jointly amend this Easement under the following circumstances. The amendment shall be consistent with the conservation purposes of this Easement, and shall enhance protection of or further clarify, but not impair, the conservation values protected by this Easement. The amendment shall not affect the qualification of this Easement to or the status of the Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections [cite applicable State law] of the General Laws of [State Name], nor shall the amendment affect its perpetual duration. All state laws regarding amendments of easements will be followed. Proposed amendments will be evaluated according to the procedures outlined in Exhibit B [see comment below].

Under no circumstances shall any additional residential, recreational, industrial or commercial structures or any industrial or commercial activities be allowed. Nor shall any commercial recreational activities that could be deemed more than de minimus, not otherwise allowed herein, be allowed on the Property. Any such amendment shall be recorded at the [NAME] Registry of Deed, after all approvals required by law have been obtained.

[No organization or property owner should ever agree to an easement with the idea that its terms will be changed later. However, in the rare event that an easement must be modified, clarified, or made more restrictive, a careful evaluation must be undertaken.

Consult appropriate experts or scientists to determine if the proposed amendment creates any detriment to the conservation values protected by the Easement. After a thorough review, a determination will be made as to whether the proposed changes, in any way, would diminish the overall goals and objectives of the original easement. If the proposed amendment would diminish the easement or in any way be detrimental to the conservation values protected by it, the proposed amendment should be denied.

If it is determined that the original goals and objectives will not be diminished by the proposed amendment, then ask an attorney and an appraiser to help

determine if the proposed amendment might entail a financial value that could create a private inurement issue. Does the proposed amendment increase the property value by restoring rights that the original easement prohibited, creating an ethical and perhaps an IRS issue?

Whether or not an income tax deduction was taken for the original easement, the restrictions of the easement are "assets" of the land trust and cannot be given away to a private party. If there is value given back through the new amendment, there must be an exchange of equal or better conservation and financial value. This requires an appraisal of the financial and conservation values to ensure that what the land trust receives is the equivalent or better than the right given away. However, this transaction must not be a purchase back of any extinguished right.

A lawyer must make a determination that the proposed amendment complies with applicable state laws, including the state's enabling legislation for conservation easements.

Finally consult with all parties that need to be part of the decision-making process, or signatories (i.e. the Grantor, and co-holders, committees, the Board, funders, agencies, regulatory boards, banks or mortgage holders, third party beneficiaries, etc.)

Easement provisions should be considered unchangeable when they are being negotiated. We recommend that each group develop careful Amendment procedures and append them as an Exhibit as per above.]

VIII. ASSIGNABILITY

A. Running of the Burden

The burdens of this Easement shall run with the Property in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Property.

B. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; the Grantor on behalf of Grantor and all successors and assigns appoint the Grantee as attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantor and all successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit

The benefits of this Easement shall be in gross and shall not be assignable by the Grantees, except in the following instances and from time to time:

- (1) as a condition of any assignment, the Grantee requires that the purpose of this Easement continues to be carried out;
- (2) the assignee(s), at the time of assignment, qualify under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder,

and under [site here applicable state law] as an eligible donee(s) to receive this Easement directly; and

(3) Grantee may assign its interest in this Easement to the other, provided that both agree to such assignment and provided that such assignment would not lead to merger of the fee to either.

IX. SUBSEQUENT TRANSFERS:

The Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property.

X. NOTICE OF PROPOSED TRANSFER OF PROPERTY OR INTEREST:

The Grantor agrees to promptly notify Grantee in writing of any proposed transfer or sale of the Property or any interest in all or a portion of the Property and provide the opportunity for Grantee to explain the terms of the Easement to potential new owners or interest holders prior to any closing or transfer.

XI. ESTOPPEL CERTIFICATES:

Upon request by the Grantor, the Grantee shall within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Easement.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally with a written receipt or sent by first class mail, return receipt requested, postage prepaid, addressed as follows:

To Grantor:

[Name]
[Address].
[City, State, Zip]

To Grantees:

[Name]
[Address].
[City, State, Zip]

XIII. EFFECTIVE DATE:

This Easement shall be effective when the Grantor and the Grantee have executed it, and it has been recorded.

XIV. RECORDATION:

Grantees shall record this instrument in timely fashion in the official records of [Region Name] District Registry of Deeds.

XV. GENERAL PROVISIONS

A. Controlling Law.

The interpretation and performance of this Easement shall be governed by the laws of the [State Name].

B. Liberal Construction.

Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purposes of [Grantee Name]. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability.

If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby.

D. Entire Agreement.

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement, all of which are merged herein.

E. Successors.

The covenants, terms, conditions and restrictions of this Easement shall be binding upon and inure to the benefits of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property

TO HAVE AND TO HOLD unto Grantee, and the successors and assigns of Grantee, forever. IN WITNESS WHEREOF Grantor and Grantee have set their hands under seal on the day and year first above written.

Executed under seal this _____ day of _____, 200__.

[GRANTOR NAME]

By: _____

Its:

[STATE NAME]

_____, ss. _____ 200__

Then personally appeared the above-named _____ who acknowledged to me that _____ is the _____ of the [Grantor Name]. and acknowledged the foregoing instrument to be _____ free act and deed and that of [Grantor Name]., before me

Witness my signature and seal of office on this the _____ day of _____, 200_.

Notary Public

My commission expires:

Notary Public

My commission expires:

ACCEPTANCE OF GRANT

The above Conservation Easement is accepted this _____ day of _____,
200__.

[GRANTOR NAME]

By: _____

Its: President

[STATE NAME]

[County], ss. _____ 200_

Then personally appeared the above-named [Signer's Name], who acknowledged to me that he is the President of the [Grantee Name]. and acknowledged the foregoing instrument to be his free act and deed and that of the [Grantee Name], before me.

Witness my signature and seal of office on this the _____ day of _____,
200__.

Notary Public
My commission expires:

EXHIBIT A

GUIDING PRINCIPLES FOR MANAGEMENT PLAN

- A. The Purpose of this Easement is to protect the Property's Ecological Integrity. Appropriate management actions might include ecological restoration, rare species or natural community management, control of over-abundant species, or the careful accommodation of permitted human use of the Property. Any such actions will require a written Management Plan ("Plan").
- B. The Plan should be prepared in consultation with one or more qualified conservation scientist (for example, a conservation biologist, forest ecologist or restoration ecologist) with the depth of inquiry and detail of the Plan appropriate to the proposed activity and any ecological disturbance, which might occur as a result of the proposed activity. (For example, the decision to allow deer and turkey hunting on pre-existing trails would require a less elaborate Plan than the decision to alter a water course.) The Plan may consider the surrounding landscape context of the Property as well as the Property itself.
- C. The Management Plan will include, but not be limited to:
1. An Ecological Assessment and Inventory (EAI) as defined in Definitions (I).
 2. Overall goals and measurable steps to achieve goals and monitor impacts.
 3. Proposed actions, and the expected effect on the Property's Ecological Integrity, including what will or may happen if the proposed actions occur; and what will or may happen if the proposed actions do not occur.
 4. Measures needed to protect the Ecological Integrity of the Property during the course of the proposed actions.
 5. Specific procedures that the Grantor and Grantee will use to evaluate the progress toward and success of the overall goals; appropriate time frames for actions; Plan reviews; duration of the Plan; and Plan renewal, updates and amendments.
- D. The Plan will be reviewed and updated at least every ten (10) years to reflect naturally occurring changes in the Property, ongoing monitoring and research, and advancements in scientific understanding.
- E. The Grantor [or "the Initiating Party", if both Grantor and Grantee have the right to initiate a Management Plan] will provide the proposed Plan, including all updates and amendments, to the reviewing party in a timely manner and with sufficient information to enable all parties to determine if the proposed Plan is consistent with the terms of the Purpose of this Easement.
- F. Before providing written notice of approval, approval with conditions, or decision not to approve the Plan, the Grantee [or "Reviewing party"] may seek any expert advice necessary in determining if the Management Plan supports the Purpose of the Easement and the ecological and other values documented in the Whereas clauses above.
- G. If approval is not given, the Grantee should document the reasons. The Grantor may then address any concerns and re-submit the request, if applicable. No action described in the Plan will commence without written approval by the reviewing party.

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- H. All notices should be in writing delivered by registered mail, return receipt requested, or in person with a written receipt received.
 - I. To approve a Plan, the Grantee will be given at least sixty (60) days notice. Within thirty (30) days of receiving the Plan, the Grantee will notify the Grantor as to whether there is sufficient information to complete a review. The sixty (60) day review period begins once the Grantee has sufficient information.
 - J. Should the Grantee, after a good faith effort, require more than the time allotted for a given review, an extension shall be granted within reason. Any such extension will be mutually agreed upon. If parties do not agree, the extension period shall be for thirty (30) days. Failure of the Grantee to respond in any way within ninety (90) days shall constitute approval. Approval shall not be unreasonably withheld.
 - K. Any override of an otherwise prohibited activity is for the time period specified in the Plan only, must be consistent with the Section V, Discretionary Consent, and should not be deemed or construed to be a permanent waiver of that prohibition.
 - L. Nothing in the Plan shall give the Grantor and/or Grantee the right or power to agree to any activity that runs counter to the Purpose of the Easement or that would result in the Easement's termination, nor to allow recreational activities that could be deemed more than de minimus, nor to allow any residential, commercial or industrial structures or activities, road building or removal of gravel, mineral or other natural resources.
 - M. If monitoring by the Grantee or Grantor indicates that an activity allowed by the Plan is adversely impacting the Ecological Integrity of the Property, the activity should immediately cease and remain suspended until such a time as the impacts can be corrected and a future occurrence prevented. An evaluation committee, consisting of a representative of each party and a mutually agreed upon expert in an appropriate field of conservation science, should be formed to carefully review the situation. The evaluation committee shall then make recommendations as to (a) what, if any, remedial actions need to be undertaken; (b) how the adverse impacts can be prevented in the future; and (c) whether the activity is still appropriate. It will be the responsibility of the Grantor to implement the recommendations of the evaluation committee.