Town of Hampden

Planning and Development Committee

Wednesday August 17, 2016, 6:00 pm

Municipal Building Conference Room

Agenda

1. Approval of August 3, 2016 Minutes

2. Committee Applications:

3. Updates:

    A. Review of draft scope and budget for Market Study – Angus Jennings, Town Manager
    B. Status of MRC/Fiberight

4. Old Business:

5. New Business:

    A. Request from MRC for Hampden to hold perpetual Conservation Easement on approximately 80 acres

6. Zoning Considerations/Discussion

    A. Update on ordinance amendments in progress
    B. Discussion on Zoning Ordinance amendment process

7. Citizens Initiatives:
8. Public Comments:
9. Committee Member Comments:
10. Adjourn

Town of Hampden

Land & Building Services

Planning & Development Department

Memorandum

To: Planning & Development Committee
From: Karen M. Cullen, AICP, Town Planner
Date: August 15, 2016
RE: August 17, 2016 Agenda Items

In preparation for the upcoming meeting, I offer the following briefs on the agenda items:

3A Draft scope and budget for the market study: Town Manager Angus Jennings has been in discussions with a vendor regarding the scope and budget for the market study, and in addition to the materials in this packet, he will report on this at the meeting.

3B Staff will provide updates to the MRC/Fiberight project at each P&D Committee meeting to keep you abreast of the current status; as you are aware, it is constantly changing.

5A MRC Conservation Easement: We have been approached by MRC with a request for the Town of Hampden to be the holder of the Conservation Easement on approximately 80 acres at the Fiberight development. Town staff is researching the pros and cons of doing so and we will be prepared to have a discussion on this at the meeting.

6A The Planning Board will be holding a public hearing on September 14, 2016 on three of the four amendments in progress: the off-premises signage, the building permit threshold, and the amendments to the Shoreland Zoning Ordinance (available in the Planning Board packet for 8/10/2016; link to PB Packet and link to Shoreland Ordinance Amendments). After extensive discussion, the Ordinance Committee felt the accessory apartment language needed additional work and I am working on a new draft which will combine the existing two-family conversion provisions and the new accessory apartment provisions.

6B Zoning Ordinance Amendment Process: I have been researching the various laws and rules that govern the process to amend the Hampden Zoning Ordinance, and will present my findings to the Committee at the meeting. My intention is to have a discussion on what the process has been and how it might be streamlined while maintaining the opportunity for abundant discussion on multiple levels.

3-a

Town of Hampden
106 Western Avenue
Hampden, Maine 04444

Phone: (207) 862-3034
Fax: (207) 862-5067
Email:
townmanager@hampdenmaine.gov

TO: Planning & Development Committee

FROM: Angus Jennings, Town Manager

DATE: August 15, 2016

RE: Draft scope for market study

Please find attached a working draft scope for review and discussion. I've worked with W-ZHA (and other vendors in this arena) in the past (http://w-zha.com/) and have found W-ZHA's work to offer the highest value.

The initial phase of work would provide some value. However, my goal is to get the second phase of work done, as this end product – supportable square footage by use in various locations – is what I think will be most valuable. However, at present I am not prepared to recommend that Hampden take on the full cost to complete this work.

I have reached out to the economic development staff in Bangor and Brewer to discuss whether there may be an opportunity to jointly commission the work. Since the proprietary data is for a sub-region, by joining forces there'd be some efficiencies on both data and travel costs. I'd envision that focus groups, public meetings, estimates of supportable SF development, and targeted recommendations would be per-community.

On Wednesday I'd like to discuss the draft scope and the potential to partner with nearby communities to reduce project costs. If there continues to be support to move forward, and if either Bangor or Brewer or both would like to join in, I'll set up a meeting shortly after Labor Day to fine tune objectives and scope, then work with the vendor to refine budget. A specific allocation of funds would be sought from the TIF account prior to executing an agreement. My goal is to see the work itself begin mid fall.

PROPOSED SCOPE OF SERVICES

PHASE I: ECONOMIC FRAMEWORK AND PRELIMINARY OPPORTUNITIES

The purpose of this phase is to get the facts straight and to assess Hampden's economic development potential. This phase will address questions like:

- How is Hampden faring compared to other peer towns?
- What are Hampden's key assets and liabilities?
- What land uses are likely to have growth potential in the near term?

Task 1: Economic Framework

W-ZHA will evaluate population and household trends and projections for Hampden and Penobscot County. Employment trends by industry will be analyzed as well as County employment forecasts by industry. W-ZHA will analyze key demographic, social and economic data to provide a "snapshot" of Hampden and how it compares to its economic region and peer towns. (The Client will identify up to three "peer" towns.)

Task 2: Kick-Off Meeting and Interviews

W-ZHA will have reviewed Hampden's social and economic characteristics prior to the Kick-Off Meeting. As such, W-ZHA will be somewhat "up on the learning curve" by the time the Kick-Off Meeting takes place. The Agenda for the Kick-Off Meeting will include a review of the Scope of Services and Schedule; a Discussion of Issues; and a Briefing on Interview Candidates. The purpose of the Kick-Off Meeting is to ensure that W-ZHA is fully aware of the questions and issues the Town would like addressed as part of Phase I.

In the interest of budget, it is assumed that interviews with key stakeholders will be scheduled during the same day as the Kick-Off Meeting. Key stakeholders might include council members, developers, property owners, citizen groups, and business leaders.

Task 3: Analysis and Technical Memorandum

On a preliminary basis, W-ZHA will analyze market factors to assess the potential for various land uses. Market factors include the condition of existing supply, potential demand, and development economics. This analysis will not be a market analysis for each land use. It will assess indicators in order to determine market opportunities and constraints by land use.

W-ZHA, LLC

W-ZHA Budget Phase I: Economic Framework and Preliminary Opportunities					
Economic Framework			24	$130	$3,120
Trip			16	$240	$3,840
	Airfare	$380			
	Hotel	$300			
	Car	$120			
	Per Diem	$100			
					$900
Technical Memorandum			16	$240	$3,840
Grand Total					$11,700

The fee to perform Phase I is $11,700 including all expenses.

PHASE II: MARKET ANALYSIS (OPTIONAL)

After Phase I the Town may elect to proceed with a market analysis for a given land use. A market analysis identifies the level of demand for a given land use over a five to seven year timeframe. For a given land use, the market analysis identifies market opportunities by product type, location, and price point. Absorption is also projected.

W-ZHA has assumed that the market analysis will target a specific land use category such as retail/service/restaurant, residential, and/or office. The budget reflects this assumption. The Scope will be crafted if and when the Town decides to proceed with the market analysis.

An example Scope of Services for retail, service and restaurant use is provided below.

Task 1: Market Supply

Competitive retail, service and restaurant locations will be identified. The competitive market will be described in terms of rent, size, occupancy, approximate age and access to various market segments. The competitive position of the Study Area in light of the competition will be assessed.

Task 2: Market Demand

The trade areas will be identified for the establishment-types recommended. Retail and restaurant demand will be determined for the trade area. Potential niches for the Subject Site will be identified given the character of the existing supply.

Task 3: Retail Development Potential by Store Type

Retail development potential will be quantified in terms of store type (including restaurant and services), rent, supportable sales volume and associated square feet. Retail development potential will be quantified for a 10-year period. Specific siting parameters will be highlighted to optimize retail performance on the Subject Site.

The budget to perform a market analysis is $15,000. This budget includes one trip.

3-b

BANGOR DAILY NEWS (http://bangordailynews.com/)

PERC appeals state permits issued to Fiberight's Hampden project (https://bangordailynews.com/2016/08/12/news/state/perc-appeals-state-permits-issued-to-fiberights-hampden-project/)

Bridget Brown | BDN

Refuse-derived fuel made from municipal solid waste is moved toward the power generation system where it will be burned in a boiler to make electric power at Penobscot Energy Recovery Co. in Orrington. *Buy Photo* (http://store.bangordailynews.com/Other/Week-of-August-8-2016/i-6pbGTqG)

By Nick Sambides Jr. (https://bangordailynews.com/author/nick-sambides-jr/), BDN Staff
Posted Aug. 12, 2016, at 5:49 p.m.

AUGUSTA, Maine — Penobscot Energy Recovery Co (https://www.google.com/url?q=http://www.percwte.com/&sa=D&ust=1471053630346000&usg=AFQjCNEPRBG3j4E2k50nDrOSX0PK9d7dig).'s battle with Fiberight (https://www.google.com/url?q=http://fiberight.com/&sa=D&ust=1471053630346000&usg=AFQjCNHrd5zYtHmgf3qA5BJdybe2F5eJKQ) over central and northern Maine's post-2018 trash disposal future is headed to court.

Orrington-based PERC (https://www.google.com/url?q=https%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3D%26esrc%3Ds%26source%3Dweb%26cd%3D10%26cad%3Drja%26uact%3
partners-form-new-company-to-compete-for-post-2018-trash-business%252F%26usg%3DAFQjCNG10UWkV-JI3mJMohjiVn7zef6aKA%26sig2%3DS_NS2r9HZDqTr69l__wc9Q&sa=D&ust=1471053630347000&usg=AFQjCNHLCicgNly3t-eVaGxeCCc__sdvBw&ref=inline), along with its majority owner, USA Energy of Minnesota, and Exeter Agri-Energy, filed an appeal in Kennebec County Superior Court on Friday saying that the Maine Department of Environmental Protection erred in giving three permits (https://www.google.com/url?q=http%3A%2F%2Fbangordailynews.com%2F2016%2F07%2F15%2Fnews%2Fstate%2Fstate-issues-permits-for-proposed-waste-to-energy-plant-in-hampden%2F&sa=D&ust=1471053630349000&usg=AFQjCNGcX0X7FxDi7cY7tb468fq9eJe7_w&ref=inline) to Fiberight's proposed $69 million waste processing plant in Hampden.

A spokesman for the Fiberight effort dismissed the appeal, saying it was unlikely to have any impact.

The DEP on July 14 issued final Solid Waste, Air Emissions and Stormwater Management and Natural Resources Protection Act permits for the waste-to-energy plant proposed for the "triangle" area between Ammo Industrial Park, Interstate 95 and Coldbrook Road.

Story continues below advertisement.

Incinerators and Thermal Oxidizers

Custom Designed and Installed Systems. Request A Quote Today!

(412) 655-0955

PROCESS COMBUSTION CORPORATION Serving Industry Since 1969

The DEP issued the licenses "despite serious deficiencies in the record and in contravention of existing statutory and regulatory requirements," according to PERC's 10-page Petition for Review of Final Agency Action (https://www.google.com/url?q=https://drive.google.com/file/d/0BwX4t-nQWw05ODFXV213Nm5IQnFIT3REVGE1R1hPb2hKOXRz/view?usp%3Dsharing&sa=D&ust=1471053630351000&usg=AFQjCNFnF6KOpMYqW8b306MPZXF8jO4IPA).

The deficiencies, according to the petition, include failures to demonstrate the technical and financial abilities to build the plant. The company's proposal also isn't consistent with Maine's solid waste hierarchy, contains insufficient documentary evidence, and should have had a review process that included public hearings, according to the petition.

The DEP relied "too heavily on inconsistent and incomplete information from the applicants. Maine people who care about the environment should be deeply concerned, as should those communities that have committed to send their trash to Fiberight after 2018," said Robert Knudsen, vice president of USA Energy Group, in a statement released Friday.

Greg Lounder, executive director of the Municipal Review Committee, which represents communities served by PERC, said in an email that MRC "expected this appeal in effort to derail our project."

"We are confident that it will not impede our plans to ensure affordable, environmentally sound disposal of [municipal solid waste] for our communities after 2018," Lounder added.

USA Energy is the majority owner and managing general partner of PERC's waste-to-energy facility serving communities in eastern, northern, central and midcoast Maine. The facility receives, processes and incinerates municipal waste, turning it into renewable electricity and dramatically reducing the volume of waste that needs to go to a landfill, company officials have said.

Exeter Agri-Energy creates energy and other products from organic waste and stands to be affected if the Hampden plant is built.

Fiberight CEO Craig Stuart-Paul praised the issuance of the permits last month.

"This puts us one step further to realizing the type of waste diversion and recycling experienced in hundreds of advanced waste processing plants in Europe, a solution that the U.S. has been slow to adopt," Stuart-Paul said. "Maine has long held a special respect for its environment, and the State is leading the way in environmentally beneficial solid waste management with its approval of our permits."

Fiberight anticipates that it will complete the engineering and financing for the project later this summer, with construction and commissioning running through 2017.

DEP has 40 days to respond to the petition, with legal briefs to follow, PERC officials said.

BDN writer Nok-Noi Ricker contributed to this report.

https://bangordailynews.com/2016/08/12/news/state/perc-appeals-state-permits-issued-to-fiberights-hampden-project/ (https://bangordailynews.com/2016/08/12/news/state/perc-appeals-state-permits-issued-to-fiberights-hampden-project/) printed on August 15, 2016

5-a

Town of Hampden

Land & Building Services

Planning & Development Department

Memorandum

To: Planning & Development Committee
From: Karen M. Cullen, AICP, Town Planner
Date: August 16, 2016
RE: Conservation Easement at MRC/Fiberight Project

The Town has been approached by the proponents of the MRC/Fiberight project to inquire as to whether the Town would hold the conservation easement for approximately 80 acres at the site. Town staff has been researching this issue over the last two weeks and has corresponded at length with Fiberight representatives as well as other entities including the Landmark Heritage Trust and the Maine Coast Heritage Trust.

Based on our current understanding of the requirements for monitoring the activities on the 80 acre easement, we believe the holder of the easement will have significant responsibilities and a fair amount of resources will be needed to monitor the easement.

Angus Jennings <townmanager@hampdenmaine.gov>

Hampden conservation easement opportunity

1 message

Johanna Szillery <jszillery@ces-maine.com> Fri, Jul 22, 2016 at 2:36 PM
To: "townmanager@hampdenmaine.gov" <townmanager@hampdenmaine.gov>

Good afternoon, Mr. Jennings,

Thanks for taking the time to talk with me briefly about the opportunity of a conservation easement that is part of the MRC/Fiberight project. The parcel of land is an approximately 80-acre area which adjoins the MRC/Fiberight facility and is accessed via the Coldbrook Road. We are gauging the interest of the Town of Hampden in holding the conservation easement on this parcel.

As part of the compensation for impacts to wetlands associated with the development of the site, the MRC will put this 80-acre parcel of land into a conservation easement. I was part of the team that completed the natural resource surveys on the site, and am familiar with the Site. In general, the parcel is an undeveloped parcel of land which has been recently harvested for timber. There are numerous vernal pools on the Site, which have breeding wood frog, spotted salamander, and blue spotted salamander breeding activity. Portions of the conservation easement land area contain a deer wintering habitat. The goal of the conservation easement is the protection and enhancement of the deer wintering habitat, and protection of vernal pools, wetlands, aquatic habitats, riparian areas, buffers, and uplands. The easement holder has the right to preserve and protect the goals of the conservation easement, to inspect the property, and prevent activity on the parcel which is inconsistent with the goals of the easement. Attached, please find the Conservation Easement document sets out the rights and responsibilities of the grantor/ parcel owner (the MRC), and the easement holder. Also attached are a few plans to help you get a sense for the property.

On behalf of the MRC, CES has approached Bangor Land Trust and Landmark Heritage Trust regarding holding the conservation easement on this property. Both land trusts have declined holding this easement, primarily due to capacity and staffing issues.

If this is an opportunity that is of interest to you, I would be happy to talk further and/ or to show you the property.

Johanna

Johanna Szillery, C.S.S. ♦ Environmental Scientist

P 207.989.4824 | **F** 207.989.4881 | **C** 207.991.8867

CESINC

Engineers ♦ Environmental Scientists ♦ Surveyors

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made on *[ENTER DATE]*, by **Municipal Review Committee, Inc.**, a Maine non-profit organization with a place of business at 395 State Street, Ellsworth Maine 04605 (hereinafter referred to as the "Grantor"), in favor of *[ENTER NAME OF HOLDER]* with a place of business at (hereinafter referred to as the "Holder").

WITNESSETH

WHEREAS, the Grantor holds title to certain real property situated in Hampden, Maine described in a deed from *[ENTER NAME GRANTEE]* to Grantor dated *[ENTER DATE]*, and recorded in Book _____ Page _____ at the Penobscot County Registry of Deeds;

WHEREAS, the Grantor intends to grant a Conservation Easement over a portion of the real property described in said deed, which portion (hereinafter the "Property") is more particularly bounded and described as follows:

See **Exhibit A**

WHEREAS, the Property remains in a substantially undisturbed state and has significant value for the protection of a relatively natural habitat for plant and animal communities; and

WHEREAS, the Grantor and the Holder, recognizing the value of the Property as described above, desire to conserve the natural values of the Property by the conveyance of a conservation easement over the Property, which easement shall benefit, protect, and conserve the natural values of the Property, conserve and protect the indigenous animal and plant population, and limit the use or development of the Property that would substantially conflict with its natural, scenic condition.

NOW, THEREFORE, in consideration of the foregoing and the covenants, terms, conditions, and restrictions herein contained, the Grantor hereby GRANTS to the Holder, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity, a conservation easement in gross, assignable as provided herein, over the Property (the "Easement"):

1. PURPOSE: It is the purpose of this Easement to provide a significant public benefit by assuring, without limitation except as expressly set forth herein, (a) that the Property will be retained forever in its natural substantially undeveloped condition except as otherwise noted herein; (b) the protection and enhancement of deer wintering habitat, protection of vernal pools, wetlands, aquatic habitats, riparian areas, buffers, and uplands; (c) the protection of wildlife habitat; and (d) the prevention of any use of the Property that will unreasonably impair or interfere with the conservation values of the Property. The foregoing purposes, without limitation, shall be collectively referred to herein as "Conservation Values". Grantor intends that this Easement will confine the use of the Property to such activities as are not inconsistent with

the purpose of this Easement or as may be permitted pursuant to the terms and conditions set forth herein.

2. RIGHTS OF HOLDER: To accomplish the purpose of this Easement, the following rights are conveyed to the Holder, subject to the provisions of this Easement:

A. The right to preserve and protect the Conservation Values of the Property;

B. The right to enter and inspect the Property over other lands of the Grantor at any reasonable time and in any reasonable manner, within the narrowest practical confines, provided that the time and manner of such entry does not unreasonably interfere with the use of the Property permitted hereunder or the use of the other lands of Grantor, and to enforce by proceedings at law or in equity the covenants hereinafter set forth, including the right to require restoration of the Property to its condition prior to any breach hereof;

C. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require reasonable steps to restore such areas or features of the Property that may be damaged by any inconsistent activity or use.

3. USE OF PROPERTY; RESTRICTIONS: The Property may be used only for conservation, low-impact outdoor recreation, and educational and conservation activities (as defined herein), except that, notwithstanding the foregoing, all activities stated in the Forest Habitat Management Plan as approved by the Maine Department of Inland Fisheries and Wildlife (MDIFW) (attached hereto as Exhibit B and incorporated herein) shall be expressly allowed. The Property and this Conservation Easement are subject to existing rights of record, including but not limited to any rights associated with the former Searsport-Limestone pipeline of Bangor Gas LLC (the "pipeline corridor") and related easements of record, and notwithstanding anything to the contrary herein, exercise of such rights shall be expressly allowed. Except as otherwise expressly set forth in this Easement and subject to existing rights of record, unless the Grantor obtains the prior written approval of the Holder, the Property shall remain undeveloped in perpetuity. In addition, the following restrictions shall apply:

A. No industrial, quarrying, mining or other extractive activities and no commercial activities are permitted on the Property, except the commercial sale of forest products as an incidental use or byproduct of the Forest Habitat Management Plan.

B. Except as otherwise permitted in this Easement (including but not limited to the Forest Habitat Management Plan and exceptions noted below), no soil, loam, peat, sand, gravel, concrete, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk waste, pollutants, or other fill material will be placed, stored, or dumped on the Property or the surface waters contained thereon, nor shall the topography of the area be altered or manipulated in any way;

C. Except for the express purpose of maintenance of existing paths, trails, including but not limited to the trail that follows the pipeline corridor, as well as for the express purpose of creating and maintaining any trails (e.g., skid trails) as part of the Forest Habitat Management

Plan, no ditches shall be dug, and no draining of the Property shall take place, and no pumping or any other removal of water shall occur on the Property, nor shall the manipulation or alteration of natural water courses or hydrology occur on the Property; and

D. Except for the emergency access to accommodate a threat to human health or life, and except for winter snowmobile use over well-frozen ground of the pipeline corridor, and except for equipment required to conduct forest management activities as directed in the Forest Habitat Management Plan, and except for motorized access required by the Americans with Disabilities Act, no trucks, cars, dirt bikes, ATVs, bulldozers, backhoes, or other motorized vehicles or mechanical equipment shall be permitted on the Property.

4. RESERVED RIGHTS:

A. It is expressly understood and agreed that this Easement does not grant or convey to members of the general public any rights of ownership, entry or use of the Property. This Easement is created solely for the protection of the Property and Grantor reserves the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the right to exclude others and to use the Property for all purposes consistent with this Easement.

B. The Grantor reserves to itself the right to create, restore, remediate, monitor and maintain those areas within the easement as required by the Compensatory Mitigation Plan Permit No. _____ issued by the Department of the Army, New England District, Corps of Engineers, dated _____.

5. DIVISION: The Property shall remain in its current configuration as an entirety without division, partition, subdivision or other legal or *de facto* creation of lots or parcels in separate ownership. Notwithstanding the foregoing, any portion of the Property may be conveyed to an entity that meets the assignee qualifications set forth in Section 11 for permanent conservation ownership by such a qualified entity, subject to the prior written consent of Holder and continuation of the terms of this Easement; and Grantor may enter into boundary line agreements to resolve bona fide boundary disputes with the prior written consent of Holder, which consent shall not be unreasonably withheld, conditioned, or delayed, provided that the total acreage of land protected under this Easement shall not be reduced materially thereby without court order. Any real property received by Grantor in exchange for such conveyance shall automatically become subject to this Easement; any real property conveyed by Grantor in exchange for such conveyance shall be automatically released from the operation of this Easement, subject to obtaining court order, if applicable. Furthermore, the Property may not be included as part of the gross tract area of other property not subject to this Easement for the purposes of determining density, lot coverage or land area requirements, under otherwise applicable laws, regulations, or ordinances controlling land use and building density.

6. STRUCTURES; SURFACE ALTERATIONS:

A. *Structures*. As of the date of this grant, to the Grantor's knowledge, excepting the existing Bangor Gas pipeline shown on Exhibit A, there are no structures on the Property. No new structures of any kind, temporary or permanent, may be located, constructed, or maintained

on the Property, unless if such location, construction, or maintenance of structures is necessary to enable the purposes of the Easement, and then only upon the express written approval of the U.S. Army Corps of Engineers (ACOE) and Maine Department of Environmental Protection (MDEP). Grantor may place signs and informational kiosks on the Property.

B. *Surface Alterations*. As of the date of this revised, amended and restated grant, there are no surface alterations on the Property, except for those paths, trails and pipeline corridor identified on Exhibit A attached hereto and hereby incorporated by reference. Notwithstanding the other provisions of this Section 5, Grantor reserves the right to maintain and remediate paths, trails and the pipeline corridor, given that such remediation be only on existing trails, only the minimum size and extent needed, and only where necessary to prevent erosion or impacts to natural resources, and that any bridging proposed be approved by Holder and permitted where necessary prior to construction. Grantor's right to maintain trails does not obligate Grantor to maintain all trails and Grantor may choose to close and abandon trails or portions thereof. No further alteration to the surface of the earth is permitted on the Property, unless it is necessary to enable the purposes of the Easement.

7. DEFINITIONS:

A. "Low-impact, non-commercial outdoor recreation, nature observation, and study" is dispersed, traditional, non-commercial outdoor activities that do not generally rely on buildings or spectator facilities, and may include hunting, fishing and trapping, hiking, bird watching, picnicking, canoeing, cross country skiing, snow-shoeing, bicycling, swimming, primitive non-commercial camping, and outdoor education, including scientific and archaeological research and observation, and other non-commercial outdoor activities of a similar nature.

B. A "wetland" is any area saturated or inundated by water at a frequency or for a duration sufficient to support, and which under normal circumstances does support, vegetation typically adapted for life in saturated soils, or any land below an identifiable debris line left by tidal action (including sand dunes), and land with vegetation present that is tolerant of salt water and occurs primarily in salt water or estuarine habitat. The "upland edge" of a wetland is the boundary between upland and wetland, and not the edge of open water.

C. A "path" or a "trail" is a way designed for and used by pedestrians, cyclists using non-motorized cycles, and snowmobiles traveling well-frozen ground.

D. The "pipeline corridor" is the area shown on Exhibit A which crosses the Parcel from south to north. The pipeline is currently operated by Bangor Gas LLC.

8. NON-MERGER: The parties acknowledge and agree that the provisions herein shall survive, in full force and effect, in the event the Property or any portion thereof belonging to one party is acquired by the other party.

DRAFT

9. DURATION: The Easement and covenants set forth herein shall run with and bind the land for the benefit of the Property and shall inure to the benefit of and be enforceable by the Grantor, the Holder, or the owner of the Property, or any portion thereof, their heirs, representatives, successors, and permitted assigns.

10. NOTICES: Any notice required hereunder will be deemed duly served if mailed by regular or certified United States mail, postage prepaid, return receipt requested, or delivered by recognized overnight courier, to the Grantor and Holder at the addresses listed below:.

Grantor:

Municipal Review Committee, Inc. (MRC)
Attn: Greg Lounder
395 State Street,
Ellsworth, Maine 04605

Holder:

[ENTER NAME OF HOLDER]

11. ASSIGNMENT: This Easement is transferable, but only if Holder assigns its rights and obligations under this Easement to an organization of a kind that is qualified to be a holder of conservation easements as provided by 33 M.R.S. §§ 476 et seq., as amended, and that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code (or successor provisions thereof) and is ready, willing and able to undertake, and does so in writing, the responsibilities of a holder of this Easement. Holder shall give Grantor at least thirty (30) days written notice of its intention to transfer or assign its rights under this Easement.

12. PROPERTY TRANSFERS: Grantor shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property. Failure to comply with this paragraph does not impair the validity or enforceability of this Easement:

NOTICE: This property is subject to a Conservation Easement recorded in Book _____ Page _____ of _____ on, _____201__.

The Grantor shall provide a 60-day advance notification to the Holder and the Army Corps of Engineers pursuant to permit no. _____, before any action is taken to void or modify this instrument, including transfer of title to, or establishment of any other legal claims.

Holder shall be under no obligation to maintain the Property or pay any taxes or assessment thereon.

13. [INTENTIONALLY OMITTED]

14. PUBLIC ACCESS: Nothing contained herein should be construed as affording the general public physical access to or use of any portion of the Property. Nothing in this Easement should be construed to preclude Grantor's right to grant and regulate public access across the Property, provided that such use is not inconsistent with the Conservation Values herein, and further provided that more than a *de minimis* use of the Property for commercial outdoor recreation is prohibited, in accordance with Internal Revenue Code Section 2031(c) and regulations promulgated thereunder. Grantor and Holder claim all of the rights and immunities against liability for injury to the public to the fullest extent of the law under 14 M.R.S. § 159-A, as amended, and successor provisions thereof, and under any other applicable provision of law and equity. Nothing contained herein shall be construed to require Grantor to preclude forms of access mandated by legislation to protect the rights of people with disabilities.

15. COSTS AND LIABILITIES:

A. Grantor shall pay and discharge when due all property taxes and assessments imposed upon the Property and any uses thereof and, subject to Section 14(E) below, to avoid the imposition of any liens that may impact Holder's rights hereunder. Grantor shall keep the Property free of any liens or encumbrances, including without limitation those arising out of any work performed for, materials furnished to or obligations incurred by Grantor but specifically not including any liens or encumbrances arising from the Holder's or Holder's assignees, employees or agents exercise of or actions under this Easement for which Holder shall be responsible and liable**.**

B. Grantor acknowledges that Holder has no possessory rights in the Property, nor any responsibility or right to control, maintain, or keep up the Property other than the limited right to access the property for the express purpose of carrying out terms of this Easement. Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Grantor shall indemnify, defend and hold Holder harmless from and against any and all liabilities, costs, damages, or expenses of any kind including any and all liabilities, costs, damages or expenses of the pipeline corridor that Holder may suffer or incur as a result of or arising out of the activities of Grantor on the Property, except to the extent that costs or damage are proximately caused by the negligent act of Holder or Holder's assignees, employees or agents .

C. Grantor shall have responsibility, and the Holder shall have no responsibility whatsoever, for the operation of the Property, the monitoring of hazardous and other conditions thereon. Notwithstanding any other provision of this Easement to the contrary, the parties do not intend and this Easement shall be construed such that: (1) it creates in the Holder the obligations or liabilities of an "owner" or "operator" as those words are defined and used in the environmental laws, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Code, Sections 9601 et seq.) or any successor or related law; (2) it creates in the Holder obligations or liabilities of a person described in 42 United States Code Section 9607(a)(3) or any successor or related law; or (3) the Holder has any control over the Grantor's ability to investigate and remediate any

hazardous materials associated with the Property. The term "environmental laws" includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous substances.

16. CONSERVATION EASEMENT REQUIREMENTS UNDER MAINE LAW AND U.S. TREASURY REGULATIONS:

A. This Easement is created pursuant to the Uniform Easement Act at Title 33, Maine Revised Statutes Annotated, Sections 476 through 479-C, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.

B. This Easement is established exclusively for conservation purposes pursuant to the Internal Revenue Code, as in effect as of the date of this Easement (hereinafter referred to as the "Code") at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c), 2055 and 2522, and under Treasury Regulations at Title 26 C.F.R. Sections 1.170A-14 et seq., as amended.

C. Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated, Section 476(2)(B), as amended, and is a Qualified Organization under Section 170(h)(3), to wit: a publicly supported, nonprofit 501(C)(3) organization operated primarily to accept lands, easements, and buildings for the purpose of protecting natural, scenic, educational, recreational, and open space values of real property, having a commitment to protect the conservation purposes of the donation, and the resources to enforce the restrictions hereof.

D. [Intentionally Omitted].

E. Grantor warrants that there are no liens or mortgages outstanding against the Property as of the date of this grant. Grantor has the right to use the Property as collateral to secure the repayment of debt, provided that the right of Holder to enforce the terms, restrictions and covenants created under this easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien. The restrictions of this Easement and Holder's right to enforce them shall be superior to any mortgage or lien, except with respect to Holder's right to monetary damages based upon a violation that occurs subsequent to recording of such mortgage or lien.

F. This Easement may be extinguished or terminated only by judicial order in a court of competent jurisdiction. It is the intention of the parties that an extinguishment or termination be approved by a court only if all of the conservation purposes of this Easement are impossible to accomplish, and if both Grantor and Holder agree. Notwithstanding the foregoing, but subject to more restrictive laws and regulations, if any, if an interest in this Easement is subject to the exercise of the power of eminent domain or Holder receives a formal notice of the intention to exercise such powers by an agency of government entitled to do so, Holder, in its sole discretion, may issue prior written consent, without a judicial order, to a partial or complete extinguishment or termination of the Easement.

DRAFT

G. Grantor and Holder agree that the donation of this Easement gives rise to a property right which vests immediately in Holder and which has a fair market value equal to the amount by which the fair market value of the unrestricted Property is reduced by the restrictions imposed by this Easement, as of the date of the execution of this Easement. Should this Easement be extinguished, in whole or in part, any increase in value of the Grantor's estate must be paid by Grantor to Holder, or to another entity selected by the court, referred to herein as Holder's successor, as required under 33 M.R.S. § 477-A(2)(B). Without limitation of Holder's rights under the foregoing, but subject to an offset for any such amount actually paid to Holder, or to Holder's successor, therefor, in the event of such extinguishment, Holder shall be entitled to be paid no less than a portion of any proceeds of sale, exchange or involuntary conversion computed as to the greater of: (i) the proportion that the value of this Easement bore to the value of the unrestricted Property on the date of execution of this Easement; or (ii) the proportion that the value of this Easement bears to the unrestricted Property at the time of the easement's extinguishment or diminishment. Such ratio shall not include value attributable to improvements made to the Property by Grantor after the date of this grant. Holder shall use its share of the proceeds or other moneys received under this paragraph in a manner consistent, as nearly as possible, with the stated, publicly beneficial purposes of this Easement. Holder has the right to record a lien on the Property to secure its rights under this Paragraph.

H. In accordance with Treasury Regulations, Grantor agrees to notify Holder prior to undertaking any activity or exercising any reserved right that may have a material adverse effect on the purposes of this Easement.

17. BREACH OF EASEMENT:

A. If a breach of this Easement, or conduct by anyone inconsistent with this easement, comes to the attention of the Holder, it shall notify the Grantor, in writing, of such breach of conduct, delivered in hand or by Certified Mail, return receipt requested. Notwithstanding anything to the contrary herein, Grantor is not responsible for and Holder may not bring an enforcement action against Grantor for injury to or change in the Property resulting from natural causes or environmental catastrophe beyond Grantor's control, such as 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 or from actions of the public or of third parties other than those who enter the Property pursuant to a contractual relationship with Grantor. Nothing herein shall be construed to limit the right of Holder and/or Grantor to seek damages or other compensation from such third parties.

B. The Grantor shall, within sixty (60) calendar days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those reasonable actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to take all reasonable actions to repair any damage. The Grantor shall promptly notify the Holder of its actions taken under this section. If additional time is necessary to complete all reasonable actions, Grantor shall notify the Holder in writing of the schedule for completion of necessary actions.

DRAFT

C. If the Grantor fails to take such proper action under this preceding paragraph, the Holder shall, as appropriate to the purposes of this easement, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Holder's reasonable expenses, court costs and legal fees, shall be paid by the Grantor.

D. If the Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damages to the property, or to prevent action or potential action which is determined to be inconsistent with the stated purposes of this Easement, the Holder may pursue any remedy it deems appropriate to correct such breach, with prior notice to the Grantor and without waiting for the period provided for cure to expire. Grantor is not liable for any actions or lack of actions taken by Bangor Gas Company or any other person in regards to the pipeline and pipeline corridor.

E. The Holder 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 this Easement.

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

18. GENERAL PROVISIONS:

A. *Applicable Law*. The terms of this grant will be interpreted liberally to carry out its conservation purposes in accordance with the laws of the State of Maine.

B. *Non-Waiver*. The failure or delay of the Holder, for any reason whatsoever, to enforce this Easement shall not constitute a waiver of its rights and the Grantor hereby waives any defense of laches, prescription, or estoppel.

C. *Interpretation*. Any uncertainty in the interpretation of the Easement should be resolved in favor of carrying out the stated purposes of this grant and the intentions of the parties hereto. Nothing in this Easement should be construed to permit any activity otherwise prohibited by the valid laws and regulations of any federal, state, or local government or governmental agency having competent jurisdiction over the Property.

D. *Compliance*. The Grantor agrees to notify Holder of any transfer, long-term lease or sale of the Property. A person's or entity's obligation hereunder as Grantor or successor owner will cease, with respect to the Property, if and when such a person or entity ceases to have any present, partial, contingent, collateral or future interest in the Property, but only to the extent that it is in compliance herewith. Responsibility of owners for breaches of this Easement that occur prior to transfer of title will survive such transfer. Holder will execute estoppel certificates, certifying the degree of compliance of the Property with the terms of this grant, at the Grantor's cost, after an inspection has been made by Holder upon reasonable prior notice.

DRAFT

E. *Amendment and Discretionary Consents.* Any discretionary consent by Holder, permitted by this Easement for uses that are conditional or not expressly reserved by the Grantor, and any legally permissible amendment hereto, may be granted to the Grantor only if the Holder has determined, in its reasonable discretion, that the proposed use furthers or is not inconsistent with the purposes of this Easement, substantially conforms to the intent of this grant, meets any applicable conditions expressly stated herein, and does not materially increase the adverse impact of expressly permitted actions under the Easement, provided that Holder has no right or power to permit residential or commercial construction, or to permit any change that would limit the term or terminate this Easement, or impair the qualification of this Easement or the status of the Holder under any applicable laws, including Title 33 Maine Revised Statutes Sections 476 et seq., or Code Section 170(h).

F. *Severability*. If any provision of this Easement or the application of any provision to a particular person or circumstances is found to be invalid, the remainder of this Easement and the application of such provision to any other person or in any other circumstance shall remain valid.

G. *Incorporation of Recitals*. The recital clauses set forth above are incorporated herein by reference as though set forth verbatim herein.

H. *Standing to Enforce*. Only the Holder and Grantor may bring an action to enforce this grant, and nothing herein should be construed to grant the public standing to bring an action hereunder, nor any rights in the Property by adverse possession, prescription, or otherwise.

I. *Successors and Assigns*. Whenever in this Easement there is reference made to either of the parties hereto, such reference shall be deemed to include, wherever applicable, a reference to the successors and permitted assigns of such party. The provisions of this Easement shall be binding upon and shall inure to the benefit of the heirs, representatives, successors, and permitted assigns of Grantor and Holder.

J. *Notification Upon Action to Void or Modify this Easement.* The Grantor shall provide a 60-day advance notification to the Holder and the Army Corps of Engineers pursuant to permit no. NAE-2010-2107, before any action is taken to void or modify this instrument, including transfer of title to, or establishment of any other legal claims.

K. Notwithstanding anything in this Easement to the contrary, and without acknowledging the validity of any such claims or rights that may exist now or in the future, this Easement shall not impair any prescriptive or other right in the Property that may have been acquired by the public or the Holder prior to the date of this Easement or that may be acquired after the date of this Easement, or any other right the public or the Holder may have to use or access the Property pursuant to law.

TO HAVE AND TO HOLD the said Easement unto the said Holder and its successors and assigns forever.

SIGNATURES BEGIN ON NEXT PAGE

GRANTOR'S SIGNATURE

IN WITNESS WHEREOF, the said Grantor, **Municipal Review Committee, Inc.**, has caused this Revised, Amended and Restated Conservation Easement to be signed by its duly authorized representative on this ___ day of _____, 2016.

Witness:

_____

Municipal Review Committee, Inc

By:_____
Name:_____
Its:_____
Duly Authorized

STATE OF MAINE

_____, ss. _____, 2016

Personally appeared the above-named _____, _____ of Municipal Review Committee, Inc., and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said Municipal Review Committee, Inc.

Before me,

_____
Notary Public/Attorney at Law
Printed name

My Commission Expires: _____

DRAFT

HOLDER'S ACCEPTANCE

IN WITNESS WHEREOF, the above and foregoing Conservation Easement was authorized to be accepted by the *[ENTER NAME OF HOLDER]* as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through _____, its _____, hereunto duly authorized, this ____day of _____, 2016.

Witness: ***[ENTER NAME OF HOLDER]***

_____

By:_____
Name:_____
Its:_____
Duly Authorized

STATE OF MAINE

_____, ss. _____, 2016

Personally appeared the above-named _____, _____ of *[NAME OF HOLDER]*, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said *[NAME OF HOLDER]*.

Before me,

_____
Notary Public/Attorney at Law
Printed name

My Commission Expires: _____

DRAFT

Exhibit A

Property Plan

DRAFT

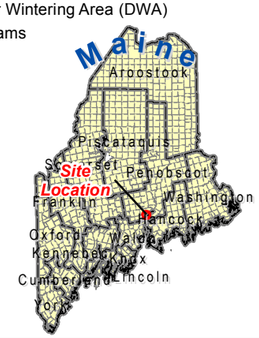
Mitigation Plan

N
W E
S

700 350 0 700
Feet

Legend

- Approximate Proposed Road Location
- Approximate Proposed Building Location
- Approximate Proposed Facility Property Boundary
- Parcels
- Town-owned Lands
- Conserved Lands
- National Wetlands Inventory (NWI)
- Deer Wintering Area (DWA)
- Streams



MAP NOTES:

1: SITE DATA DEVELOPED BY CES, INC., DECEMBER, 2015.

2: ABUTTING PARCEL DATA AND LOT NUMBERS COURTESY OF THE TOWN OF HAMPDEN. PARCEL IDs ARE MAP AND LOT NUMBERS POPULATED FROM THE [MAP_LOT] FIELD. ALL PARCEL BOUNDARIES SHOULD BE CONSIDERED APPROXIMATE. THIS MAP DOES NOT REPRESENT A SURVEY.

3. OWNERSHIP RECORD OF LOT 09-0-037 IS BASED OFF OF THE LATEST ASSESSMENT RECORD WHICH WAS UPDATED MORE RECENTLY THAN ARCHIVE GIS DATA RECORDS.

4. BASE MAPPING LAYERS ARE SERVER-BASED IMAGERY, TOPOGRAPHIC IMAGES, OR TERRAIN DEPICTIONS COURTESY OF ESRI. ACQUIRED OCT., 2014.

5: MAP IS PROJECTED USING THE UNIVERSAL TRANSVERSE MERCATOR (UTM) PROJECTION, ZONE 19 NORTH, METERS AND REFERENCES THE NORTH AMERICAN DATUM OF 1983 (NAD83).

6: NORTH ARROW IS REFERENCED TO GRID NORTH.

7: INTENDED FOR REFERENCE PURPOSES ONLY. THE MRC & CES, INC. AND THEIR AFFILIATES ARE NOT RESPONSIBLE FOR THE MISUSE OF THIS MAP OR DATA DEPICTED HEREIN. ALL ACREAGES ARE APPROXIMATE.

CES INC
Engineers • Environmental Scientists • Surveyors

MXD: P:\10973-MRC-Municipal-Review-Committee\003-Processing Facility-DSP\07-GIS_Data\MXD\Mitigation\DRAFT_11x17_061615.mxd

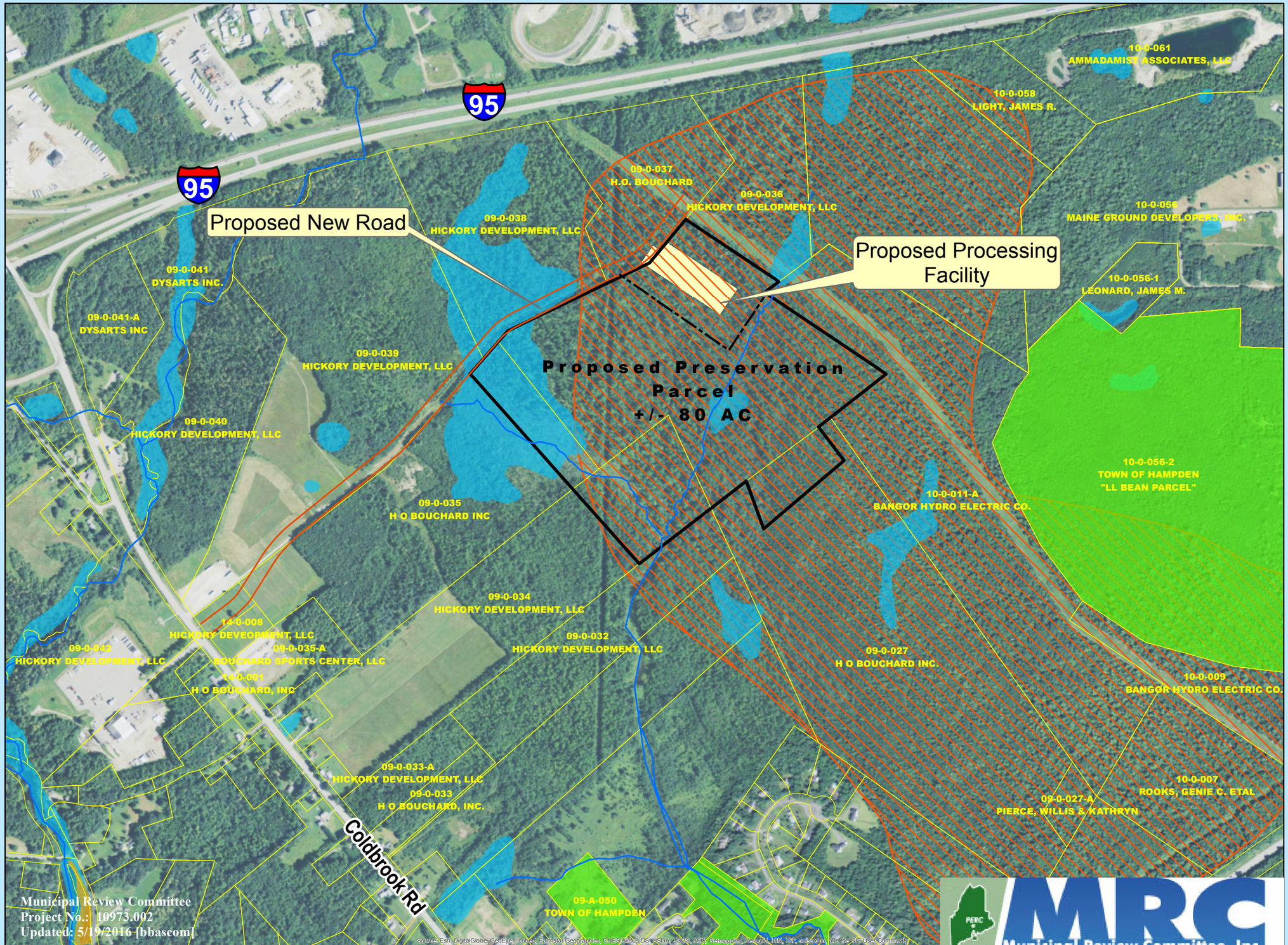


Exhibit B

Forest Habitat Management Plan

DRAFT

notice the volume and page in which the record of said notice may be found. The person filing the notice shall deliver or mail a copy thereof to the current record owner of the land at the last known address of such owner. [1975, c. 511, (NEW).]

SECTION HISTORY
1975, c. 511, (NEW).

§473. PERSONS UNDER DISABILITY; 2-YEAR PERIOD NOT SUSPENDED

The notice provided in section 472 may be filed for record by the claimant or any other person acting on behalf of any claimant who is under a disability or unable to assert a claim on his own behalf, but no disability or lack of knowledge of any kind shall suspend or extend the periods provided for such filing. [1975, c. 511, (NEW).]

SECTION HISTORY
1975, c. 511, (NEW).

§474. STATUTES OF LIMITATIONS NOT EXTENDED; BAR OR RELEASE NOT AFFECTED

Nothing contained in this subchapter shall be construed to extend the period limited for the bringing of an action or for the doing of any other required act or to otherwise extend any statute of limitations; nor shall it be construed to affect the nature of the right and interest by descent, the time at which it becomes vested or any provision of law regarding its bar, release or other disposition. [1975, c. 511, (NEW).]

SECTION HISTORY
1975, c. 511, (NEW).

§475. LIBERAL CONSTRUCTION

This subchapter shall be liberally construed to affect the legislative purpose of enhancing the marketability of the title to land by eliminating the possibility of ancient marital interests that are outstanding on the record but are unclaimed. [1975, c. 511, (NEW).]

SECTION HISTORY
1975, c. 511, (NEW).

Subchapter 8-A: CONSERVATION EASEMENTS

§476. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 395, §3 (NEW).]

1. Conservation easement. "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality of real property.

[1985, c. 395, §3 (NEW) .]

2. Holder. "Holder" means:

A. A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or [1985, c. 395, §3 (NEW).]

B. A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property. [1985, c. 395, §3 (NEW).]

[1985, c. 395, §3 (NEW) .]

3. **Real property.** "Real property" includes without limitation surface waters.

[2007, c. 412, §1 (AMD) .]

4. **Third-party right of enforcement.** "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, nonprofit corporation or charitable trust, which, although eligible to be a holder, is not a holder.

[1985, c. 395, §3 (NEW) .]

SECTION HISTORY
1985, c. 395, §3 (NEW). 2007, c. 412, §1 (AMD).

§477. CREATION, CONVEYANCE, ACCEPTANCE AND DURATION

1. **Conservation easement.** Except as otherwise provided in this subchapter, a conservation easement may be created, conveyed, recorded, assigned or partially released in the same manner as other easements created by written instrument. A conservation easement may be terminated or amended by the parties only as provided in section 477-A, subsection 2.

[2007, c. 412, §2 (AMD) .]

2. **Right or duty.** No right or duty in favor of or against a holder arises under a conservation easement unless it is accepted by the holder and no right in favor of a person having a 3rd-party right of enforcement arises under a conservation easement unless it is accepted by any person having a 3rd-party right of enforcement.

[1985, c. 395, §3 (NEW) .]

3. **Limitation.** Except as provided in this subchapter, a conservation easement is unlimited in duration unless:

A. The instrument creating it otherwise provides; or [1985, c. 395, §3 (NEW).]

B. Change of circumstances renders the easement no longer in the public interest as determined by the court as provided in section 477-A, subsection 2, paragraph B in an action under section 478. [2007, c. 412, §3 (AMD).]

[2007, c. 412, §3 (AMD) .]

4. **Interest.** An interest in real property in existence at the time a conservation easement is created shall not be impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

[1985, c. 395, §3 (NEW) .]

5. **Entitled to enter land.** The instrument creating a conservation easement must provide in what manner and at what times representatives of the holder of a conservation easement or of any person having a 3rd-party right of enforcement shall be entitled to enter the land to assure compliance.

[1985, c. 395, §3 (NEW) .]

SECTION HISTORY
1985, c. 395, §3 (NEW). 2007, c. 412, §§2, 3 (AMD).

§477-A. CONSERVATION EASEMENT STANDARDS

1. **Conservation values.** A conservation easement executed on or after the effective date of this section must include a statement of the conservation purposes of the easement, the conservation attributes associated with the real property and the benefit to the general public intended to be served by the restriction on uses of the real property subject to the conservation easement.

[2007, c. 412, §4 (NEW) .]

2. **Amendment and termination.** Amendments and termination of a conservation easement may occur only pursuant to this subsection.

A. A conservation easement executed on or after the effective date of this section must include a statement of the holder's power to agree to amendments to the terms of the conservation easement in a manner consistent with the limitations of paragraph B. [2007, c. 412, §4 (NEW).]

B. A conservation easement may not be terminated or amended in such a manner as to materially detract from the conservation values intended for protection without the prior approval of the court in an action in which the Attorney General is made a party. In making this determination, the court shall consider, among other relevant factors, the purposes expressed by the parties in the easement and the public interest. If the value of the landowner's estate is increased by reason of the amendment or termination of a conservation easement, that increase must be paid over to the holder or to such nonprofit or governmental entity as the court may designate, to be used for the protection of conservation lands consistent, as nearly as possible, with the stated publicly beneficial conservation purposes of the easement. [2007, c. 412, §4 (NEW).]

[2007, c. 412, §4 (NEW) .]

3. **Monitoring.** The holder of a conservation easement shall monitor the condition of the real property subject to the conservation easement at least every 3 years and shall prepare and retain a written monitoring report in its permanent records. The holder shall make available to the landowner, upon request, a copy of the monitoring report.

[2007, c. 412, §4 (NEW) .]

4. **Failure to comply.** Failure to comply with the requirements of subsection 1, subsection 2, paragraph A or subsection 3 does not invalidate a conservation easement otherwise entitled to the protections of this subchapter.

[2007, c. 412, §4 (NEW) .]

SECTION HISTORY
2007, c. 412, §4 (NEW).

§478. JUDICIAL ACTIONS

1. **Action or intervention.** An action affecting a conservation easement may be brought or intervened in by:

A. An owner of an interest in the real property burdened by the easement; [1985, c. 395, §3 (NEW).]

B. A holder of the easement; [2007, c. 412, §5 (AMD).]

C. A person having a 3rd-party right of enforcement; or [2007, c. 412, §5 (AMD).]

D. The Attorney General; except that the Attorney General may initiate action seeking enforcement of a conservation easement only when the parties designated as having the right to do so under the terms of the conservation easement:

(1) Are no longer in legal existence;

(2) Are bankrupt or insolvent;

(3) Cannot be contacted after reasonable diligence to do so; or

(4) After 90 days' prior written notice by the Attorney General of the nature of the asserted failure, have failed to take reasonable actions to bring about compliance with the conservation easement. [2007, c. 412, §5 (NEW).]

[2007, c. 412, §5 (AMD) .]

2. **Intervention only.** An action affecting a conservation easement may be intervened in by a political subdivision of the State in which the real property burdened by the easement is located, in accordance with court rules for permissive intervention.

[2007, c. 412, §5 (AMD) .]

3. **Power of court.** The court may permit termination of a conservation easement or approve amendment to a conservation easement that materially detracts from the conservation values it serves, as provided in section 477-A, subsection 2, paragraph B, and may enforce a conservation easement by injunction or proceeding at law and in equity. A court may deny equitable enforcement of a conservation easement only when it finds that change of circumstances has rendered that easement no longer in the public interest or no longer serving the publicly beneficial conservation purposes identified in the conservation easement. If the court so finds, the court may allow damages as the only remedy in an action to enforce the easement.

[2007, c. 412, §5 (AMD) .]

4. **Confidentiality of records.** Documents and records obtained by the Attorney General, which would otherwise not legally be subject to public disclosure, may be shared with other public agencies but must be held as legally confidential under Title 1, section 402, unless disclosed in the course of a public proceeding in court.

[2007, c. 412, §5 (NEW) .]

No comparative economic test may be used to determine under this subchapter if a conservation easement is in the public interest or serves a publicly beneficial conservation purpose. [2007, c. 412, §5 (NEW).]

SECTION HISTORY
1985, c. 395, §3 (NEW). 2007, c. 412, §5 (AMD).

§479. VALIDITY

A conservation easement is valid even though: [1985, c. 395, §3 (NEW).]

1. **Not appurtenant to interest in real property.** It is not appurtenant to or does not run with an interest in real property;

[1985, c. 395, §3 (NEW) .]

2. **Assigned to another holder.** It can be or has been assigned to another holder;

[1985, c. 395, §3 (NEW) .]

3. **Not recognized at common law.** It is not of a character that has been recognized traditionally at common law;

[1985, c. 395, §3 (NEW) .]

4. **Negative burden.** It imposes a negative burden;

[1985, c. 395, §3 (NEW) .]

5. **Affirmative obligations.** It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

[1985, c. 395, §3 (NEW) .]

6. **Benefit does not touch or concern real property.** The benefit does not touch or concern real property;

[1985, c. 395, §3 (NEW) .]

7. **No privity of estate or of contract.** There is no privity of estate or of contract;

[2007, c. 412, §6 (AMD) .]

8. **Does not run to successors or assigns.** It does not run to the successor and assigns of the holder;

[2007, c. 412, §7 (AMD) .]

9. **Acquired for tax delinquency.** A lien has been established for property tax delinquency under Title 36, section 552, or title to the real property subject to the conservation easement has been acquired by procedures for enforcement and foreclosure of delinquent taxes under Title 36, chapter 105, subchapter 9; or

[2007, c. 412, §8 (NEW) .]

10. **Merger.** The title to the real property subject to the conservation easement has been acquired by the holder, unless the holder, with the consent of any 3rd party with rights of enforcement, replaces the conservation easement with legally binding restrictions under a conservation easement or declaration of trust at least as protective of the conservation values of the protected property as provided by the replaced easement.

[2007, c. 412, §9 (NEW) .]

SECTION HISTORY
1985, c. 395, §3 (NEW). 2007, c. 412, §§6-9 (AMD).

§479-A. APPLICABILITY

1. **Interest created after effective date.** This subchapter applies to any interest created after its effective date which complies with this subchapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

[1985, c. 395, §3 (NEW) .]

2. **Conservation easement created before effective date.** This subchapter applies to any conservation easement created before the effective date of this subchapter if the conservation easement would have been enforceable had it been created after the effective date of this subchapter, unless retroactive application contravenes the Constitution of Maine or the United States Constitution.

[1985, c. 395, §3 (NEW) .]

3. **Subchapter does not invalidate interest.** This subchapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under other laws of this State.

[1985, c. 395, §3 (NEW) .]

SECTION HISTORY
1985, c. 395, §3 (NEW).

§479-B. UNIFORMITY OF APPLICATION AND CONSTRUCTION

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the subchapter among states enacting it. [1985, c. 395, §3 (NEW).]

SECTION HISTORY
1985, c. 395, §3 (NEW).

§479-C. CONSERVATION EASEMENT REGISTRY

A holder of a conservation easement that is organized or doing business in the State shall annually report to the Department of Agriculture, Conservation and Forestry the book and page number at the registry of deeds for each conservation easement that it holds, the municipality and approximate number of acres protected under each easement and such other information as the Department of Agriculture, Conservation and Forestry determines necessary to fulfill the purposes of this subchapter. The filing must be made by a date and on forms established by the Department of Agriculture, Conservation and Forestry to avoid duplicative filings when possible and otherwise reduce administrative burdens. The annual filing must be accompanied by a $30 fee. The Department of Agriculture, Conservation and Forestry shall maintain a permanent record of the registration and report to the Attorney General any failure of a holder disclosed by the filing or otherwise known to the Department of Agriculture, Conservation and Forestry. The fees established under this section must be held by the Department of Agriculture, Conservation and Forestry in a nonlapsing, special account to defray the costs of maintaining the registry and carrying out its duties under this section. [2011, c. 655, Pt. II, §7 (AMD); 2011, c. 655, Pt. II, §11 (AFF); 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY
2007, c. 412, §10 (NEW). 2011, c. 655, Pt. II, §7 (AMD). 2011, c. 655, Pt. II, §11 (AFF). 2011, c. 657, Pt. W, §5 (REV).

Maine Department of
Agriculture, Conservation & Forestry

Conservation Easement Registry

FAQ

Frequently Asked Questions

1. What is a conservation easement?
2. What is the purpose of the registry?
3. I own land that has a conservation easement on it. Do I need to register?
4. What kind of easements need to be registered?
5. Who needs to register?
6. Is there an annual reporting deadline?
7. What is the Monitoring Status?
8. What information do I need to start the registration process?
9. Do I need to register a conservation easement for which my organization is a third-party Holder or enforcer?
10. Can I upload my information to the registry?
11. Can I download my information?
12. What is an amendment? What do I need to do?
13. I have a conservation easement that adds acreage to an existing easement. How do I register this?
14. The conserved property has been sold to a new owner. Do I need to do anything?
15. How do I handle subdivisions of the protected property?
16. How do I transfer a conservation easement?
17. How do I handle terminations of a conservation easement?
18. What is the internal ID number?
19. Why is the information entered into the registry so limited?
20. Is the conservation easement registry information available to the public?

1. What is a conservation easement?

A conservation easement is a legally enforceable restriction on the future uses of property, which can be sold or granted as a gift by the lands current owners. Granted in the form of a deed to a governmental entity or qualified conservation land trust, it is designed to preserve and protect the lands conservation values over time, while leaving the land in private ownership and on the tax rolls. The holders of the easement have the right to enforce the restrictions on the land. Conservation easements can be designed to keep a property in an essentially wild state, or to allow limited residential uses, farming and forestry. Some conservation easements grant public access on or over the private lands. All future owners of the land take it subject to the easements restrictions. Conservation Easements are authorized under state and federal law and have certain requirements that must be met to make them legally binding and, in the case of federal law, to make them deductible as a charitable gift. Experienced legal and accounting advice is essential to the landowner in making a decision to grant a permanent conservation easement. (see Title 33 MRS §476 et seq)

2. What is the purpose of the registry?

Conservation easements have become a very common tool used to protect Maines special character including its fish and wildlife habitat, farms, working forests, other natural resources, scenery, and outdoor recreation opportunities. In 2007, the Maine Legislature enacted a series of amendments to Maine law authorizing conservation easements (see now Title 33 MRS §476 et seq). Of particular note is the new requirement that conservation easement Holder monitor each of its easements **at least** once every three years. Because most conservation easements create perpetual restrictions on the use of the properties they affect, the Legislature also decided that it would be important to create a central registry of conservation easements to facilitate oversight and to track the use of conservation easements throughout the state.

3. I own land that has a conservation easement on it. Do I need to register?

No. The owner of the land "under" a conservation easement is not responsible for registration. Only the Holder of the easement must register it. Landowners may want to check with the organization holding the easement on their property to be sure it has

been registered but they, as landowners, have no legal responsibility for that action.

4. What kind of easements need to be registered?

Only conservation easements need to be registered in this registry. Do **not** register other real estate conveyances sometimes referred to as easements including historic preservation easements, solar easements, rights of way or utility easements. Some instruments labled "trail easements" actually cite Title 33 MRSA section 476 et seq and are thus conservation easements that should be registered. If the "trail easement" references Title 33 MRSA section 1581 et seq it does not need to be registered. If in doubt, contact the Registry Administrator.

5. Who needs to register?

Any entity that is the primary Holder of a conservation easement on property in the State of Maine is required to register all of the conservation easements it holds. Such entities include state and federal agencies, municipalities, quasi-municipal organizations such as water districts, local land trusts and any other charitable trust or nonprofit corporation. Title 33 MRS §476 et seq provides the legal authority for conservation easements in Maine. Parties listed as third party Holders or third party enforcers do not need to register that conservation easement.

6. Is there an annual reporting deadline?

YES. The annual renewal deadline is March 30. You should review your registry records for accuracy, add new conservation easements and update the monitoring status of each conservation easement. Your organization will need to pay its annual registration fee ($30.00 per organization) prior to that date as well. **Annual registration fee payment needs to be completed on line via credit cards. MasterCard or VISA is acceptable.** Whenever you sign-on to the registry after January 1 you will be reminded of the need to update records although you can be adding easements and managing your records at any time during the year.

7. What is the Monitoring Status?

Every conservation easement should be monitored regularly by the Holder. This activity includes a field visit to the property, typically a meeting with the landowner, and a written report that is held in the Holder's files. Maine law requires that all conservation easements be monitored at least once every three years and best practices entail annual monitoring. This data field is used to enter the date of the most recent monitoring report. If the easement is less than one year old, please enter the same date as the "Date of Recording".

8. What information do I need to start the registration process?

Initially you will need to create an account. This will require you to create a username and password and supply an email address for your organization to which you have access. The Registry will send a confirming email to that email address with instructions on how to activate the account. The initial activation will require the full name and mailing address of the organization, a contact name and phone number, the Maine corporate charter number (if any) and the type of organization. You will be prompted to pay an initial registration fee of $30 by credit card, (MasterCard or Visa). Please note that you cannot enter your registration data without first having entered a valid credit card number. Once you have activated your account you will be prompted to register all of your organization's conservation easements. You will need the following information:

Easement name

Counties and Towns affected

Execution date

Registry of Deeds Book/page (& recording dates)

Acreage (by town if more than one town)

Original grantor name

Current landowner name (can be multiples if original parcel has been subdivided)

Third Party holders (if any)

Most recent monitoring date

Amendments (if any) with recording information

9. Do I need to register a conservation easement for which my organization is a third-party Holder or enforcer?

NO. The primary Holder will register that conservation easement and should be listing you as third-party Holder or third-party enforcer as part of that registration.

10. Can I upload my information to the registry?

NO. Data security concerns and the likelihood of errors introduced during an upload preclude this option. Assuming your

organization has its records well organized, to complete the initial entry should average approximately 5 minutes per conservation easement. Once entered, annual updates of monitoring status will be very quick.

11. Can I download my information?

YES. You may download all of the data associated with your organization's registration. Downloads will be displayed as a comma-delimited text file with field names. This information can be saved to your computer as a text file for import to another database or cut and pasted into a spreadsheet like Excel. Because the Registry is a relational database, the information must be downloaded in several separate files. A unique identifier is provided with each so that you can import the data to your database and reassociate the data.

12. What is an amendment? What do I need to do?

Amendments to the conservation easement itself need to be added to your easement record. There is a set of fields for the County, book, page and date of registration for easement record. To add an amendment to an existing easement record, select the easement and chose the view/edit/amend option. At the bottom of the next screen will be an "Add Amendement" button. This will prompt you to enter the appropriate information. The sale of the conserved property itself is NOT an amendment.

13. I have a conservation easement that adds acreage to an existing easement. How do I register this?

If the easement falls exclusively within a single town, you can register this transaction as an amendment to the existing easement and then edit the acreage field on the easement itself to add the new acreage. If the easement adds acreage in a new town, you will need to register this as a new easement. Please use the "Comments" field on both the new and old easement to explain the relationship between the two easements.

14. The conserved property has been sold to a new owner. Do I need to do anything?

YES. Please update the Current Landowner field of the easement record. You should write over the name of the old (previous) landowner. Note: You do not need to enter any of the recording infomation for the sale (book and page). The sale of the land itself is NOT an amendment to the easement.

15. How do I handle subdivisions of the protected property?

Some conservation easements allow for division of the protected property. If this happens the Registry allows you to enter an additional Current Landowner name to the record of that easement up to 10. Such a division does not affect the conservation easement deed your organization holds and you do NOT need to transfer the easement or add an amendment.

16. How do I transfer a conservation easement?

The Registry provides a simple transfer feature. You only need to know the organizational name under which the recipient of the transferred easement is listed in the Registry. If the recipient is not already in the Registry, you will need to ask them to set up an active account. You will also need the recording information (book and page) of the deed of transfer. After submitting a request to transfer, the recipient will receive an email with the request. When they accept the transfer the Registry will make the update in its records.

17. How do I handle terminations of a conservation easement?

The termination of a conservation easement requires action by a court of law and is an unusual event. Should your organization hold a conservation easement which has been terminated, you will need to contact the Registry Administrator to confirm that this has occurred and to supply any documentation the Administrator may require. Upon confirmation of court decision, the Administrator will deactivate that conservation easement and it will no longer appear in Registry records as an active or valid conservation easement.

18. What is the internal ID number?

This is a unique number or code assigned by you exclusively for your own management of easement records held by your organization. By using this field you can cross check your information held in the Registry with your own records. This field is optional and can be left blank.

19. Why is the information entered into the registry so limited?

Our first task is to get the basic model of the Registry running smoothly. While there are many efforts underway in Maine and nationally to develop more sophisticated online tools for land conservation work, the Maine Legislature focused its initial expectations on a limited set of information for each conservation easement registered.

20. Is the conservation easement registry information available to the public?

YES. All information contained in the Registry is treated as a public record under Maine law and is available to the public upon

request. Parties seeking registry information should contact the Registry Administrator. The information is available only in tabular form and does not contain any maps or geospatial information at this time.

Return to Service Home

Questions about this Service? Contact the Department of Agriculture, Conservation and Forestry at: (207) 287-3200 or Email: EasementAdministrator@maine.gov

Copyright © 2009 All rights reserved.