

AGENDA ITEM: **#7C**

DATE: October 15, 2012

COUNCIL COMMUNICATION

INITIATED BY: The Durham Conservation Commission

AGENDA ITEM: SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE ADMINISTRATOR, SCHEDULE A PUBLIC HEARING FOR MONDAY, NOVEMBER 5, 2012 ON A REQUEST BY THE DURHAM CONSERVATION COMMISSION FOR THE TOWN OF DURHAM TO ACCEPT FEE TITLE IN A 176-ACRE PROPERTY LOCATED ALONG MILL AND PACKERS FALLS ROADS KNOWN AS SPRUCEWOOD FOREST (TAX MAP 13, LOTS 14-2 AND 6-3), SUBJECT TO AN EASEMENT OWNED BY THE USDA NATURAL RESOURCE CONSERVATION SERVICE, AND TO AUTHORIZE THE ADMINISTRATOR TO SIGN A PURCHASE AND SALE AGREEMENT AND OTHER RELATED DOCUMENTS WITH THE TRUST FOR PUBLIC LAND ON BEHALF OF THE TOWN?

CC PREPARED BY: Robin Mower, Councilor
Gregg Caporossi, The Trust for Public Land

PRESENTED BY: Gregg Caporossi, The Trust for Public Land
Todd I. Selig, Administrator

AGENDA DESCRIPTION:

The Council is in receipt of a letter dated October 8, 2012 from the Conservation Commission requesting that the Town accept legal interest in the property known as the Sprucewood Forest (also attached to this Communication). The boundaries of the property include Mill Road to the south and southeast and the UNH College Woods to the northeast, and on the west it abuts the Spruce Hole Conservation Area off Packers Falls Road.

On October 3, 2012 a duly noticed site walk was held on the Sprucewood Forest property. That evening the Conservation Commission held a public hearing related to the expenditure of monies from the Conservation Fund in support of this Proposal. Three members of the public spoke strongly in favor of the project. No members of

the public spoke against it. The Commission subsequently deliberated and reaffirmed that this project has been its *highest priority* for the past few years, primarily for the protection afforded to two public water sources: the Oyster River and the Spruce Hole Aquifer. It then voted unanimously to appropriate \$375,000 from the Conservation Fund and to request authorization from the Town Council to accept legal interest in the property in the form of fee title, subject to an easement owned by the USDA Natural Resource Conservation Service.

As prescribed by the Town's "Guidelines for Acquiring Legal Interest in Conservation/Open Space Land," the Town Council, with the recommendation of the Town Administrator, shall schedule the proposal for discussion at a regular meeting and determine whether to move the project forward to public hearing.

The Administrator recommends the expenditure of \$375,000 for the acquisition of the restricted fee title, weighed against the broader tax implications and various other municipal priorities faced by the community at this time.

Note: The property under consideration is sometimes referred to as the Oyster River Forest.

Brief history

Efforts to protect this 176-acre combination of woodlands and open fields began more than three years ago, since which time the Durham Conservation Commission has worked in partnership with The Trust for Public Land (TPL). In 2010 the Council voted to support a grant application submitted by TPL on behalf of Durham to the Coastal and Estuarine Land Conservation Program (CELCP). Subsequently, the budget for that federal program fell significantly shorter than anticipated. As a result, despite its high national ranking, the grant was not approved. Since then, TPL has sought – and found – other funding sources. Despite the change in funding strategy, the goals for the project remain the same.

The proposal

The proposal entails ownership of the property by the Town Durham, subject to an easement held by the U.S. Natural Resource Conservation Service (NRCS), which has expressed strong interest in the property for New England cottontail habitat restoration through its Wetlands Reserve Program (WRP). Indeed, NRCS would provide majority funding for the project and would become responsible for all costs related to NE cottontail habitat restoration and monitoring of the easement.

The Town would manage the Sprucewood Forest property in a manner consistent with its goals – as open space and for wildlife habitat, recreational use, and water quality protection. If conserved under the easement, the property would help protect

two current or future public water supplies, the Oyster River (a current public water supply and tributary to the Great Bay) and the Spruce Hole Aquifer (a future public water supply). The project would complement the Amber Acres property, conservation of which is underway, by providing over a mile and a half of protection along both sides of the Oyster River. The complementary nature of the two projects is underscored through a cooperative private fundraising campaign (the "Oyster River Initiative") recently launched by the projects' nonprofit land conservation partners, The Trust for Public Land and the Southeast Land Trust of New Hampshire.

For decades the UNH/Durham Water System has considered the Spruce Hole Aquifer as a prime potential public water source. Approximately 54.8 acres of the Sprucewood Forest property sit atop the aquifer. This aquifer protection would complement the approximately 35.6 acres of aquifer protection afforded by the Town-owned Spruce Hole Conservation Area consisting of two parcels shown on Durham Tax Map 13: Lots 13-1 and 13-5. Regarding Lot 13-5, in the 1989 Annual Report for the Town of Durham Council Chair Donald Sumner wrote:

Acquisition of a 27.7-acre parcel of land in the Mill Road-Packers Falls Road area adjacent to the Town-owned Spruce Hole Bog was considered to be of utmost importance to protect a natural aquifer existing in that area. The aquifer was identified as a potential source for up to 1/2 million gallons of water per day by Dufresne-Henry, an engineering firm retained to study our water problems.

Negotiations between the Town and the owner of the land were unsuccessful so the Council voted to acquire the property through eminent domain action. The sum of \$430,000 was voted by the Council to secure the property and a final price will be established upon completion of the eminent domain proceedings.

Dr. Thomas Ballestero, a hydrologist and water resources engineer at the University of New Hampshire, was hired by the Town in the 1990s to study "the sand and gravel formation that contains the Spruce Hole Bog in order to more clearly delineate the hydrogeology of the system and the ecology of the bog." (A final report was issued in 2000 as "Final Report for Hydrogeologic Studies of the Spruce Hole Bog Sand and Gravel Formation," co-authored by UNH professor Thomas D. Lee. The report notes, "The Spruce Hole Bog appears to be insulated from the groundwater below by all of the dead and decomposed peat at its base" and includes a section titled "Biological Studies at Spruce Hole Bog" as Appendix 9.) This research work provided a basis of understanding that groundwater withdrawal from the Spruce Hole Aquifer would be unlikely to negatively affect the hydrology of the Spruce Hole Bog, which was designated a National Natural Landmark in 1972.

In 2010, Dr. Ballestero provided a letter of support to the Town Council for the Conservation Commission's request to seek grant funding to support the permanent conservation of the Sprucewood Forest property. On October 1, 2012, he commented in a phone conversation about the Sprucewood Forest project, "I can think of no town in New Hampshire that would have the kind of water security that Durham would have if it protects this resource."

On October 1, 2012 representatives from Underwood Engineers, Inc. and Emery & Garrett Groundwater, Inc. gave a presentation to the Town Council titled "Development of a New Public Water Supply Well with Artificial Recharge—Spruce Hole Aquifer." They commented that Durham is lucky to have the Spruce Hole Aquifer as a potential public water supply. Presentation slides note:

- The well site and the majority of the aquifer are on properties owned [and/or] controlled by the Town of Durham
- The groundwater recharge area surrounding Production Well DWP-PW2 is mostly undeveloped and provides a high level of protection to the quality of groundwater resources.

The Sprucewood Forest project would enhance these benefits by providing Durham with ownership rights to substantially more of the land around and adjacent to the aquifer. This would enable the Town to ensure that the well is kept free of contaminants—keeping the costs of water treatment affordable while protecting a critical water supply source for current and future residents and the University.

Public access for Sprucewood Forest would include low-impact recreational uses, such as birding, fishing, hiking, and cross-country skiing. The property provides easy access from an abandoned forest road and affords significant opportunity for trails on the property itself and as part of a network of trails on nearby properties.

Boundary line adjustment

The Sprucewood Forest project consists of two existing lots of record with two different owners: (1) Map 13, Lot 14-2 owned by Sprucewood Retirement Trust and (2) that portion of Map 13, Lot 6-3 south of the Oyster River and approximately 47 +/- acres, owned by the Chet Tecce, Jr. Revocable Living Trust. Lot 14-2 in its entirety and only that portion of Lot 6-3 located south of the Oyster River would be included in the project. An application for a boundary line adjustment on Lot 6-2 is expected to be presented to the Planning Board in November. The Town of Durham may want to consider being a co-applicant with the Trust for Public Land.

Formal presentation

Gregg Caporossi of The Trust for Public Land will attend Monday night's Council meeting but will not make a presentation until the Public Hearing. Jeremy Lougee, representing NRCS, will also be present on Monday night.

SUPPORTING DOCUMENTS

Accompanying this Council Communication please find supporting documents that may also be downloaded from the Conservation Commission website at <http://www.ci.durham.nh.us/boc_conservation/sprucewood-forest-conservation-project>:

- 1) Letter to the Durham Town Council from the Durham Conservation Commission, dated October 8, 2012, requesting that the Town accept legal interest in the property known as the Sprucewood Forest
- 2) Letter to Administrator Todd Selig from The Trust for Public Land, dated September 24, 2012. This letter incorporates other documents:
 - a) Summary of Ecological Benefits
 - b) Budget (showing land acquisition and program cost and sources of public and private revenues)
 - c) Maps titled "Aerial View of Oyster River Forest" and "Sprucewood Forest Aquatic Features"
 - c) Wetlands Reserve Program Easement, "Warranty Easement Deed in Perpetuity," including Exhibit D - Water Uses and Water Rights
- 3) Documents provided by the Natural Resources Conservation Service:
 - a) Separate preliminary habitat restoration *plans* for New England cottontail rabbit for the Sprucewoods and Tecce parcels
 - b) A map showing the proposed habitat restoration areas
- 4) Press release for the Oyster River Initiative, a cooperative private fundraising campaign between The Trust for Public Land and Southeast Land Trust of New Hampshire
- 5) Map provided by the Strafford Regional Planning Commission titled "Sprucewood Forest Project Drinking Water Protection Map"
- 6) Durham Tax Map 13; Lots 14-2 and 6-3 each marked with a star
- 7) Opinion of Thomas P. Ballestero in the Matter of the Spruce Hole Formation (dated February 1, 2010 and submitted to the Durham Town Council)
- 8) Town of Durham "Guidelines for Acquiring Legal Interest in Conservation / Open Space Land" (May 19, 2008; formerly titled "Policy for Acquiring Legal Interest in Conservation/Open Space Land," dated May 3, 2004)

COMMENTS ON SUPPORTING DOCUMENTS

NRCS Wetlands Reserve Program easements are non-negotiable and between NRCS and the current landowners. However, it should be emphasized that (1) the Durham Conservation Commission carefully reviewed the easement language and met twice with NRCS to discuss the easement terms and restoration plans to ensure that all of the Town’s conservation objectives would be fulfilled by the easement; and (2) David Cedarholm, the Town Engineer, was an active participant in drafting Exhibit D – Water Uses and Water Rights, which the Commission also reviewed.

The question before the Town Council is to determine whether the Town of Durham shall take title to the land *subject to the recorded easement held by NRCS*. Note that because the deeds will be identical for the two parcels except for the names of the properties, only one (with blanks for name placeholders) is provided.

The appraisal was commissioned by NRCS to determine the purchase price that it would pay to the current landowners for the easement and therefore is not presented for Council review.

NRCS will be providing for the public hearing a statement of its financial responsibility for restoration and monitoring activities.

LEGAL AUTHORITY:

RSA 36-A:4 and 5

Town of Durham “Guidelines for Acquiring Legal Interest in Conservation/Open Space Land” (May 19, 2008; formerly titled “Policy for Acquiring Legal Interest in Conservation/Open Space Land,” dated May 3, 2004)

LEGAL OPINION:

The NRCS Wetland Reserve Program Warranty Easement Deed was forwarded to Town Attorney Laura Spector-Morgan for review. The purchase and sale agreement between the Trust for Public Land and the Town of Durham for the fee title will also be reviewed and opinions made available for the Council’s review prior to the public hearing.

FINANCIAL DETAILS:

Described in the "Budget" sent as part of the September 24, 2012 letter from the Trust for Public Land to Administrator Todd Selig. (See line item labeled "Town of Durham Conservation Fund.")

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby, upon recommendation of the Town Administrator, schedule a Public Hearing for Monday, November 5, 2012 on a recommendation by the Durham Conservation Commission for the Town of Durham to accept legal interest in approximately 176 acres of property known as the Sprucewood Forest (Tax Map 13, Lots 14-2 and 6-3) in the form of fee title and authorize the Town Administrator to sign an agreement and other related documents with The Trust for Public Land regarding said interest.

MEMORANDUM

TO: Durham Town Council
Todd Selig, Town Administrator

FROM: Durham Conservation Commission

DATE: October 8, 2012

RE: Sprucewood Forest conservation proposal (aka, Oyster River Forest):
Request to accept legal interest

As the Town Council is aware, since 2009 the Sprucewood Forest conservation proposal has continued to be of strong interest to the Conservation Commission. It now has funding support from the Commission, which turns to the Council with a request to accept legal interest in the property on behalf of the Town of Durham.

In its memoranda to the Council dated January 20, 2010 and February 12, 2010, the Durham Conservation Commission expressed strong support for the conservation of the property now known as Sprucewood Forest and requested that the Town Council lend its support for the submission of a CELCP (NOAA's Coastal and Estuarine Land Conservation Program) grant application to further explore this possibility.

In the intervening two and a half years, the Proposal evolved: Majority federal funding anticipated through CELCP was replaced with majority funding through the USDA Natural Resources Conservation Service's (NRCS) Wetlands Reserve Program (WRP). Additionally, the DCC voted earlier this year to support a complementary conservation project, Amber Acres, thereby enhancing the conservation values of the Sprucewood Forest property by providing additional protection for the Oyster River and contributing acreage to an unfragmented wildlife corridor.

On October 3, 2012 a duly noticed site walk was held on the Sprucewood Forest property. That evening the Conservation Commission held a public hearing related to the expenditure of monies from the Conservation Fund in support of this Proposal. Three members of the public spoke strongly in favor. The Commission confirmed that this project has been its *highest priority* for the past few years. It then determined that use of the Conservation Fund for the proper utilization and protection of the natural resources and the protection of watershed resources of the Property was justified and made the following motion:

Jamie Houle MOVED that the Durham Conservation Commission allocate \$375,000 from the Conservation Fund towards the purchase by The Trust for Public Land (TPL), of a 176-acre property located along Mill and Packers Fall Roads known as the Sprucewood Forest, aka Oyster River Initiative (Tax Map 13, Lots 14-2 and 6-3), and recommend that the Town thereafter accept the fee title in said property, subject to an easement owned by the USDA Natural Resource Conservation Service, and to

authorize the Town Administrator to sign a purchase and sale agreement and other related documents with TPL; this was SECONDED by Derek Sowers. The motion was APPROVED unanimously.

The Town's *Land Acquisition Guidelines*, Section 8(B), stipulates, "When reviewing proposed projects, the Conservation Commission and Town Council shall give special attention and consideration to proposed projects that attract non-Town funds for the purchase and/or maintenance of the land in question." The funding requested by the Town toward the purchase of the property represents approximately 1/10th (one-tenth) of the purchase price. NRCS will maintain the easement at no cost to the Town.

In its memorandum to the Town Council dated January 20, 2010, the Commission specified the following benefits of the Proposal to the Town of Durham:

1. Protection of the Town's current and future water supply;
2. Cost avoidance associated with impacts of development in these sensitive areas to water quality and quantity;
3. Preservation of the Town's rural character and quality of life; and
4. Expansion of recreational opportunities and access to public lands.

The Commission further notes that this natural resource area has been identified as a conservation priority in the Town's Master Plan, by the Oyster River Watershed Association, and by various local and State agencies.

In light of these benefits, the Proposal's alignment with established conservation goals, the non-Town funds, and the considerable work contributed to the project by TPL and NRCS staff to date (and anticipated in the future), the members of the Conservation Commission officially recommend that the Town accept fee title in the Sprucewood Forest property, subject to the NRCS-owned easement.

Respectfully,

James Houle
Acting Chair, Durham Conservation Commission

cc: Durham Conservation Commission
Gregg Caporossi, The Trust for Public Land
Jeremy Lougee, Natural Resources Conservation Service

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**

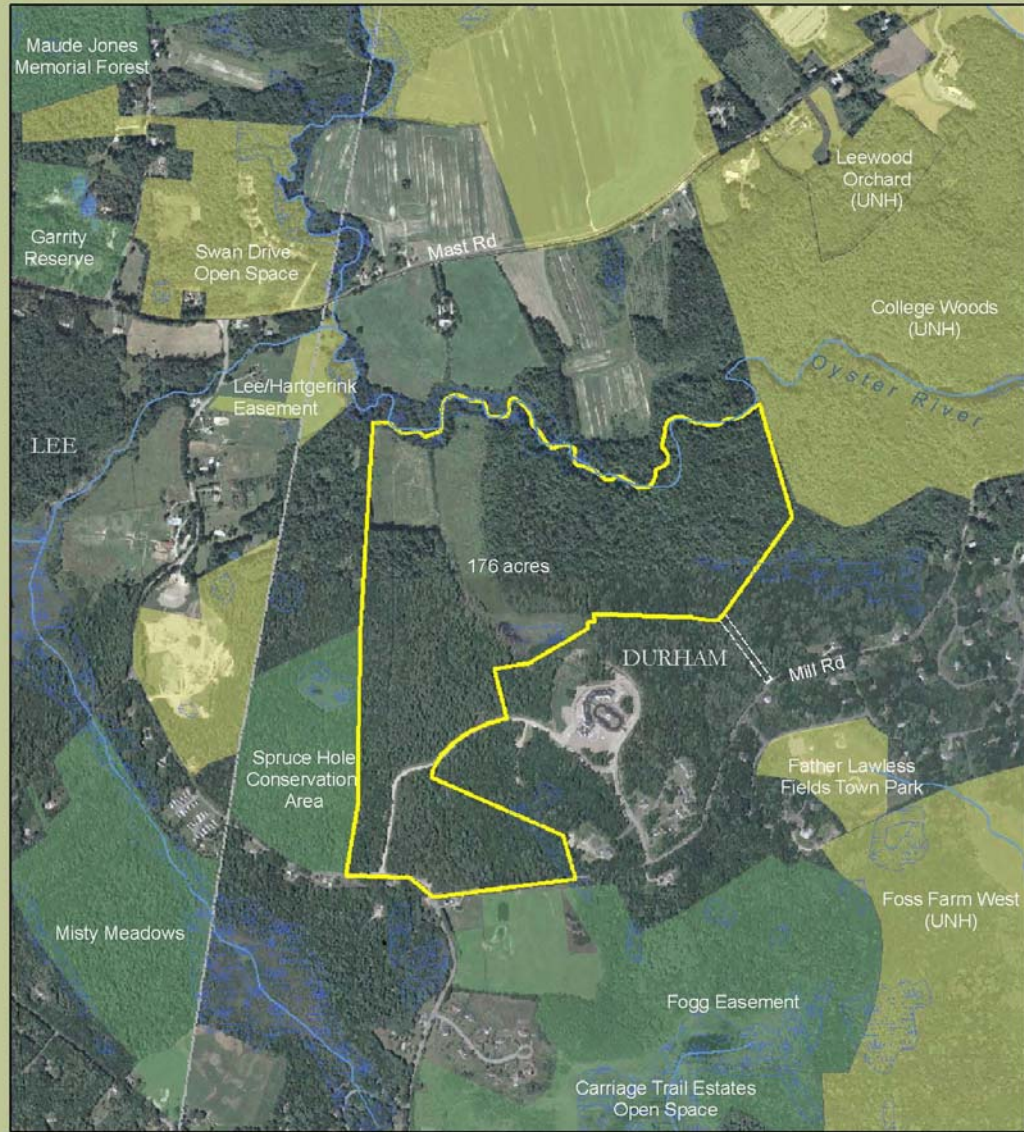
Budget





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

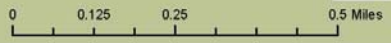
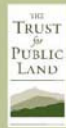
Aerial of Oyster River Forest ~ Durham, NH



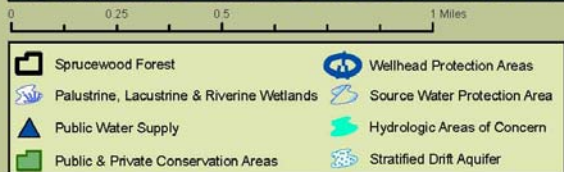
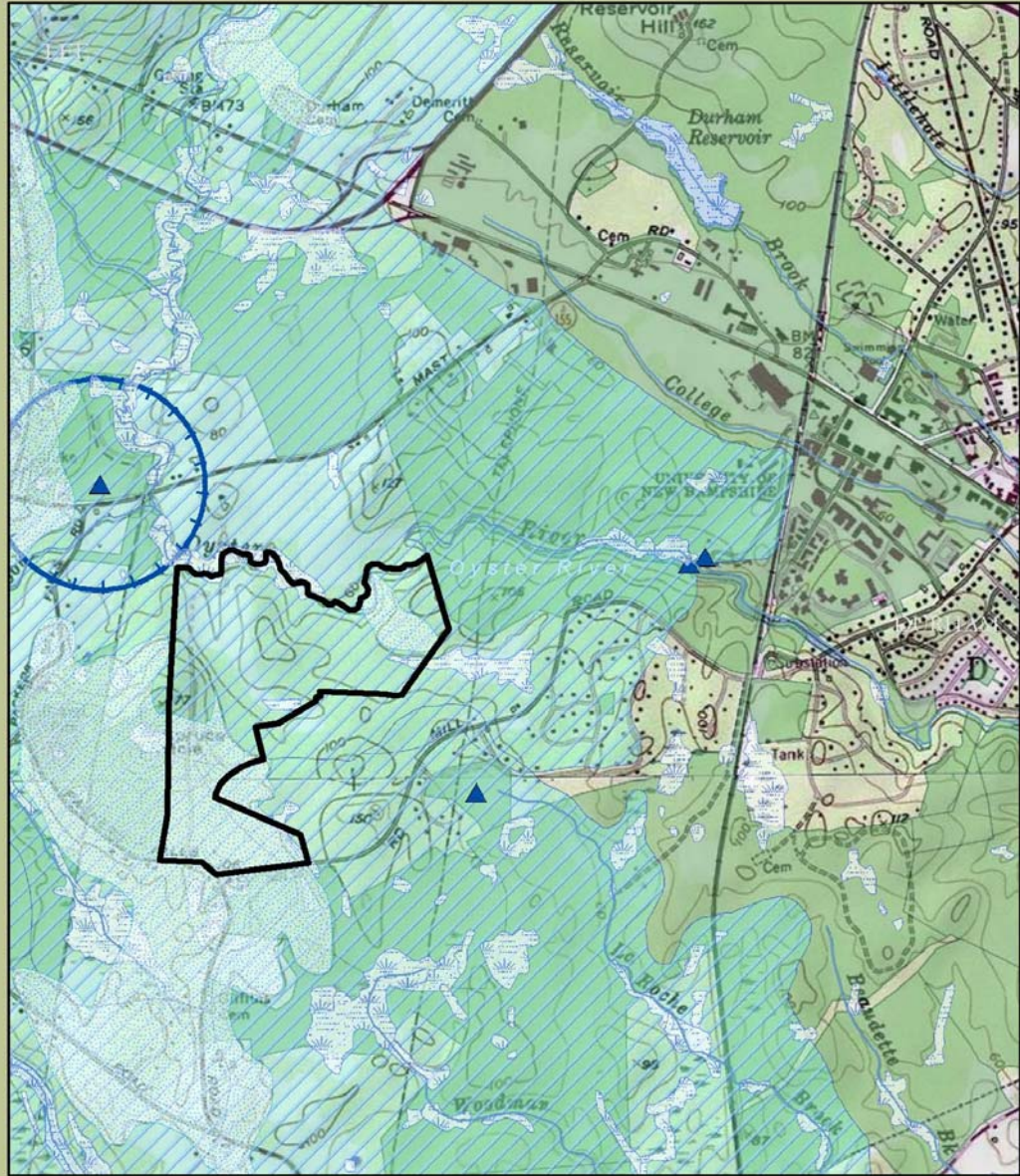
-  Oyster River Forest
-  Potential access
-  Public & Private Conservation Areas
-  Other Municipal or University-Owned land



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

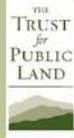


Sprucewood Forest Aquatic Features



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 .
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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.

NH-NRCS
Wetland Reserve Program
Preliminary Restoration Plan

Practices Identified for:
SPRUCEWOODS

May 1, 2012

Prepared by:
JEREMY LOUGEE

❖ **RESTORATION SITE #1:**

- **Wetland Enhancement – 659 – Vegetative Community Enhancement Scenarios**
Using feller/buncher, remove low value timber and/or stack into shelter piles to increase horizontal diversity and preferred habitat for New England Cottontail.
 - 7 Acres @ \$1,125/Acre = \$7,875 (#1)

❖ **RESTORATION SITE #2:**

- **Wetland Enhancement – 659 – Vegetative Community Enhancement Scenarios**
Add 1000 live stakes/acre to increase shelter component in old field (~10 acres).
 - 10,000 @ \$3.45/each = \$34,500 (#2)
- **Wetland Enhancement – 659 – Vegetative Community Enhancement Scenarios**
Add 1000 blackberries/acre to complement shelter component in old field (~10 acres).
 - 10,000 @ \$2.50/each = \$25,000 (#3)
- **Wetland Enhancement – 659 – Vegetative Community Enhancement Scenarios**
Add 1,000 container plants to complement shelter component in old field (~10 acres).
 - 1,000 @ \$20/each = \$20,000 (#4)
- **Wetland Enhancement – 659 – Woody Invasive Plant Control Scenarios**
Moderate Density across 25 acre old field.
 - 25 acres @ \$550/acre = \$13,750 + \$6,850 follow-up = \$20,625 (#5)

❖ **RESTORATION SITE #3:**

- **Wetland Restoration – 657 – Stream Restoration Scenarios**
Stream wood additions to increase habitat complexity and re-engage floodplain.
 - 1,500 linear feet @ \$4/foot = \$6,000 (#6)
- **Wetland Enhancement – 659 – Stream Crossing Scenarios**
Install stone ford across 30x15 section of stream bed.
 - 30 feet at \$49.24/Foot = \$1,477.20 (#7)

TOTAL ESTIMATED COSTS = \$115,477.20

NH-NRCS
Wetland Reserve Program
Preliminary Restoration Plan

Practices Identified for:
TECCE TRUST

May 1, 2012

Prepared by:
JEREMY LOUGEE

❖ **RESTORATION SITE #1:**

- **Wetland Enhancement – 659 – Vegetative Community Enhancement Scenarios**
Using lighter touch hand work, girdle lower value trees and add coarse woody debris to increase horizontal complexity and shelter habitat for New England Cottontail.
 - 10 Acres @ \$600/Acre = \$6,000 (#1)

- **Wetland Enhancement – 659 – Vegetative Community Enhancement Scenarios**
Plant 250 bare roots/acre to increase shelter component in riparian areas (~10 acres).
 - 2500 @ \$2.50/Each = \$6,250 (#2)

- **Wetland Enhancement – 659 – Woody Invasive Plant Control Scenarios**
Remove moderate density invasives across 10 acre restoration site.
 - 10 Acres @ \$550/Acre = \$5,500 (#3)

TOTAL ESTIMATED COSTS = \$17,750

Sprucewood Forest Restoration Map




Restoration Site #3

Restoration Site #2

Restoration Site #1

Restoration Site #4

Legend

 Sprucewood Forest

0 335 670 1,340 Feet

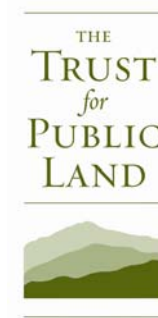


**For Immediate Release
October 2, 2012**

Contact:

Rodger Krussman
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The Trust for Public Land
802-371-9286

Brian Hart
Executive Director
Southeast Land Trust of New Hampshire
603-778-6088



**The Trust for Public Land and Southeast Land Trust of New Hampshire
Launch the Oyster River Initiative to Permanently Protect
Sprucewood Forest and Amber Acres Farm**

Combined acquisitions will protect drinking water quality, endangered wildlife habitats, shoreline on the Oyster River, working farmlands, and provide conservation connectivity

DURHAM, NEW HAMPSHIRE, October 2, 2012 —

The Trust for Public Land (TPL) and the Southeast Land Trust of New Hampshire (Land Trust) announced today the launching of the Oyster River Initiative, cooperative private fundraising campaigns to permanently protect the 176-acre Sprucewood Forest and the 39-acre Amber Acres Farm. Although separate projects, Amber Acres and Sprucewood Forest – parcels located on opposite banks of the Oyster River – are complementary to each other. The combined properties cost a total of \$5.3 million, 83% of which has been either secured or pledged to date. The remaining \$900,000 must be raised by December 31, 2012 for both properties to be conserved.

With more than one mile of combined shoreline along the Oyster River, protecting both Sprucewood Forest and Amber Acres is critical to maintaining drinking water quality in the Oyster River. Currently, the Oyster River serves as one of the sources of drinking water for Durham and UNH, serving a population of 16,000 and providing as much as a million gallons of water a day. In addition, Sprucewood Forest sits atop the Spruce hole Aquifer, which has been identified as a future water source for Durham and UNH. If conservation efforts are successful, both properties would become part of a fabric of 2,200 acres of existing conservation land – linking some of the community’s most cherished natural resources like College Woods and Spruce hole Bog.

The Oyster River Initiative is important not only for Durham but for the Great Bay region. Sprucewood Forest and Amber Acres Farm both lie within the Oyster River Core Focus Area, identified by the Land Conservation Plan for New Hampshire's Coastal Watershed as a top priority due to its ecological functioning and water quality protection.

Sprucewood Forest

The Trust for Public Land is working in partnership with the Town of Durham, NH Fish and Game and the Natural Resource Conservation Service (NRCS) to acquire Sprucewood Forest. Identified as a Conservation Focus Area, and featuring over 4,600 feet of shoreline on the Oyster River, the Sprucewood Forest project creates a unique opportunity to protect drinking water, protect critical wildlife habitat and create new recreational opportunities. Not only will this project help maintain water quality in the Oyster River, the property is also located on top of Spruce hole aquifer – a future source of water for the Town of Durham and University of New Hampshire. In addition to protecting water quality, approximately 97% of the property is designated as the “highest ranked habitat” in the State, according to the NH Wildlife Action Plan (2010). Of critical importance, the property contains suitable habitat for New England Cottontail, a state listed Endangered Species.

To date, \$2.964 million has been raised towards the total goal of \$4.082 million to purchase the Sprucewood Forest property and cover project related expenses. Funding secured to date includes \$2,464,000 from the Wetland Reserve Program (WRP) and \$500,000 from the NH Aquatic Resource Mitigation Program. Additional funds are also being sought from LCHIP and the NH Mooseplate program. The Durham Conservation Commission will be holding a public hearing on October 3 to consider expending \$370,000 from its Conservation Fund towards the project. The remaining \$749,000 will need to be raised privately by the end of 2012. Should fundraising efforts prove successful, the proposed project structure is for the Town of Durham to own the property with a conservation easement held by NRCS.

Amber Acres

The Land Trust has been working with the Town of Durham and NRCS to acquire a conservation easement on Amber Acres Farm, located directly across the Oyster River from Sprucewood Forest. In addition to its 4,000 feet of shoreline on the Oyster River, Amber Acres Farm serves as part of the scenic gateway to Durham and Lee along Route 155A's agricultural landscape. One of the project's primary goals is the conservation of local “working farmlands.” With two-thirds of the property at work as open fields, Amber Acres is well suited for agriculture and the project's goal is to ensure Amber Acres' continued use for local food production.

The Land Trust's private fundraising campaign seeks to raise the final \$175,000 needed by year end to permanently conserve Amber Acres Farm. To date, 85% (\$1,015,000) of the funding required to save Amber Acres Farm has already been committed, with \$765,000 from the Farm and Ranchland Protection Program, \$250,000 from the Durham

Conservation Fund. Additional funds are also being sought from LCHIP and the NH Mooseplate program.

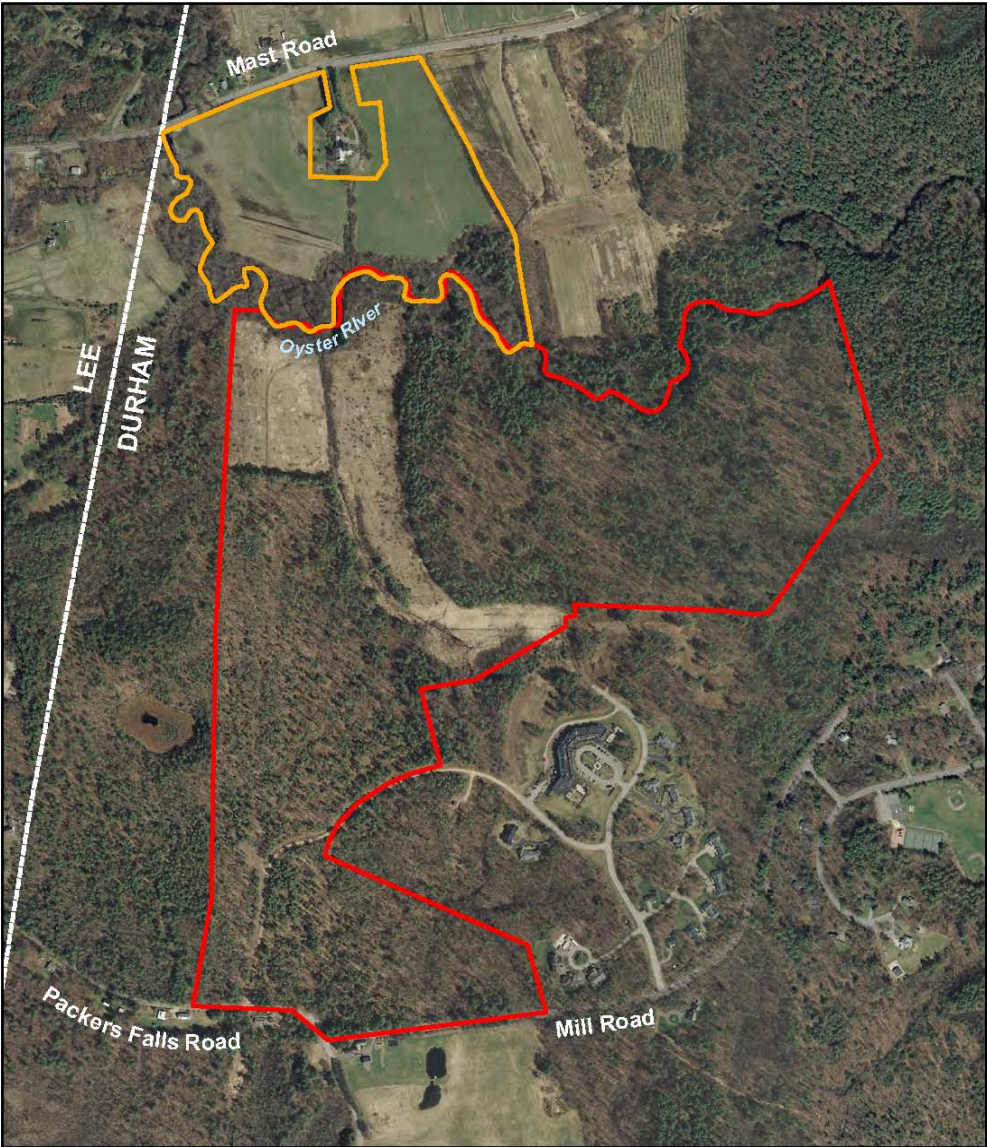
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About TPL




The Trust for Public Land (TPL) is a national nonprofit land conservation organization that conserves land for people to enjoy as parks, gardens, and natural areas, ensuring livable communities for generations to come. Since 1972, The Trust for Public Land has helped protect 3 million acres nationwide, including more than 225,000 acres in New Hampshire. The Trust for Public Land depends on the support of individuals, corporations, and foundations. Visit The Trust for Public Land online: www.tpl.org/newhampshire.

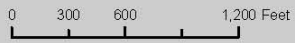
About the Southeast Land Trust of New Hampshire

Since 1980, the Southeast Land Trust of New Hampshire has been conserving the significant land and natural resources of southeastern New Hampshire (Rockingham County), including farmland, working forests, water, wildlife habitat and natural areas, and community landscapes. The Land Trust has permanently protected 146 properties totaling more than 8,500 acres. For more information please visit: www.seltnh.org.



Oyster River Initiative
Southeast Land Trust of NH
& Trust for Public Land
Durham, NH

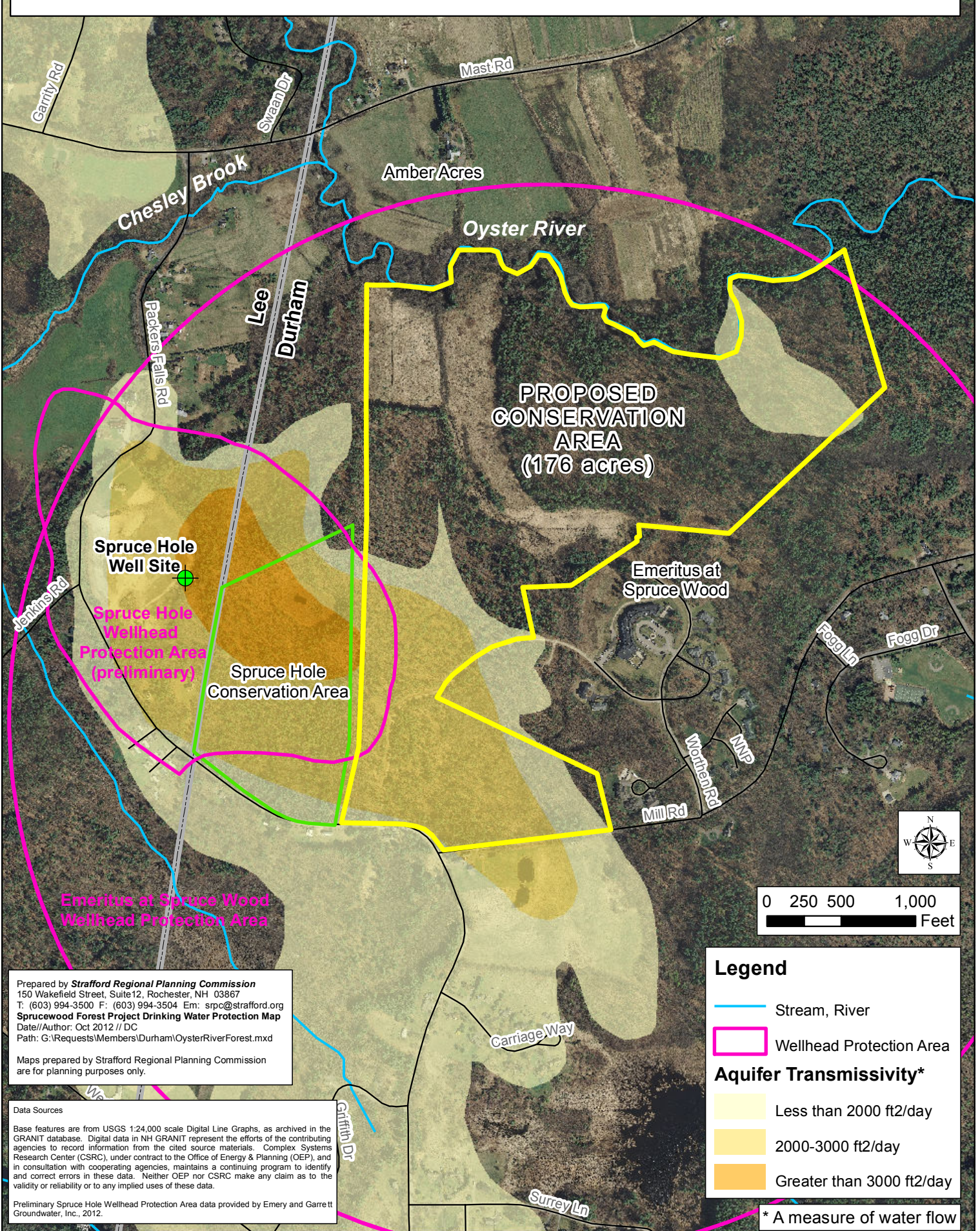
-  Amber Acres Farm
-  Sprucewood Forest
-  Town Line



Map prepared by
Southeast Land Trust of NH
October, 2012
2010 NHDOT aerial photo



Sprucewood Forest Project Drinking Water Protection Map



Prepared by **Stafford Regional Planning Commission**
 150 Wakefield Street, Suite 12, Rochester, NH 03867
 T: (603) 994-3500 F: (603) 994-3504 Em: srpc@stafford.org
Sprucewood Forest Project Drinking Water Protection Map
 Date//Author: Oct 2012 // DC
 Path: G:\Requests\Members\Durham\OysterRiverForest.mxd
 Maps prepared by Stafford Regional Planning Commission
 are for planning purposes only.

Data Sources
 Base features are from USGS 1:24,000 scale Digital Line Graphs, as archived in the GRANIT database. Digital data in NH GRANIT represent the efforts of the contributing agencies to record information from the cited source materials. Complex Systems Research Center (CSRC), under contract to the Office of Energy & Planning (OEP), and in consultation with cooperating agencies, maintains a continuing program to identify and correct errors in these data. Neither OEP nor CSRC make any claim as to the validity or reliability or to any implied uses of these data.
 Preliminary Spruce Hole Wellhead Protection Area data provided by Emery and Garrett Groundwater, Inc., 2012.

Legend

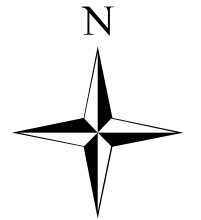
- Stream, River
- Wellhead Protection Area

Aquifer Transmissivity*

- Less than 2000 ft²/day
- 2000-3000 ft²/day
- Greater than 3000 ft²/day




* A measure of water flow

Map 13



PROPERTY MAP DURHAM NEW HAMPSHIRE

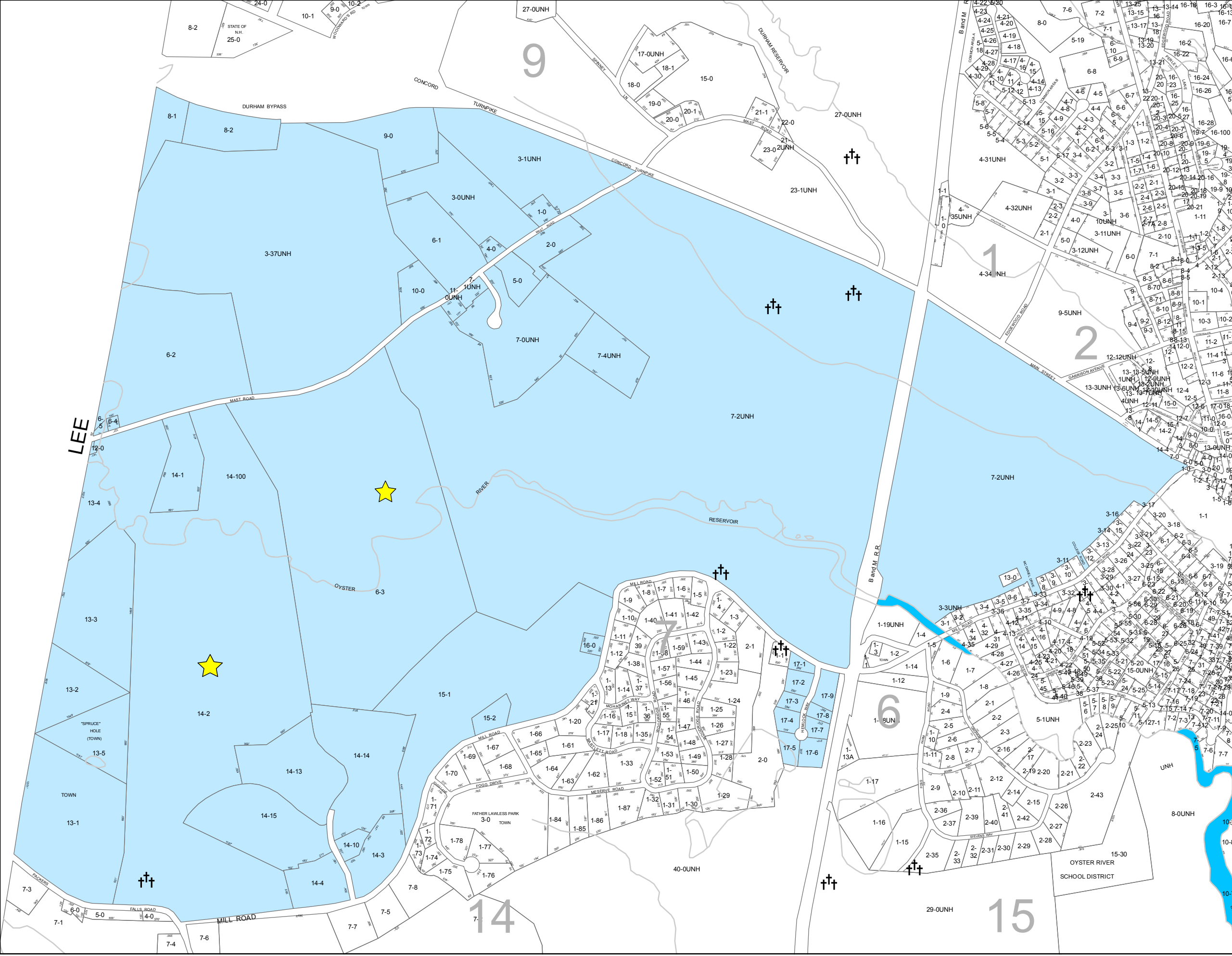
Legend

-  Adjacent Map Sheets
-  Current Map Sheet
-  Cemetery

1 inch equals 935 feet

This map was originally produced by
Strafford Regional Planning
Commission in October 2004 and
updated by the Town of Durham
in June 2009.

**THIS MAP IS FOR ASSESSMENT
PURPOSES ONLY.
IT IS NOT INTENDED FOR
LEGAL DESCRIPTION OR CONVEYANCE.**



Opinion of Thomas P. Ballestero in the Matter of the Spruce Hole Formation.

1 February 2010

The Town of Durham shares water supply and service with the University of New Hampshire. In the early 1900's Town and university populations were less than 1/10th of what they are today, and the water supply that served this system for decades was the Old Town Reservoir, located behind the UNH equestrian complexes on Main Street. The Old Town Reservoir was created by a small dam, and the impoundment was fed by a one square mile area watershed. From 1920 to 1940, the Town and university populations increased rapidly, and the Old Town Reservoir was no longer capable of supplying the increased demand. So the water supply source switched to the Oyster River, who's 12 square miles of watershed seemed more than abundant for the needs of the people. However after World War II, population continued to skyrocket to a level over five times of what it was at the beginning of the century. So within 2 decades of moving to the new, abundant water supply, it became clear that in the drier years, the Oyster River supply was inadequate to meet the needs of the water customers. The old Wiswall Dam and reservoir on the Lamprey River seemed to be a nearby source that would be more than adequate to make up the deficiency of the Oyster River flows. The Lamprey River has over 170 square miles of watershed upstream of Wiswall Dam plus upstream there are some larger impoundments that assist with flood control, recreation, and low flow control. To secure the Lamprey River water supply, a pipeline was constructed from the Lamprey River, through the Spruce Hole Formation, and to the Oyster River. (More recently, this pipeline was plumbed right into the water treatment plant). As growth continued to the end of the 1900's, which included land developments west of Town, wells were installed in the sand and gravel deposits next to the Oyster River, and this water served the western portion of the water distribution network.

So by the end of the last century, Town and university populations grew by 10-fold, the old water supply was abandoned, and three new water supplies were developed and added. As the century came to an end however, the reality proved that in roughly one third of the years, during the August-September low flow period, the wells and the Oyster River were insufficient to meet system demand. The Lamprey River is necessary to make up this difference. But guess what, independent of any other demands, these sources will not suffice long into the future. Although the rate of population growth has decreased since the start of this millennium, Town and university populations continue to increase.

Now some stark realities: neither the Oyster River nor the Lamprey River is entirely in Durham. In fact, Durham is downstream from most Towns in the watershed. The populations of the upstream towns are also increasing (some of the fastest growing in the state at the moment), and they will soon start to place their own demands on these same rivers. Given our current water law, Durham has no senior right to the water in these rivers. In addition, topography is not a barrier: just as Durham uses transbasin diversion to move water from the Lamprey to the Oyster,

other Towns can certainly follow suit. Also, downstream towns can divert water from locations upstream of Durham.

Another demand that will soon occur on these rivers is for instream flows: the minimum flows necessary to preserve instream, water-dependent resources. When the instream flows are established, water will be all the more critical at low flow times necessitating towns to add storage capacity, new water supplies, and conservation plans for their drinking water infrastructure.

There should be no false sense of security in the water supply. The Town and university need to be thinking in terms of securing water supplies for the next century or longer. Water is not like energy: there are no alternatives. Water is not like money, you can't print more. You either have it or you do not. The more insidious aspect is that you can have the water, but if it is contaminated it could be rendered unpotable. Or the treatment costs could be prohibitive.

One existing water supply that can be a short term supplementary supply consideration is the Spruce Hole Formation. I say short term, because with just a production well and pumping groundwater, this formation can supply about 20% more water to the existing system supply. At the present rate of population growth, this will suffice for another 2 to 3 decades. Unless controls are placed on population, density, or growth, an additional water supply will then be necessary by mid-century.

Having taught and consulted on development of water supplies and designs of water transmission systems for 3 decades, I can identify that there are some simple ways to deal with water supply issues. As we have seen in the past 10 years, there is phenomenal potential for flooding in our rivers. So one way out of the water supply problem is to build enough storage to save some of the flood waters in order to then have water when the rivers are at very low stages. Conventionally this is either done with dams or with storage tanks. But the magnitude of storage that we are talking about is in the millions of gallons. This alternative is not cheap. Plus, there really are no strong possibilities for dams to meet these needs. Even if there were, there is no guarantee that a new dam would make it through the review and permitting process. Interestingly, the Spruce Hole Formation already possesses a fantastic amount of storage, and most of the infrastructure necessary to get the water to the formation already exists. This is almost a no cost option. If operated as a reservoir (what is known as aquifer storage and recovery), the Spruce Hole Formation could help the Durham/UNH water system suffice for at least another century.

What is the value of the Spruce Hole Formation? At least 2 to 3 decades of new water supply if the water quality is maintained and it is used solely to pump groundwater. If the formation is operated as artificial storage and recovery, this is could provide additional water supply for well

over a century. If you want to place a dollar value on this formation, ask yourself what it would cost to replace the Oyster River supply.

What is critical is that once this formation is lost, it is lost forever. Don't kid yourself. If you do think that you can bring back developed areas, turn them into natural areas, and use them for natural resources, imagine a very productive aquifer being right under the center of Town, with the best site for a well at Young's Restaurant. To develop this site, all buildings within 400 feet of the well would need to be removed. Let's be honest, this just would not happen.

The slippery slope that you find yourselves on now is the slow but steady erosion of the protection that you once afforded the Spruce Hole Formation. At some point your decisions will become irreversible and the formation, its water supply, or its storage ability will be untenable. Any development proposal on the heart of the Spruce Hole Formation has the potential to render the formation unusable. Maybe not today or in the next decade, but it will happen. We cannot be so careless as to think that just because we employ prudent stormwater and land use management strategies that this insures us against the loss of this formation. This simply is not true. The best way to secure the integrity of this formation and the water it contains is to protect it from any development. Anything less erodes its integrity and sanctuary. Employing modern stormwater management strategies may remove 99% of some pollutants from stormwater, but not all. In addition, the 1% that is not removed, in this case, goes to the Spruce Hole Formation. And this 1% is relentless: it occurs day after day after day. Ultimately you would surpass the ability for the formation to accept these contaminants without consequence. If the Superfund program has taught us anything, it is that prevention is much more cost-effective than the cure. If you do not believe this, ask Dover when the groundwater in the sand and gravel formation at the Tolend Road landfill will again be potable, and at what cost?

Be fully aware that your actions on this matter will not go unnoticed. A good portion of the Spruce Hole Formation is in the neighboring Town of Lee. How do you expect to convince Lee to protect this same formation from development if you do not do so yourself? Similarly, if you do not create the protective buffers at the rivers which serve as your water supplies, what will persuade the upstream towns to do so? If your own actions do not display the importance of this formation when the decisions are in your own hands, how do you expect to convince others that the resource is worth protecting?

100 years from this day, your successors will consider you either people with great vision and foresight, or foolish enough to let this opportunity slip through your hands and go to waste. The opportunity now is before you, and once it is lost there is really no going back without a lot of cost, difficulty, and pain.