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Town of Durham
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Planning, Assessing
and Zoning

Chairman Peter Wolfe
Planning Board
Town of Durham 15 Newmarket Road
Durham, NH 03824

re: 50 Newmarket Road – Mill Pond Center Property

Dear Chairman Wolfe and Planning Board Members,

As you are aware, the Southeast Land Trust of New Hampshire (formerly known as the Rockingham Land Trust) holds a conservation easement on approximately 9.977 acres of the approximately 17 acre Mill Pond Center property. The Town of Durham holds an executory interest in this conservation easement, thereby providing the Town with the ability to enforce the conservation easement should the Southeast Land Trust fail to do so or cease to exist.

It was recently brought to our attention that there will be an informal discussion surrounding the possibility of subdividing the Exclusion Area related to the conservation easement into a 3-lot conservation subdivision at the March 26th Planning Board meeting. At this point in time we would like to point out specific portions of the conservation easement that should be taken into account as well as a few suggestions we have if this project moves forward.

First, Section 2.H. of the conservation easement eliminates the ability of the 9.997 acres subject to the conservation easement (referred to by the term 'Property' in the easement and hereinafter) from being used in density calculations for development of any other property, including the portion of the Mill Pond Center land not subject to the conservation easement (referred to in the easement and this letter as the 'Exclusion Area'). Because of this restriction, please understand that the Property (the land subject to the conservation easement) cannot be used to meet the density requirements of the Town of Durham zoning regulations for any of the lots created from the Exclusion Area. To do so would constitute a violation of the conservation easement and result in enforcement action from the Southeast Land Trust.

In addition, last July we had a question from the realtor listing the Mill Pond Center property about the use of the Property for road frontage for density requirements under the Durham Zoning Ordinance. To clarify our response to the realtor and make the Planning Board aware, the road frontage of the Property can only be used to satisfy the frontage requirements of only one lot in the Exclusion Area and no other lots created from the Exclusion Area. It is difficult to discern from the conceptual plan submitted if this is the proposed outcome or if the proposed lots would use a portion of the frontage of the Property to meet the frontage requirements.

Further, Section 2.B of the conservation easement states that the Property shall not be subdivided from the Exclusion Area or otherwise divided in ownership. This means that the Property (the

land subject to the conservation easement) must remain intact and under the ownership of one entity and that in addition, one of the lots resulting from the subdivision of the Exclusion Area must remain with the Property.

One more thing relevant to the potential subdivision is the location of the septic system and leach fields associated with the existing buildings on the Exclusion Area. We believe that the current septic tank is located in the northeast corner of the proposed 60,000 square foot lot shown on the subdivision sketch submitted by the applicant to the Durham Planning Department. A portion of the leach field also partially extends into the Property. Please note that Section 3.G. of the conservation easement states that only the buildings and structures located on the Property and Exclusion Area at the time of the recording of the easement may use the leach field. Any portion of a new septic system and leach field required by any new buildings would not be allowed to be located on the Property. This provision also excludes any new buildings from using the existing leach field.

Finally, we would like to make two suggestions regarding the potential subdivision. The first is, in keeping with the original intent of the conservation easement, we would suggest that any new houses built on subdivided lots are set back from the conservation easement boundary so as not to impact the scenic view as seen from Route 108. As appears to be the intent of the applicant, we would also prefer that the existing barn and house within the Exclusion Area remain as part of the same lot with the Property (the land subject to the conservation easement).

Duane Hyde, our Land Protection Director, is planning to attend the Planning Board meeting in case you have any questions on the matters in this letter. Thank you for your consideration and please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Goard". The signature is fluid and cursive, with the first name "Deborah" written in a larger, more prominent script than the last name "Goard".

Deborah Goard
Easement Stewardship Manager

cc: Judi Currie, Seacoast Repertory Theatre, Interim Managing Director