

September 24, 2012

Mr. Todd Selig
Town Manager
Town of Durham
15 Newmarket Road
Durham, NH 03824

RE: Sprucewood Forest Project, Durham, NH

Dear Todd:

Please accept this letter and supporting documentation as a means to provide a brief update on the Sprucewood Forest project and request for the Town of Durham to consider the following: 1) taking ownership of the restricted fee on 176 acres of real property; and 2) authorize the expenditure of existing conservation funds to help acquire the property

As you may recall from our previous discussions, the proposed Oyster River project is a public/private collaborative to acquire 176 acres in Durham, NH. More importantly, acquisition of this key parcel will accomplish the following goals (see enclosed summary of ecological values):

- Protection of drinking water quality for two water sources
- Protect of important wildlife habitat, particularly for the New England Cottontail (NEC)
- Provide Public access for low impact recreational uses
- Provide connectivity to 2,200 acres of existing conservation land including the Amber Acres project currently in process

Over the course of the past three years, the Trust for Public Land has worked in partnership with the Town of Durham, NH Fish and Game, U.S. Natural Resource Conservation Service (NRCS) and other parties to secure significant funding for this project. To date, the project partners have raised \$2.964 towards our total goal of \$4.082 million to purchase the property and cover project related expenses (see enclosed budget). Funding secured to date includes: \$2,464,000 from the NRCS Wetland Reserve Program (WRP) and \$500,000 from the NH DES Aquatic Resource Mitigation Program.

In addition, we have applications pending for LCHIP and the NH Mooseplate program and will be embarking on an ambitious private capital campaign this fall to close the gap in public funding. While we are confident that these efforts will be successful, we cannot reach our goal without investment from the Town of Durham. Therefore, we respectfully request \$370,000 in funding from Durham, contingent upon the partners raising the remaining funds.

If our fund raising efforts are successful, we propose that Durham consider owning the property subject to a conservation easement held by NRCS. At this time, we anticipate that the property will be acquired in a two step process. First, NRCS will purchase a conservation easement from the current landowners through WRP. Once the easement is in place, TPL will exercise its option, which currently expires on December 31, 2012, to purchase the restricted fee (subject to the WRP easement) from the landowners and convey it to the Town of Durham.

Although the ownership structure and funding sources described above represents a change from our previous discussions regarding potential Coastal and Estuarine Land Conservation Program funding, the outcome remains unchanged. Under the terms of the WRP easement, the Town of Durham will: 1) achieve protection of a substantial portion of the Sprucehole aquifer in close proximity to its new wellhead, 2) retain the right to withdraw groundwater, 3) protect 4,600 feet of frontage on the Oyster River, and 3) create opportunities for public access for low impact recreational uses as well as educational and research purposes that may be identified by the Town.

Thank you in advance for considering this request. I look forward to joining the Durham Conservation Commission at the upcoming site walk and public hearing on October 3rd and welcome the opportunity to address the Town Council at your earliest convenience. In the meantime, please do not hesitate to contact me at (207) 772-7424 x. 2.

Signed,



Gregg Caporossi
Project Manager

Enclosures:

- Summary of Ecological Benefits
- Project Budget
- Maps
- Wetland Reserve Program Easement
- Exhibit D – Reserved Water Rights
- Sprucewood Retirement Trust Draft Restoration Plan
- Tecce Draft Restoration Plan

Summary of Ecological Values

Habitat Values

The property is entirely comprised of Tier 1 Habitat (highest habitat ranking) as determined by the New Hampshire Wildlife Action Plan due to the unique habitats and species found on the property, connectivity to existing conservation land and importance to maintaining water quality. According to the NH Natural Heritage Bureau, 14 threatened or endangered species have been found within one mile of the Property, some of which are likely to use the Property for foraging or breeding.

New England Cottontail

Of primary concern, the Property contains critical habitat for New England Cottontail (NEC) – a species that has recently been listed as endangered by the State of New Hampshire and a candidate species for federal listing. Recent surveys and modeling indicates that NECs inhabit less than 25% of their historic range from New York to Maine. In New Hampshire, wildlife biologists believe that as few as 100 individuals remain today. The population crash in New Hampshire is largely attributed to habitat loss as early successional habitat has grown into forestland or converted for development.

In recognition of this alarming trend, and in an effort to avoid federal listing, a broad based coalition of federal and state agencies, NGOs, municipalities and landowners are coordinating efforts to manage and restore habitat suitable for NECs through the New England Cottontail Initiative. Located within a NEC Focus Area, the proposed Sprucewood Forest project is regionally significant at a range-wide scale due to a number of factors.

According to NRCS Biologist Don Kierstead, the early successional habitat found on site could successfully be managed for NECs and is an ideal demonstration project due to the size of the habitat, connectivity with existing conserved lands and location within the existing NEC range. As a result, future migration along natural linkages without any major obstacles is likely to occur. For these reasons, protection of the Sprucewood Forest property is thought to be critical to maintaining NEC populations within the watershed. If acquired, NRCS would manage the Property to restore and maintain early successional habitat. All restoration and management costs associated with wetlands and/or NECs would be paid for by NRCS.

Water Quality Protection

The Sprucewood Forest project will help protect water quality in two important ways – both as a Durham/UNH drinking water supply and as a high-quality fresh water tributary to the Great Bay estuary.

Drinking Water Quality

The subject property includes 4,640 feet of river frontage on the Oyster River and lies in a critical location between two current drinking water sources (Oyster River reservoir and Lamprey River reservoir) and a future water source known as the Spruce Hole Aquifer. The Oyster River serves as the primary drinking water supply for the Town of Durham and the University of New Hampshire – serving a population of more than 16,000. The Oyster River provides about 54% (576 million gallons/day) of the water used by Durham and the University of New Hampshire today. The Property also abuts the parcel containing Durham's new municipal wellhead and sits atop the aquifer which supplies that well. According to Professor Tom Ballestero, a well-respected Civil Engineer at University of New Hampshire, protecting this property will help buffer all three water sources and help ensure high water quality now – and in the future.

Aquatic ecosystem and biodiversity

Given its location less than four miles from the point at which the Oyster River flows into Great Bay, protection of this property would help maintain the rich aquatic ecosystem that characterizes the Great Bay estuary. The Great Bay is formed by the outflow of five rivers that make up the Great Bay watershed, which encompasses nine percent of the land area of the state of New Hampshire. The abundance of fresh water dumped into this tidal estuary causes the mixing of fresh and salt water that provides a rich aquatic habitat and unusual biodiversity supporting more than 150 rare species and 55 exemplary natural communities and ecosystems. These communities and ecosystems include provide feeding, breeding, and nursery grounds for a variety of finfish, oysters, shellfish, waterfowl, wading birds, and shorebirds. The Great Bay is the most important waterfowl breeding, migrating, and wintering area in the state.

The section of the Oyster River that flows past the property has been designated as a **Special Significant Stream Reach**, in the State's Land Conservation Plan for NH's Coastal Watersheds due to the "significant living resources with the stream or river segment and their associated floodplain". In the Oyster River, this designation stems from the presence of American Brook Lamprey-rearing habitat and one of the largest remaining runs of anadromous blueback herring in the NH Seacoast region. NH Fish and Game, the Piscataqua Region Estuaries Partnership and the New Hampshire Coastal Program have made sustained investments to improve anadromous fish access and habitat in the Oyster River.

Connectivity

The Sprucewood Forest project represents a critical opportunity to connect over 2,200 acres of existing conservation land in a region of New Hampshire that is undergoing rapid urbanization. In response to these changes, federal and state agencies, NGOs and municipalities have invested considerable public and private funds to protect critical lands within the Great Bay estuary. As shown in the attached aerial map, the property is ideally situated to provide critical connectivity between some of the highest-ranking habitats in the state. Of note, the property abuts a 250 acre forest block owned by the University of New Hampshire (the “College Woods”) which serves as an outdoor classroom and laboratory; Sprucehole Bog, a National sphagnum-heath bog that was designated a National Natural Landmark in 1972; and Amber Acres, a 44 acre agricultural project in progress.

At present, much of the Oyster River remains in a natural state with its banks lined by natural vegetation— enhancing its ability to serve as a wildlife travel corridor. If conserved, the subject property would significantly enhance the ability of wildlife to move in this densely populated area and help create a wildlife and recreational corridor through which the Oyster River flows to Great Bay.

Not only is the size of this conservation block important, but also the diversity of species and habitats represented. According to the NH Wildlife Action Plan, the Property contains *Critical Habitats for Species of Conservation Concern* including: 161.4 acres of Appalachian Oak Pine Forest, 29.3 acres of Grasslands, 5.4 acres of Wet meadow/shrub wetland, and one acre of Red Maple Floodplain Forest.

Due to the conservation values found on this property, it has been recognized in a numerous statewide and regional planning documents, the foremost of which are

- **The Land Conservation Plan for New Hampshire’s Coastal Watersheds** (the “Coastal Plan”) (2006)
- **The NH Wildlife Action Plan** (2006)
- **The NH Rivers Management Protection Plan**
- **New England Cottontail Initiative priority focus area**

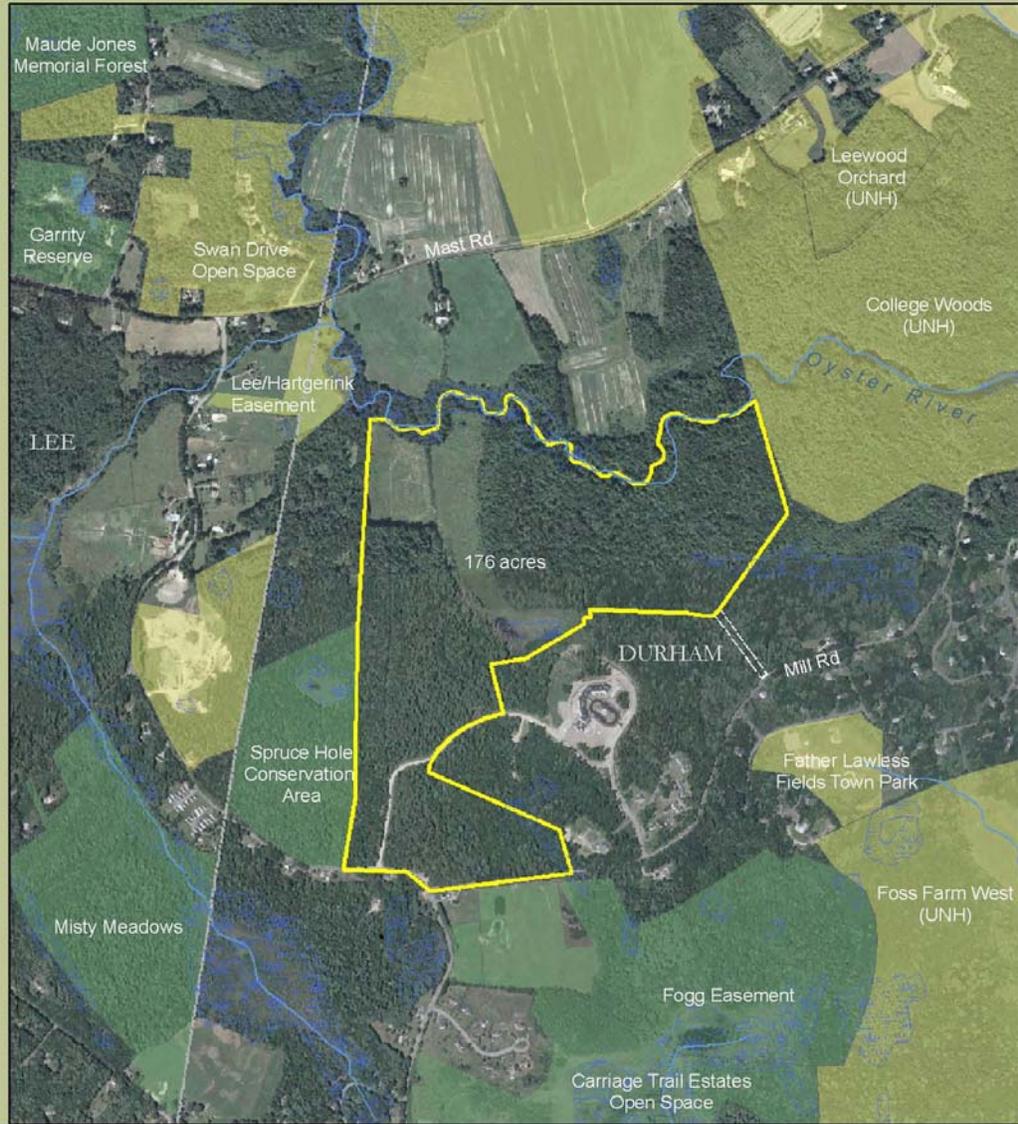
Budget

EXPENSES	Amount	
Land Acquisition	\$4,000,000	
TPL Program Costs*	82,500	
<i>TOTAL EXPENSES</i>	\$4,082,500	
PUBLIC REVENUE		
		Status/Timing
NRCS Wetland Reserve Program	\$2,464,200	Confirmed
Town of Durham Conservation Fund	\$370,000	Requested
NH DES Aquatic Resource Mitigation	\$500,000	Confirmed
NH LCHIP Program	\$100,000	Pending/Application Submitted
NH Mooseplate	\$40,000	To be approached
<i>TOTAL PUBLIC REVENUE</i>	\$3,474,200	
PRIVATE REVENUE		
Lead Gift	\$50,000	Pledged
Private Foundations	\$60,000	In Process
Private Individuals	\$498,300	In Process
<i>TOTAL PRIVATE FUNDING GOAL</i>	\$ 608,300	
TOTAL REVENUE	\$4,082,500	

* Includes staff time, due diligence and private capital campaign.

Maps

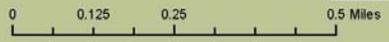
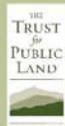
Aerial of Oyster River Forest ~ Durham, NH



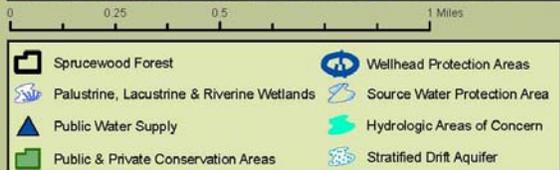
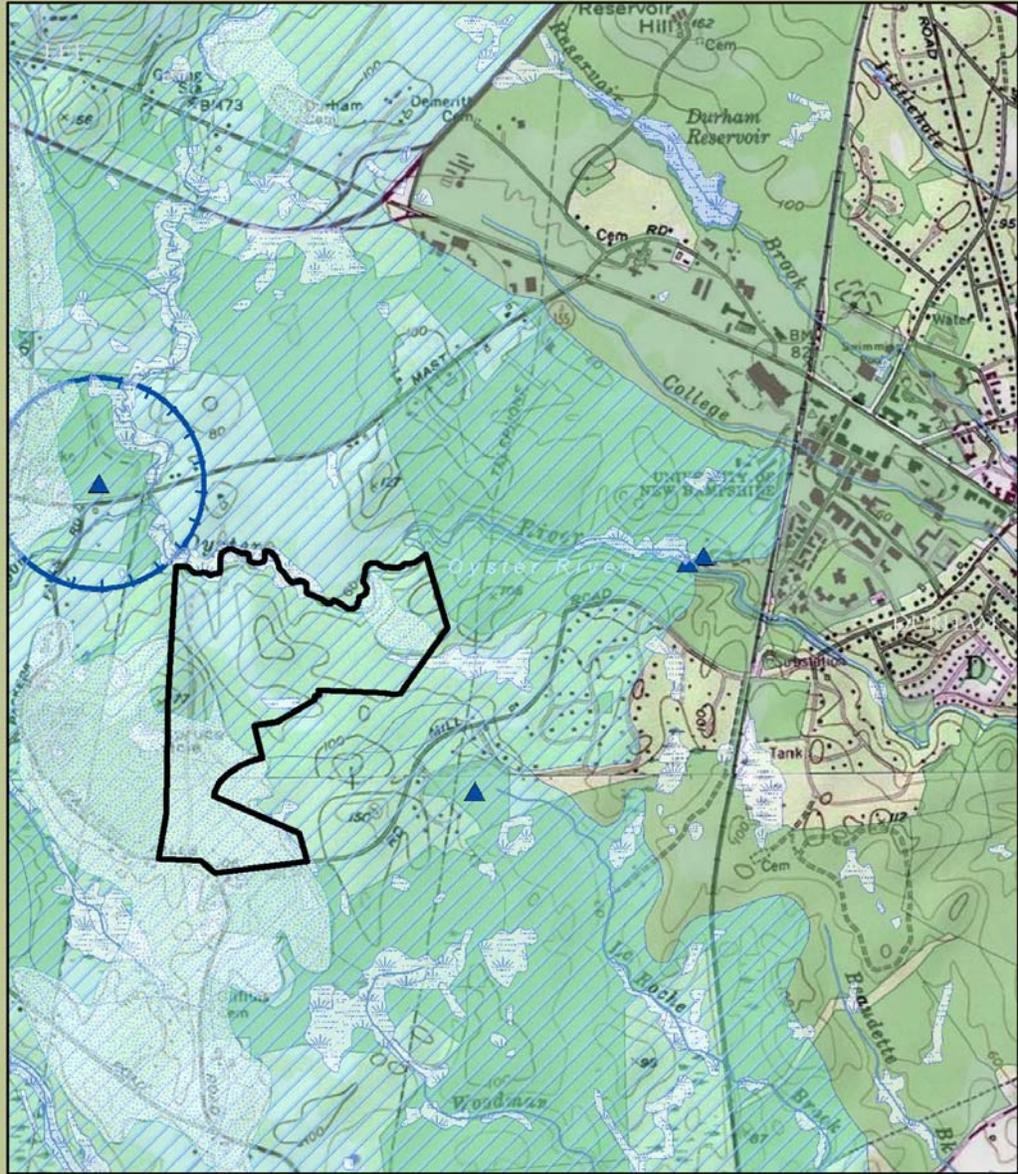
-  Oyster River Forest
-  Potential access
-  Public & Private Conservation Areas
-  Other Municipal or University-Owned land



Property boundaries courtesy of Broken Arrow Realty, and town of Durham tax maps. All other data from GRANIT. Boundaries are approximate.
 Map created by The Trust for Public Land on March 7, 2010. Created in ArcMap 9.1®
 Map Projection: NAD 1983 State Plane NH



Sprucewood Forest Aquatic Features



Property boundaries courtesy of Broken Arrow Realty and Durham tax maps. All other data from GRANIT.Map created by The Trust for Public Land on March 31, 2010.

Created in ArcMap 9.1®
Map Projection: NAD 1983 State Plane NH



**WARRANTY EASEMENT DEED
IN PERPETUITY**

**WETLANDS RESERVE PROGRAM
EASEMENT**

NO. _____

THIS WARRANTY EASEMENT DEED is made by and between _____ of _____ (hereafter referred to as the "Landowner"), Grantor(s), and **the UNITED STATES OF AMERICA**, by and through the Commodity Credit Corporation (CCC) (hereafter referred to as the "United States"), Grantee. The Landowner and the United States are jointly referred to as the "Parties". The acquiring agency of the United States is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

Witnesseth:

Purposes and Intent. The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of wetlands and other lands, and for the conservation of natural values including fish and wildlife and their habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education. It is the intent of NRCS to give the Landowner the opportunity to participate in the restoration and management activities on the easement area. By signing this deed, the Landowner agrees to the restoration of the Easement Area and grants the right to carry out such restoration to the United States.

Authority. This easement deed acquisition is authorized by Title XII of the Food Security Act of 1985, as amended (16 U.S.C. §3837), for the Wetlands Reserve Program.

NOW THEREFORE, for and in consideration of the sum of _____ Dollars (\$ _____), the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, (the Grantee), in perpetuity, all rights, title and interest in the lands comprising the easement area described in Part I and appurtenant rights of access to the easement area, but reserving to the Landowner only those rights, title, and interest expressly enumerated in Part II. It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved. This easement shall constitute a servitude upon the land so encumbered; shall run with the land for the duration of the easement; and shall bind

the Landowner, (the Grantor(s)), their heirs, successors, assigns, lessees, and any other person claiming under them.

SUBJECT, however, to all valid rights of record, if any.

PART I. Description of the Easement Area. The lands encumbered by this easement deed, referred to hereafter as the easement area, are described on EXHIBIT A which is appended to and made a part of this easement deed.

TOGETHER with a right of access for ingress and egress to the easement area across adjacent or other properties of the Landowner. Such a right-of-way for access purposes is described in EXHIBIT B which is appended to and made a part of this easement deed.

PART II. Reservations in the Landowner on the Easement Area. Subject to the rights, title, and interest conveyed by this easement deed to the United States, including the restoration, protection, management, maintenance, enhancement, and monitoring of the wetland and other natural values of the easement area, the Landowner reserves:

- A. Title. Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.
- B. Quiet Enjoyment. The right of the Landowner to enjoy the rights reserved on the easement area without interference from others.
- C. Control of Access. The right to prevent trespass and control access by the general public subject to the operation of State and Federal law.
- D. Recreational Uses. The right to undeveloped recreational uses, including undeveloped hunting and fishing and leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time. Undeveloped recreational uses must be consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area. Undeveloped recreational use may include hunting equipment, such as, tree stands and hunting blinds that are rustic and customary for the locale as determined by NRCS.
- E. Subsurface Resources. The right to oil, gas, minerals, and geothermal resources underlying the easement area, provided that any drilling or mining activities are to be located outside the boundaries of the easement area, unless activities within the boundaries are specified in accordance with the terms and conditions of EXHIBIT C which is appended to and made a part of this easement deed, if applicable.

- F. Water uses and water rights. The right to water uses and water rights identified as reserved to the Landowner in EXHIBIT D which is appended to and made a part of this easement deed, if applicable.

PART III. Obligations of the Landowner. The Landowner shall comply with all terms and conditions of this easement, including the following:

- A. Prohibitions. Without otherwise limiting the rights of the United States acquired hereunder, it is expressly understood that the rights to carry out the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited on the easement area:
1. haying, mowing, or seed harvesting for any reason;
 2. altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
 3. dumping refuse, wastes, sewage, or other debris;
 4. harvesting wood products;
 5. draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices, except as specifically set forth in EXHIBIT D, if applicable;
 6. diverting or causing or permitting the diversion of surface or underground water into, within, or out of the easement area by any means, except as specifically set forth in EXHIBIT D, if applicable;
 7. building, placing, or allowing to be placed structures on, under, or over the easement area, except for structures for undeveloped recreational use;
 8. planting or harvesting any crop;
 9. grazing or allowing livestock on the easement area;
 10. disturbing or interfering with the nesting or brood-rearing activities of wildlife including migratory birds;
 11. use of the easement area for developed recreation. These uses include but are not limited to, camping facilities, recreational vehicle trails and tracks, sporting clay operations, skeet shooting operations, firearm range operations and the infrastructure to raise, stock, and release captive raised waterfowl, game birds and other wildlife for hunting or fishing;
 12. any activities which adversely impact or degrade wildlife cover or other habitat benefits, water quality benefits, or other wetland functions and values of the easement area; and
 13. any activities to be carried out on the Landowner's land that is immediately adjacent to, and functionally related to, the land that is subject to the easement if such activities will alter, degrade, or otherwise diminish the functional value of the eligible land.

- B. Noxious Plants and Pests. The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by the NRCS prior to implementation by the Landowner.
- C. Fences. Except for establishment cost incurred by the United States and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Landowner. The installation or use of fences which have the effect of preventing wildlife access and use of the easement area are prohibited on the easement or easement boundary.
- D. Use of water for easement purposes. The landowner shall use water for easement purposes as set forth in EXHIBIT D, which is appended to and made a part of this easement deed, if applicable.
- E. Protection of water uses and water rights. As set forth in EXHIBIT D, if applicable, the Landowner shall undertake actions necessary to protect any water rights and water uses for easement purposes.
- F. Taxes. The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.
- G. Reporting. The Landowner shall report to the NRCS any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the easement area.
- H. Survival. Irrelevant of any violations by the Landowner of the terms of this deed, this easement survives and runs with the land for its duration.

PART IV. Compatible Uses by the Landowner.

- A. General. The United States may authorize, in writing and subject to such terms and conditions the NRCS may prescribe at its sole discretion, the use of the easement area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.
- B. Limitations. Compatible use authorizations will only be made if, upon a determination by NRCS in the exercise of its sole discretion and rights, that the proposed use is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area. The NRCS shall prescribe the amount, method, timing, intensity, and duration of the compatible use.

PART V. Rights of the United States. The rights of the United States include:

- A. Management activities. The United States has the right to enter the easement area to undertake, on a cost-share basis with the Landowner or other entity as determined by the United States, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area. The United States may apply to or impound additional waters, in accordance with State water law, on the easement area in order to maintain or improve wetland and other natural values.

- B. Access. The United States has a right of reasonable ingress and egress to the easement area over the Landowner's property, whether or not the property is adjacent or appurtenant to the easement area, for the exercise of any of the rights of the United States under this easement deed. The authorized representatives of the United States may utilize vehicles and other reasonable modes of transportation for access purposes. To the extent practical, the United States shall utilize the access identified in EXHIBIT B.

- C. Easement Management. The Secretary of Agriculture, by and through the NRCS, may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to any entity authorized by law that the NRCS determines to have the appropriate authority, expertise and resources necessary to carry out such delegated responsibilities. State or federal agencies may utilize their general statutory authorities in the administration of any delegated management, monitoring or enforcement responsibilities for this easement. The authority to modify or terminate this easement (16 U.S.C. §3837e(b)) is reserved to the Secretary of Agriculture in accordance with applicable law.

- D. Violations and Remedies - Enforcement. The Parties, Successors, and Assigns, agree that the rights, title, interests, and prohibitions created by this easement deed constitute things of value to the United States and this easement deed may be introduced as evidence of same in any enforcement proceeding, administrative, civil or criminal, as the stipulation of the Parties hereto. If there is any failure of the Landowner to comply with any of the provisions of this easement deed, the United States or other delegated authority shall have any legal or equitable remedy provided by law and the right:
 - 1. To enter upon the easement area to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and,

2. To assess all expenses incurred by the United States (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.

PART VI. General Provisions.

- A. Successors in Interest. The rights granted to the United States shall accrue to any of its agents or assigns. All obligations of the Landowner under this easement deed shall also bind the Landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them. All the Landowners who are parties to this easement deed shall be jointly and severally liable for compliance with its terms.
- B. Rules of Construction and Special Provisions. All rights in the easement area not reserved by the Landowner shall be deemed acquired by the United States. Any ambiguities in this easement deed shall be construed in favor of the United States to effect the wetland and conservation purposes for which this easement deed is being acquired. The property rights of the United States acquired under this easement shall be unaffected by any subsequent amendments or repeal of the Wetlands Reserve Program. If the Landowner receives the consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be totally effective upon the payment of the first installment.
- C. Environmental Warranty. "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards or conduct (including common law) concerning air, water, solid waste, hazardous materials or substance, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

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

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

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

TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America and its assigns forever. The Landowner covenants that he, she, or they are vested with good title to the easement area and will warrant and defend the same on behalf of the United States against all claims and demands. The Landowner covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed.

Dated this _____ day of _____, 2____.

Landowner(s): _____

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 2____, before me, the undersigned, a Notary Public in and for said State personally appeared _____, know or proved to me to be the person(s) described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of _____
Residing at _____
My Commission
Expires _____

ACCEPTANCE BY GRANTEE:

I _____ (name), _____ (title), being the duly authorized representative of the United States Department of Agriculture, Natural Resources Conservation Service, do hereby accept this Conservation Easement Deed with respect to the rights and duties of the United States of America, Grantee.

Dated this _____ day of _____, 2____.

Signature

Title

This instrument was drafted by the Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250-1400.

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (1202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 705-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (U.S.C. 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other State or Federal Law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.

EXHIBIT D
WATER USES AND WATER RIGHTS

I. Water Uses and Water Rights Reserved to the Grantor (“Landowner”)
(Warranty Easement Deed Part II.F.)

A. The following specifies each water use¹ that the NRCS determines the Landowner may continue on, across, or under the easement area without harming the purposes of the easement:

1. Impound surface water in Oyster River upstream of a dam near the current or former location of the Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties .
2. Transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
3. Withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.

B. For each water use described above, the following water rights², or portion of water rights, are associated with these uses. These are the only water rights, or portions of water rights, that the Landowner reserves for continuing agricultural, domestic, or other uses. All details of each reserved water right, or reserved portion of a water right, must be specified, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.

1. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to continue to use the surface water impoundment in Oyster River behind a dam near the current or former Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use for current, as well as future owners of these properties .
2. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by the current, as well as future owners, of these properties.

3. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by current, as well as future owners, of these properties .

C. For each water right identified above, the Landowner retains the right to maintain, repair and reconstruct any existing water facilities associated with the right unless that activity would adversely impact the conservation values of the easement, as determined by NRCS in its sole judgment. The Landowner must obtain approval from the United States prior to commencing any substantial maintenance, repair, or reconstruction of existing facilities. "Substantial maintenance, repair, or reconstruction" means all activities that may adversely affect the purposes of the easement and includes, but is not limited to, the lining of irrigation works and the piping of water.

D. Any use other than stated above for water rights the Landowner reserves requires the consent of NRCS following its determination that the action will not be inconsistent with the purposes of the easement or the protection of the conservation values. This includes, but is not limited to, changing a water right to any new use (including municipal, industrial or commercial use); selling, leasing, transferring, or encumbering the water right; and changing the point of diversion or type or place use.

E. The Landowner reserves no other water rights or uses of water on, across, or under the easement area.

II. Encumbered Water Uses and Water Rights for Easement Purposes (Warranty Easement Deed, Part III.D.)

A. The following specifies the water uses that the NRCS determines are necessary to accomplish the purposes of the easement.

1. Impound surface water in Oyster River upstream of a dam near the current or former location of the Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.

2. Transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.

3. Withdraw groundwater from available groundwater sources near or within the drainage

area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.

- B. For each water use described in II.A. above, identify any associated existing water right or portion of a water right. These water rights are encumbered by the Warranty Easement Deed³ for easement purposes, together with any associated rights-of-way, water conveyance and diversion structures, and water use equipment. Specify below details of each encumbered water right, or portion of a water right, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.
1. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to continue to use the surface water impoundment in Oyster River behind a dam near the current or former Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use for the current, as well as future owners, of these properties.
 2. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by the current, as well as future owners, of these properties
 3. The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by current, as well as future owners, of these properties .

III. PROTECTION OF ENCUMBERED WATER RIGHTS

(Warranty Easement Deed Part III.E.)

The Landowner shall protect the encumbered water uses and rights identified in II.A. and II.B. above by:

- A. Continuing to use the water for easement purposes so as to not abandon or forfeit any water rights by action or inaction.
- B. Providing NRCS with any reports provided by or to state water officials, of water diversions and evidence of use, such as records of dates of impoundment.

- C. Providing NRCS with all notices concerning water rights, including notices of abandonment or forfeiture, from state water officials.
- D. Allowing NRCS to enter property to continue use of the water right to prevent abandonment or forfeiture.
- E. Attempting to administratively prevent abandonment or forfeiture.
- F. Never changing the water right(s) to another use, including sale or transfer of such water right, or conversion to another conservation use.

Footnotes:

¹ For purposes of this exhibit, the term “water use” means activities that control water or the use of water instream or in situ. The term includes, but is not limited to: diverting water from its natural source; conveying water in canals, ditches, laterals, flumes, or pipelines; storing water in reservoirs, impoundments, or ponds; pumping or otherwise controlling groundwater; developing springs; and intentionally leaving a quantity of water instream or in situ for a particular purpose. These activities also include installation, operation and maintenance of vehicle access for service, power lines, pumps, equipment shelters for related water treatment and other appurtenances associated with the described water uses whether owned by the property owner, water system operator or other third parties.

² For purposes of this exhibit, the term “water right” means an instrument, filing, or document that is associated with a particular water use. The term “water right” may include, but is not limited to water permits, water shares or stock certificates, water reservations, water allotments, or water contracts.

³ By its terms, the Warranty Easement Deed also encumbers any water right appurtenant to the easement area that, for whatever reason, is not identified in this Exhibit D.

EXHIBIT D
WATER USES AND WATER RIGHTS

I. Water Uses and Water Rights Reserved to the Grantor (“Landowner”)
(Warranty Easement Deed Part II.F.)

A. The following specifies each water use¹ that the NRCS determines the Landowner may continue on, across, or under the easement area without harming the purposes of the easement:

1. Impound surface water in Oyster River upstream of a dam near the current or former location of the Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use by the Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties .
2. Transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by the Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
3. Withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by the Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.

B. For each water use described above, the following water rights², or portion of water rights, are associated with these uses. These are the only water rights, or portions of water rights, that the Landowner reserves for continuing agricultural, domestic, or other uses. All details of each reserved water right, or reserved portion of a water right, must be specified, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.

1. The Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to continue to use the surface water impoundment in Oyster River behind a dam near the current or former Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use for current, as well as future owners of these properties .
2. Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable

Living Trust, as well as future owners of these properties reserve the right to transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by the current, as well as future owners, of these properties.

3. Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by current, as well as future owners, of these properties .

C. For each water right identified above, the Landowner retains the right to maintain, repair and reconstruct any existing water facilities associated with the right unless that activity would adversely impact the conservation values of the easement, as determined by NRCS in its sole judgment. The Landowner must obtain approval from the United States prior to commencing any substantial maintenance, repair, or reconstruction of existing facilities. "Substantial maintenance, repair, or reconstruction" means all activities that may adversely affect the purposes of the easement and includes, but is not limited to, the lining of irrigation works and the piping of water.

D. Any use other than stated above for water rights the Landowner reserves requires the consent of NRCS following its determination that the action will not be inconsistent with the purposes of the easement or the protection of the conservation values. This includes, but is not limited to, changing a water right to any new use (including municipal, industrial or commercial use); selling, leasing, transferring, or encumbering the water right; and changing the point of diversion or type or place use.

E. The Landowner reserves no other water rights or uses of water on, across, or under the easement area.

II. Encumbered Water Uses and Water Rights for Easement Purposes (Warranty Easement Deed, Part III.D.)

A. The following specifies the water uses that the NRCS determines are necessary to accomplish the purposes of the easement.

1. Impound surface water in Oyster River upstream of a dam near the current or former location of the Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use by the Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.

2. Transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
 3. Withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties.
- B. For each water use described in II.A. above, identify any associated existing water right or portion of a water right. These water rights are encumbered by the Warranty Easement Deed³ for easement purposes, together with any associated rights-of-way, water conveyance and diversion structures, and water use equipment. Specify below details of each encumbered water right, or portion of a water right, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.
1. Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to continue to use the surface water impoundment in Oyster River behind a dam near the current or former Arthur Rollins Water Treatment Plant and within the easement area for water storage and withdrawal for use for the current, as well as future owners, of these properties .
 2. Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to transfer water from the Lamprey River or a groundwater source to the Oyster River or to a subsurface aquifer within the easement area for use by the current, as well as future owners, of these properties
 3. Sprucewoods Retirement Trust and The Chet Tecce, Jr. Revocable Living Trust, as well as future owners of these properties reserve the right to withdraw groundwater from available groundwater sources near or within the drainage area contributing to the Oyster River including groundwater from the aquifer under the easement area for use by current, as well as future owners, of these properties .

III. PROTECTION OF ENCUMBERED WATER RIGHTS

(Warranty Easement Deed Part III.E.)

The Landowner shall protect the encumbered water uses and rights identified in II.A. and II.B. above by:

- A. Continuing to use the water for easement purposes so as to not abandon or forfeit any water rights by action or inaction.
- B. Providing NRCS with any reports provided by or to state water officials, of water diversions and evidence of use, such as records of dates of impoundment.
- C. Providing NRCS with all notices concerning water rights, including notices of abandonment or forfeiture, from state water officials.
- D. Allowing NRCS to enter property to continue use of the water right to prevent abandonment or forfeiture.
- E. Attempting to administratively prevent abandonment or forfeiture.
- F. Never changing the water right(s) to another use, including sale or transfer of such water right, or conversion to another conservation use.

Footnotes:

¹ For purposes of this exhibit, the term “water use” means activities that control water or the use of water instream or in situ. The term includes, but is not limited to: diverting water from its natural source; conveying water in canals, ditches, laterals, flumes, or pipelines; storing water in reservoirs, impoundments, or ponds; pumping or otherwise controlling groundwater; developing springs; and intentionally leaving a quantity of water instream or in situ for a particular purpose. These activities also include installation, operation and maintenance of vehicle access for service, power lines, pumps, equipment shelters for related water treatment and other appurtenances associated with the described water uses whether owned by the property owner, water system operator or other third parties.

² For purposes of this exhibit, the term “water right” means an instrument, filing, or document that is associated with a particular water use. The term “water right” may include, but is not limited to water permits, water shares or stock certificates, water reservations, water allotments, or water contracts.

³ By its terms, the Warranty Easement Deed also encumbers any water right appurtenant to the easement area that, for whatever reason, is not identified in this Exhibit D.