

# Mitigation Baseline Report

## Site Z3 - Brush Road Forest Site

### Pembroke, NH

#### Northern Pass



Prepared for  
Northern Pass Transmission, LLC and  
Public Service of New Hampshire  
d/b/a Eversource Energy  
Energy Park  
780 Commercial Street  
Manchester, NH 03101

August 2016

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# **Conservation Easement Baseline Documentation Report**

*(To satisfy Treasury Regulation 1.170A-14(g)(5))*

## **Donor Information:**

Name(s): **Renewable Properties, Inc.**

Address: 780 Commercial St, Manchester, NH 03101

## **Property Location:**

Road: 552-578 Sixth Range Road

Town/County: Town of Pembroke, Merrimack County

**Donee Name/Address:** Eversource Energy Land Trust, Inc.  
107 Selden Street Berlin, Connecticut 06037

**Land Types:** Total acreage: 91.7 ac. 78 ac Hemlock Hardwood 4 ac Wetlands

## **Buildings, Structures, & Improvements on Property:**

*Describe size, type, and condition of buildings, structures and improvements, including houses, sheds, towers, docks, barns, man-made ponds, roads, utilities, etc. Include historical, cultural and archeological features. Show locations on attached map.* Site Z3 – the Brush Road Forest Site – is a 91.7 acre undeveloped parcel on Brush Road and 6<sup>th</sup> Range Road in Pembroke. An existing PSNH ROW crosses the parcel for a total length of approximately 1,080 feet. Three new NP structures will be added to the ROW, requiring additional tree clearing of about 20 to 30 feet along the southern edge of the ROW. The total area of open land that will be associated with the ROW is approximately 5 acres. There are no other structures on the property.

## **Condition of Land:**

*Describe condition and management status of forest or farmland, condition of wetlands or waterways, unusual features, listed species or natural communities; note erosion, gravel pits, dumping or pollution.*

Site Z3 is a primarily hemlock-hardwood-pine forest. An un-named perennial stream flows south to north across the site on the western side, entering a small beaver pond prior to flowing off the site. Multiple wetland types are associated with the beaver flowage wetland/stream and other wetlands on site, including palustrine scrub-shrub, forested and emergent wetlands. Several vernal pools are present, and the buffering forest is well-managed second growth hemlock, pine and oak forest. Several state-listed rare species are known to be located within one mile of Site Z3, including Eastern Hognose Snake, Smooth Green Snake, Pine Devil, Spiny Oakworm, Graceful Clearwing, Noctuid Moth, and Wild Lupine. Some of these species may also find suitable habitat on the mitigation site. Site Z3 has approximately 60 acres of NH Wildlife Action plan designated Highest Ranked Habitat in the State, and 7.5 acres of Highest Ranked Habitat in the Region.

A Phase I Site Assessment was conducted on the parcel. During the walkover, no hazardous substances or petroleum products or signs of any spills or releases were observed on the Site. However, a deteriorating abandoned vehicle was discovered in the interior of the property. In addition, a 55 gallon drum and discarded oil filter were observed with no evidence of leaking oil or ground staining nearby. Finally, several old tires, bottles/cans and similar debris common on backlands were discovered and removed.

Adjacent land uses are forestry and residential. Site Z3 has approximately 3,800 feet of frontage on Brush Road and 1,415 feet of frontage on Sixth Range Road. Sixth Range Road borders the site to the northwest and is not maintained for travel. Brush Road bisects the site and is accessible by vehicle from Fourth Range Road to a point about midway along the Site, beyond which vehicular access is limited to four-wheel drive vehicles. There are some residences close by, and the Site would be accessible for development if not conserved.

Feature	Measurement/Classification
Total Site Area	91 acres
Waterbody	Small beaver pond, perennial stream
Shoreline Length	N/A
Stream Length	178.33 linear feet
Wetlands	3.7 acres (0.7 ac PSS1, 0.5 PEM1; 1.0 PFO1; 1.5 PUB)

*In compliance with Treas. Reg. 1.170A-14(g)(5), this natural resources inventory is an accurate representation of the property at the time of the conservation donation.*

_____	_____
	for Five Rivers Conservation Trust
_____	_____
	Baseline Document Preparer
_____	_____
Date	Date

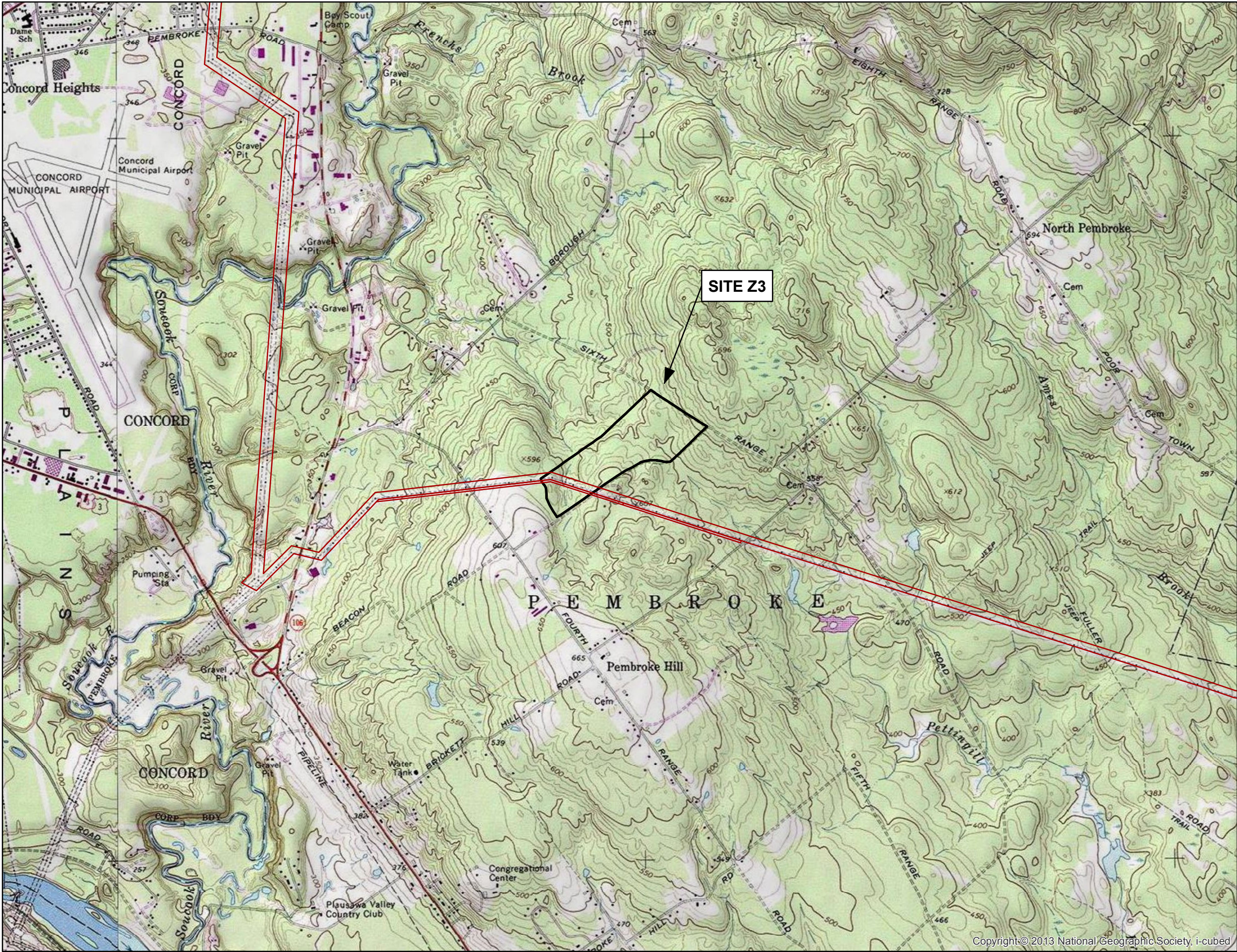
Attachments: (not all conservation parcels have all attachments)

USGS Location Map  
 Ground Photos  
 Aerial Property Map  
 Natural Resource Maps (Soils, Cover Types, Wildlife Action Plan, etc.)  
 Site Reconnaissance Notes  
 Property Deeds and Survey Plans  
 Conservation Easement Deed

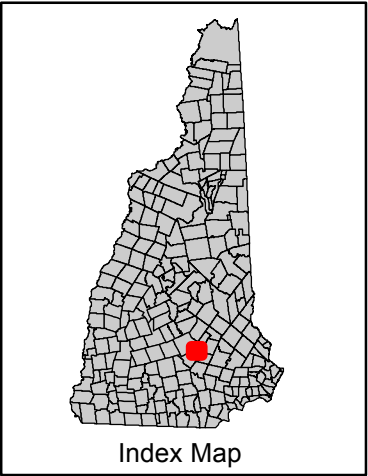
## USGS Location Map



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# Northern Pass Mitigation Analysis

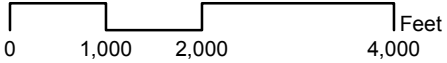


- Site Features**
- Proposed ROW / Site Facilities
  - Mitigation Parcels

Data Provided By: ESRI & USGS



1:24,000



Normandeau Associates, Inc  
25 Nashua Road,  
Bedford, NH, USA  
03110





## Ground Photos

Site Z3 – Brush Road Site  
Ground Photos



Photo 1. July 14, 2016. Forest of northern edge of Site Z3 along 6<sup>th</sup> Range Road.



Photo 2. May 21, 2015. Perennial stream that crosses Parcel 8981, and flows into a beaver pond on the property.



Site Z3 – Brush Road Site  
Ground Photos



Photo 3. May 21, 2015. One of several Vernal Pools on Parcel 8981. Wood frog and spotted salamander eggs present.



Photo 4. The stream as it enters the beaver pond/marsh on Parcel 8981.



Site Z3 – Brush Road Site  
Ground Photos



Photo 5. July 14, 2016. A view of the well-managed mixed pine/oak forest surrounding a potential vernal pool.



Photo 6. May 21, 2015. The perennial stream also flows through other wetlands, including this small emergent marsh.

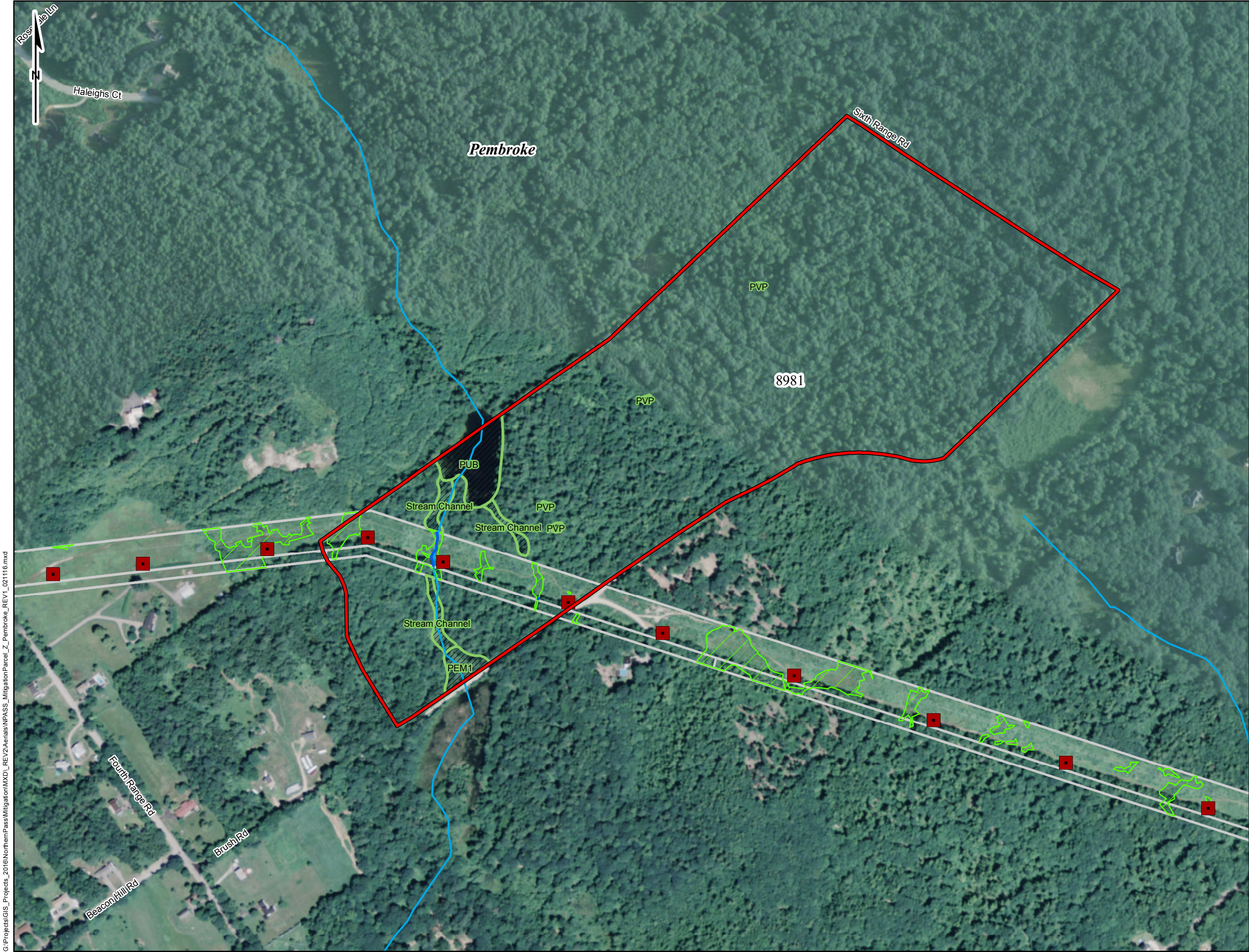
Site Z3 – Brush Road Site  
Ground Photos



Photo 7. July 14, 2016. Bobcat tracks on Site Z3.

## Aerial Photo Property Map

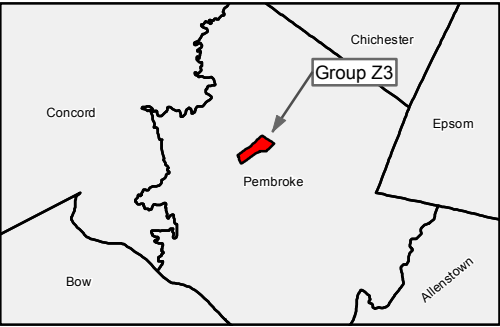




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# Northern Pass Mitigation Analysis

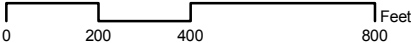
Mitigation Group: Z3



Group Z3 Site Summary		
Town:	Pembroke	
County:	Merrimack	
HUC 12 Watersheds:	010700060202 010700060503	
Eco Region:	ME Coastal Plain	
Total Site Acreage:		91.7

- Site Features**
- Proposed Transmission Structures
  - Delineated Streams
  - NHD Streams
  - ROW Access Routes
  - Group Z3 Parcel
  - Mitigation Parcels
  - Political Boundaries
  - Delineated Vernal Pools
  - Delineated Wetlands
  - Photointerpreted Wetlands
  - Proposed ROW

Data Provided By: GRANIT, NHDES, NHHNB, NRCS, NHF&G, NHD and ESRI



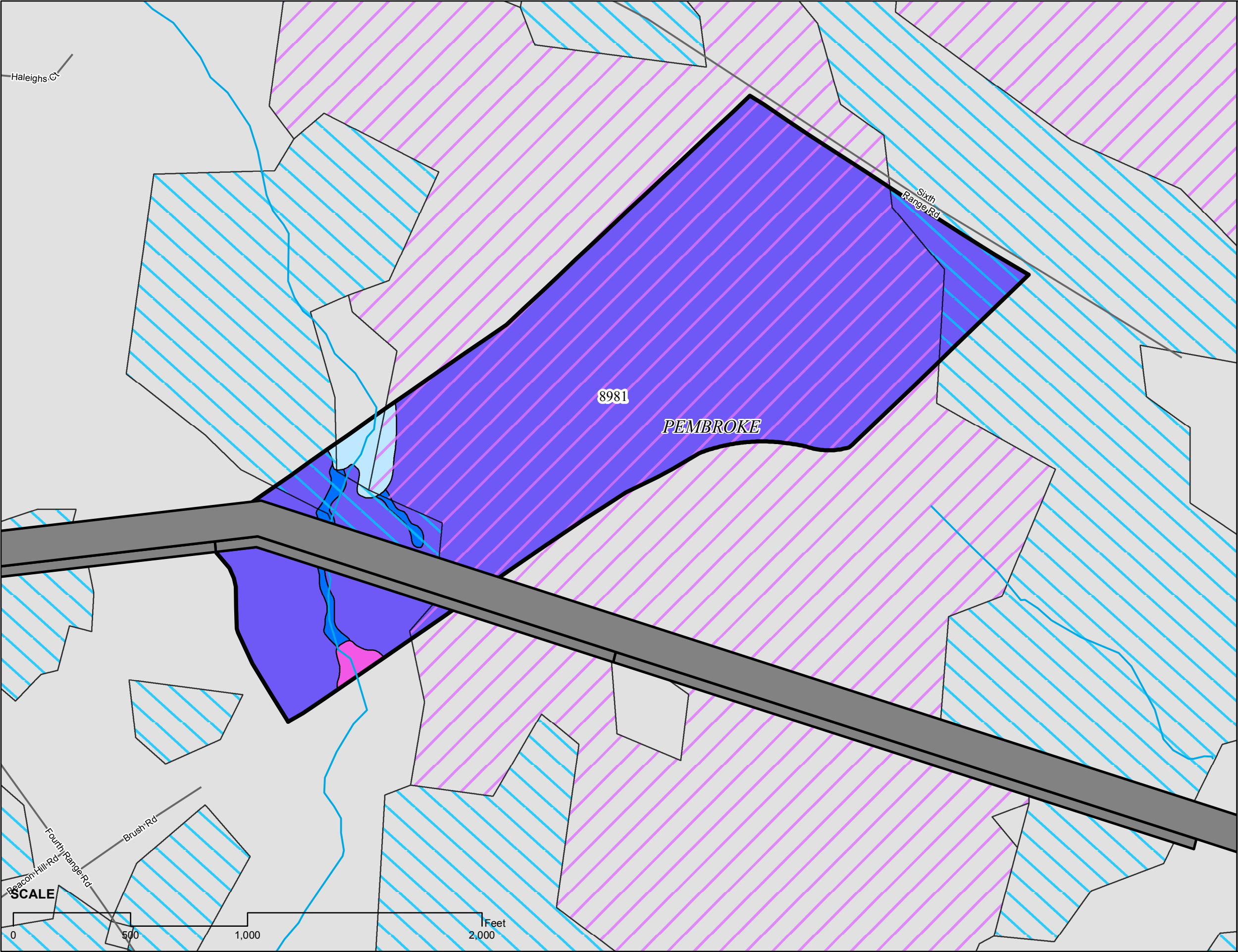
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25 Nashua Road,  
Bedford, NH, USA  
03110



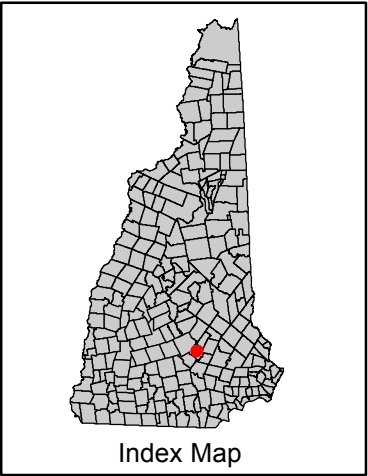


## Natural Resource Maps

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Northern Pass Mitigation Analysis



Group: Z3

Site Features (acres)  
5.1 Proposed ROW / Site Facilities

WAP Tiers (acres)  
60.1 Highest Ranked Habitat in NH  
7.6 Highest Ranked Habitat in the Biological Region

Photointerpreted Cover Types (acres)

0.5 Open Habitat	Mixed Hardwoods
Clear Cut	Lowland Spruce Fir
River	Hardwood / Softwood
0.8 Stream	72.2 Hemlock Hardwood Pine
1.5 Pond	High Elevation 2500 +
Residential	High Elevation Spruce Fir 2700 +
Northern Hardwood Conifer	

\*Note: open habitat includes wetland marshes, wet meadows, shrub swamps and fields.

Data Provided By: GRANIT, NHF&G and NHD



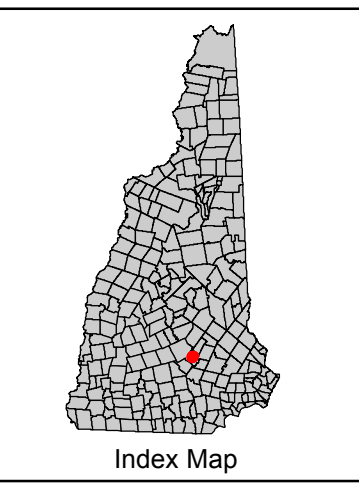
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Northern Pass Mitigation Analysis



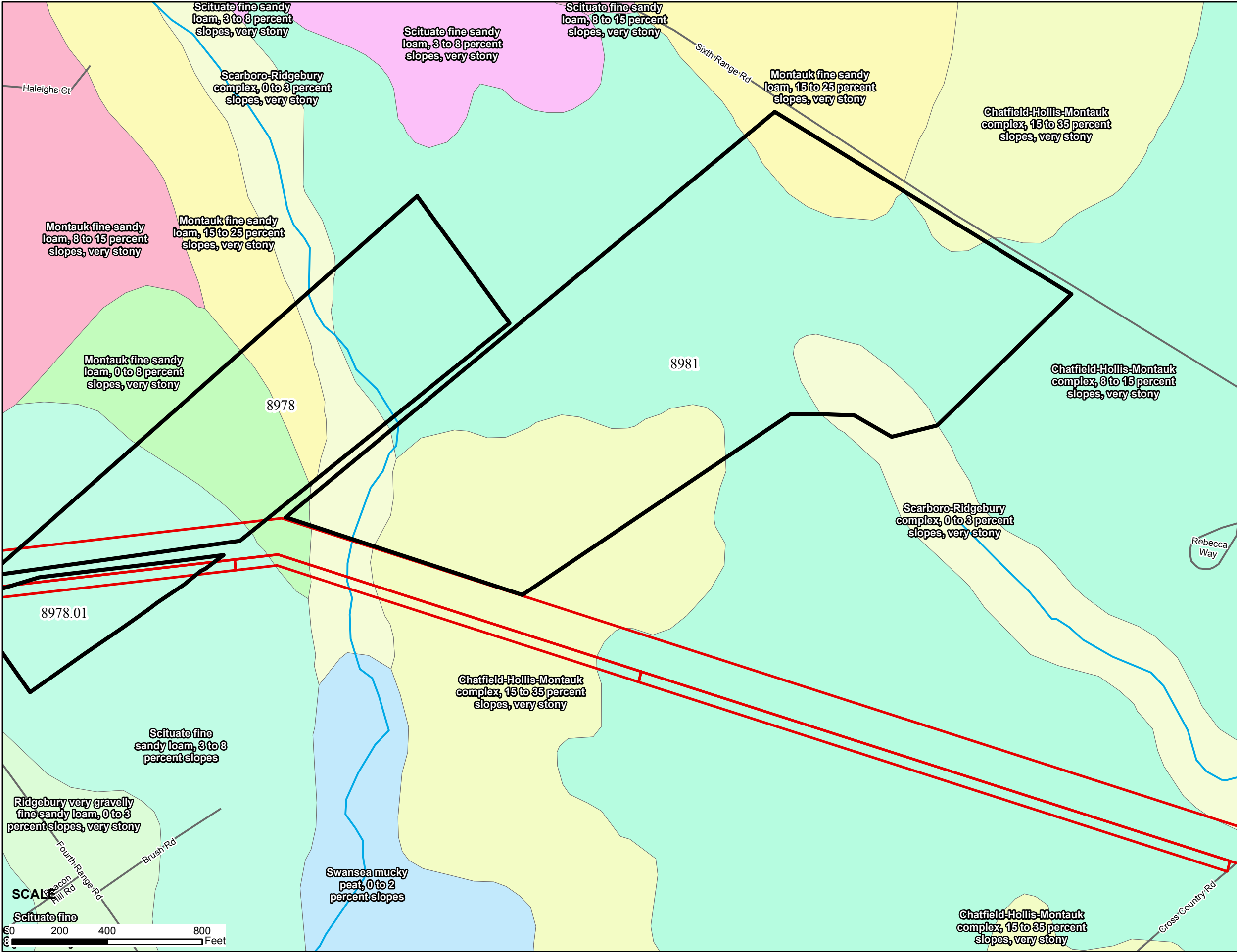
Group: Z3

- Site Features (acres)
- NHD Streams
  - Delineated Streams
  - Delineated Vernal Pools
  - Delineated Wetlands
  - Proposed ROW / Site Facilities
- Photointerpreted Wetland Cover Types (acres)
- |        |      |       |                |
|--------|------|-------|----------------|
| 0.5    | PEM1 | 1.5   | PUB            |
| PFO1   |      | 0.12  | PVP            |
| PFO1/4 |      | River |                |
| PFO4   |      | 0.9   | Stream Channel |
| PSS1   |      |       |                |

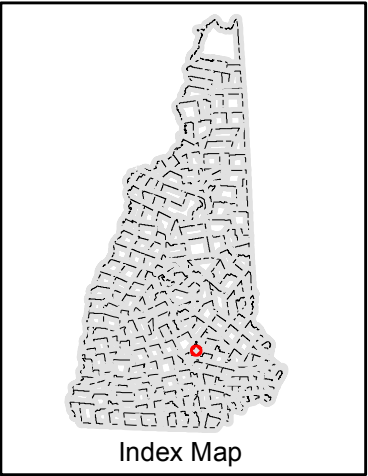
Data Provided By: GRANIT & NHD



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# Northern Pass Mitigation Analysis - Soils Map



## Group: Z3

- Mitigation Parcels
- Proposed ROW/Site Facilities

\*Note: open habitat includes wetland marshes, wet meadows, shrub swamps and fields.

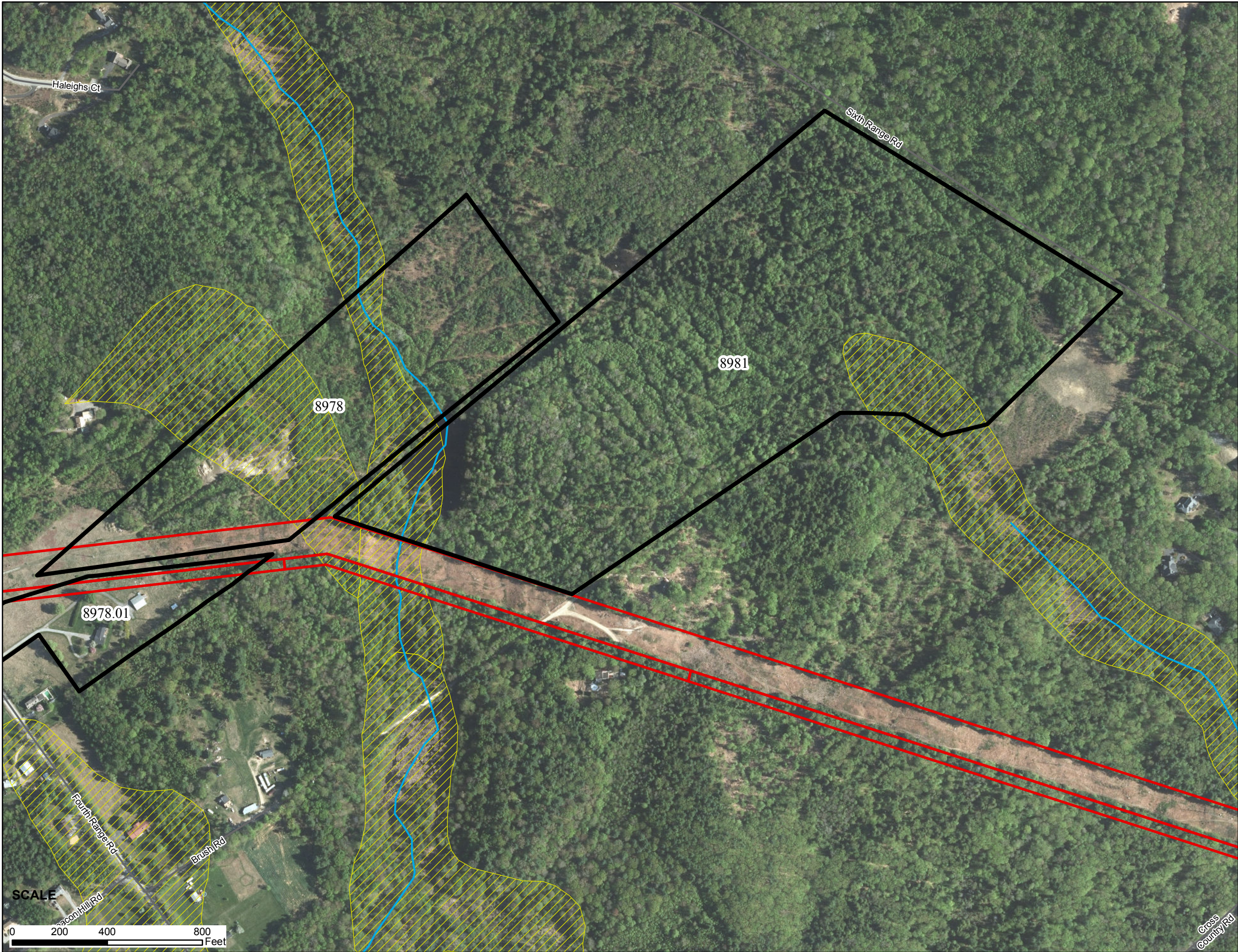
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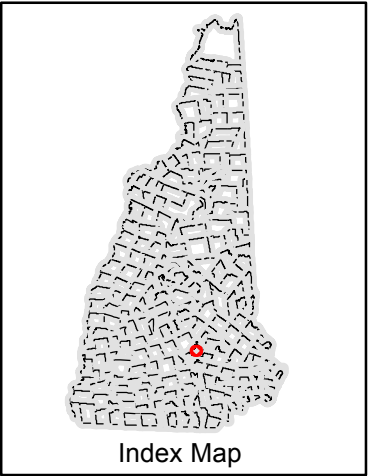
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03110







Northern Pass Mitigation Analysis - Hydric Soils Map



Group: Z3

- Mitigation Parcels
- Proposed ROW/Site Facilities
- Hydric Soils

\*Note: open habitat includes wetland marshes, wet meadows, shrub swamps and fields.

Data Provided By: GRANIT and NHD



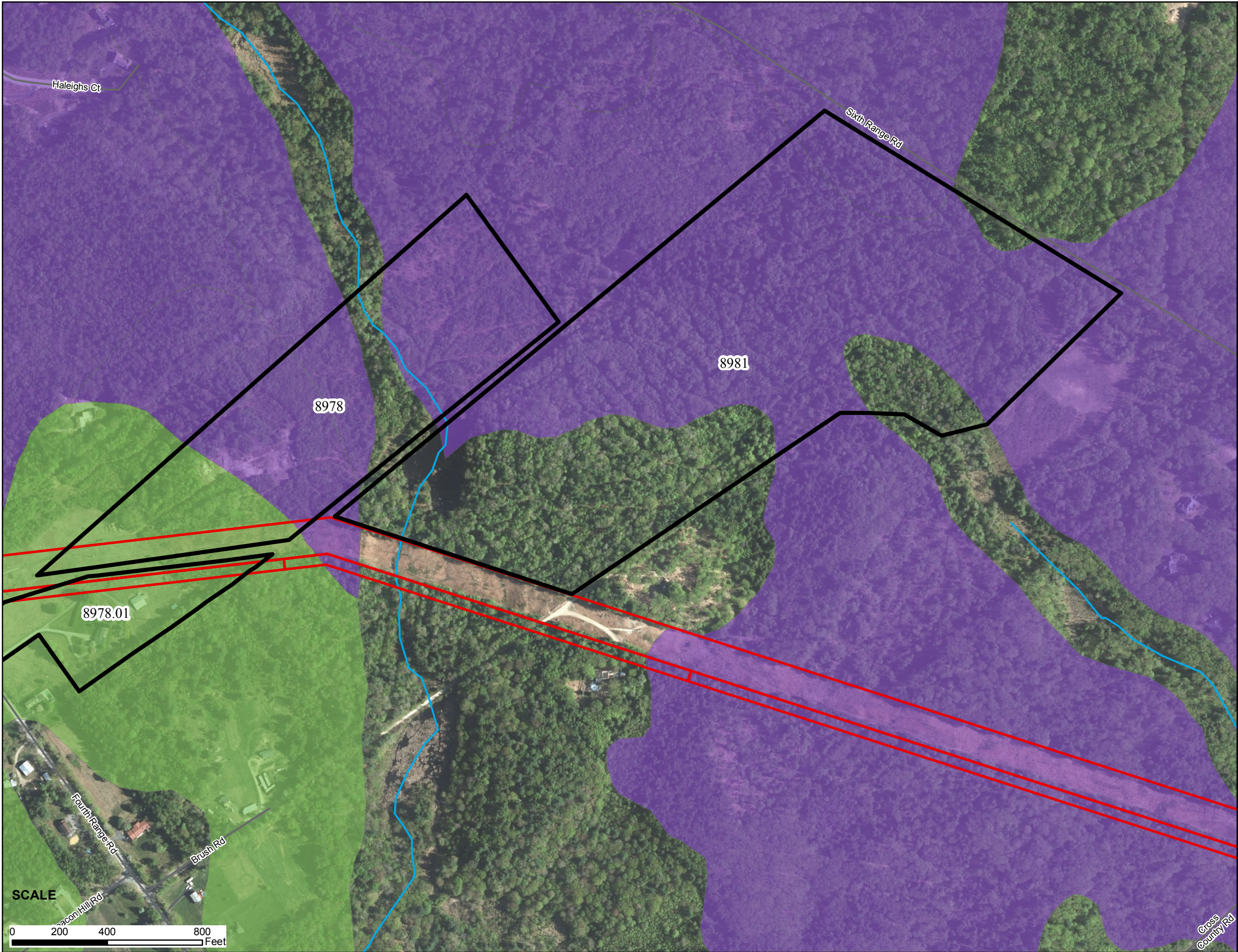
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03110



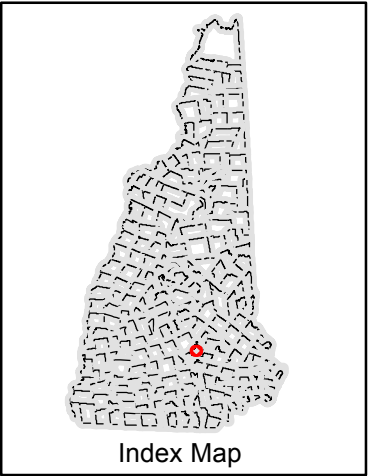
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Northern Pass Mitigation  
Analysis - Agricultural Land Map



- Group: Z3
- Mitigation Parcels
  - Proposed ROW/Site Facilities
  - All areas are prime farmland
  - Farmland of local importance

\*Note: open habitat includes wetland marshes, wet meadows, shrub swamps and fields.

Data Provided By: GRANIT and NHD



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03110





## Site Reconnaissance Notes

## Brush Road and 6<sup>th</sup> Range Road, Pembroke Mitigation Parcel Field

### Reconnaissance Notes

#### Site Z3

A brief walkover of the parcel located northwest of Brush Road and South east of 6<sup>th</sup> Range Road in the Town of Pembroke, New Hampshire was conducted on July 14, 2016. The purpose of the site visit was to obtain general information regarding the presence of access roads, walking paths, streams, wetlands and other notable natural resources such as vernal pools and rare species. The walkover was not intended as a comprehensive review of the physical attributes of the site, but rather as a general review to identify features that may provide additional mitigation potential in terms of unique natural resources, restoration opportunity, and/or recreation potential (trail access).

#### General Site Comments

Site Z3 is entirely forested except for the existing Eversource ROW and the wetland areas and pond in the southwestern portion of the parcel described below, and a small open area in the northeast corner. The forest cover is well-managed second growth hemlock-hardwood-pine forest. Large portions of the parcel were cut relatively recently, (< 10 years ago), and in these locations the stems are small (< 2 inches diameter at breast height) and dense. However, larger trees are also present throughout the parcel, and the skid roads created during harvest are largely overgrown. An un-named perennial stream flows south to north across the site on the western side, entering a small beaver pond prior to flowing off the site. Multiple wetland types are associated with the beaver flowage wetland/stream and other wetlands on site, including palustrine scrub-shrub, forested and emergent wetlands. Several vernal pools are present, and the buffering forest is in good condition, providing suitable habitat for vernal pool breeders.

The NH Wildlife Action Plan designates approximately 60 acres of the Z3 site as designated as Highest Ranked Habitat in the State, and 7.5 acres as Highest Ranked Habitat in the Region.

Adjacent land uses are forestry and residential. Site Z3 has approximately 3,800 feet of frontage on Brush Road and 1,415 feet of frontage on Sixth Range Road. Sixth Range Road borders the site to the northwest and is not maintained for travel. Brush Road bisects the site and is accessible by vehicle from Fourth Range Road to a point about midway along the Site, where it becomes the eastern border of the parcel. At this point, vehicular access is limited to four-wheel drive vehicles. There are some residences close by, and the Site is accessible for development.

#### Wildlife and Wildlife Habitat Value

An onsite review of the wildlife and wildlife habitat value of the parcel was conducted on July 14, 2016. The relatively undisturbed second growth forest appears to offer good wildlife habitat



for a variety of species that are present in southern New Hampshire. Although the forest on site is regenerating from relatively recent cutting, some larger, old trees and snags are present and have suitable structure to provide roosting habitat for bats. Tracks from deer, coyotes, opossum, raccoon and bobcat were observed and chipmunks were heard. Browse damage on young hemlocks indicating winter use by deer was not observed, and there did not appear to be any recent beaver activity around the beaver pond. On the upland portion of the parcel which included the existing ROW and forested area, 15 species of bird were heard, and nine additional species were seen or heard in wetland habitats, including wood ducks, mallards, and a group of four roosting eastern whip-poor-wills.

## **Property Deeds and Survey Plans**

Docket Number: 201400011415  
 Recorded in Merrimack County, NH  
 Kathi L. Guay, CPO, Register  
 BK: 3447 PG: 174, 7/8/2014 2:58 PM  
 LCHIP \$25.00 RECORDING \$22.00  
 TRANSFER TAX \$4,500.00  
 SURCHARGE \$2.00

Return to:  
 Michael D. Ruedig, Esq.  
 Gallagher, Callahan & Gartrell, PC  
 PO Box 1415  
 Concord, NH 03302-1415

MERRIMACK COUNTY RECORDS

*Kathi L. Guay*, CPO, Register

22 49  
0-  
25-

4500.00

**WARRANTY DEED**

**KNOW ALL MEN BY THESE PRESENTS**, that **PEMBROKE TIMBER LLC**, a New Hampshire Limited Liability Corporation, with an address of P.O. Box 423, Belmont, Massachusetts 02478, for consideration paid, grants to **RENEWABLE PROPERTIES, INC.**, a New Hampshire corporation with its principal offices at 780 North Commercial Street, Manchester, New Hampshire 03101 with **WARRANTY COVENANTS**, certain real property, with the improvements thereon, situate in the Town of Pembroke, Merrimack County, New Hampshire, more particularly described follows:

A certain tract or parcel of land, together with any improvements thereon, located in Pembroke, Merrimack County, New Hampshire, shown on a plan of land entitled "Boundary Survey, Mills-Lakeman Lot West Side of the Fifth Range Road, Pembroke, N.H. owned by Patriot Investment Company", prepared by FORECO: Forest Resource Consultants, dated October, 1986, recorded in the Merrimack County Registry of Deeds as Plan No. 9256 (the "Plan"), which tract is referred to in the Town of Pembroke Assessor's Records as Map 260, Lot 39, and is more particularly described as follows:

Beginning on the westerly sideline of the road shown on the Plan as Fifth Range Road but now known as Sixth Range Road, so-called, at an iron rod set in a stone pile, said iron rod being the northeast corner of the herein-described premises;

Thence running South 62° 42' 47" West a distance of 1427.5 feet along land now or formerly of Cofran to a 7" diameter red maple tree and a wire fence;

Thence running South 71° 50' 52" West a distance of 321.6 feet along land now or formerly of Marshall and along a wire fence to the beginning of a stone wall;

Thence running South 70° 16' 10" West a distance of 193.2 feet along said Marshall land to the end of said stone wall;

Thence running South 71° 03' 25" West a distance of 490.3 feet along said Marshall land and along a wire fence to the beginning of another stone wall;

Thence running South 70° 43' 20" West a distance of 544.5 feet along said Marshall land and along said stone wall to an intersection of stone walls;

Thence turning and running South 03° 15' 54" East a distance of 83.6 feet along land now or formerly of Terry to a point on said stone wall;

Thence running South 24° 45' 37" East a distance of 74.4 feet along said Terry land to a point on said stone wall;

Thence running South 07° 15' 24" East a distance of 88.2 feet along said Terry land to a point on said stone wall;

Thence running South 12° 35' 55" West a distance of 190.2 feet along said Terry land to a point on said stone wall;

Thence running South 07° 37' 26" East a distance of 165.6 feet along said Terry land to a point on said stone wall;

Thence running South 15° 55' 11" East a distance of 301.4 feet along said Terry land to an intersection of stone walls on the northerly sideline of the road shown on the Plan as Lakeman Road but also known as Brush Road, so-called;

Thence turning and running North 71° 00' 56" East a distance of 109.2 feet along said Brush Road to a point on said stone wall;

Thence running North 71° 08' 23" East a distance of 592.1 feet along said Brush Road to a point on said stone wall;

Thence running North 70° 55' 24" East a distance of 410.9 feet along said Brush Road to a point on said stone wall;

Thence running North 71° 16' 25" East a distance of 221.7 feet along said Brush Road to a point on said stone wall;

Thence running North 71° 54' 33" East a distance of 182.8 feet along said Brush Road to the end of the said stone wall;

Thence running North 73° 05' 52" East a distance of 221.2 feet along said Brush Road to a stake and stones ("Point A");

Thence running in a general northeasterly direction along land now or formerly of Rothwell to the beginning of a stone wall, said stone wall being North 87° 46' 17" East, a tie distance of 1209.6 feet from Point A (said last-described course partially running along said Brush Road);

Thence running North 62° 14' 30" East a distance of 119.9 feet along said Brush Road to a point on said stone wall;

Thence North 61° 47' 42" East a distance of 674.8 feet along said Brush Road to a drill hole at the intersection of stone walls at the corner of said Brush Road and said Sixth Range Road;

Thence turning and running North 43° 44' 13" West a distance of 172.1 feet along said Sixth Range Road and partially along said stone wall to the beginning of another stone wall;

Thence running North 41° 37' 11" West a distance of 286.1 feet along said Sixth Range Road to the end of said stone wall;

Thence North 41° 20' 26" West a distance of 98.3 feet along said Sixth Range Road to the beginning of another stone wall;

Thence North 40° 55' 10" West a distance of 265.8 feet along said Sixth Range Road to the end of said stone wall;

Thence North 40° 59' 26" West a distance of 291.7 feet along said Sixth Range Road to the beginning of another stone wall;

Thence running North 40° 06' 30" West a distance of 228.4 feet along said Sixth Range Road to the end of said stone wall;

Thence running North 41° 37' 53" West a distance of 71.8 feet along said Sixth Range Road to the point of beginning.

Containing 80.32 acres, more or less, according to the Plan.

Being the same premises conveyed by Warranty Deed of Frederick B. Whittemore to Pembroke Timber LLC dated June 25, 2004, and recorded at Book 2673, Page 134 of the Merrimack County Registry of Deeds.

THIS IS NOT HOMESTEAD PROPERTY.

EXECUTED this 24<sup>th</sup> day of June, 2014.

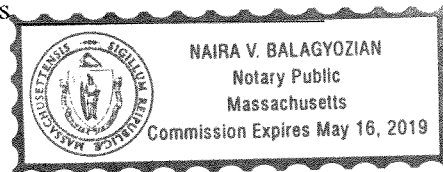
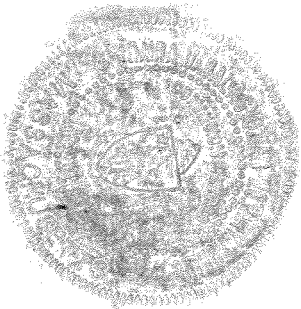
PEMBROKE TIMBER LLC

By: [Signature]  
Name: JONATHAN P. SCHWARTZ PRESIDENT  
MATRIX MANAGEMENT SERVICES, MEMBER  
Duly authorized

STATE OF MA  
COUNTY OF Middlesex

On this the 24<sup>th</sup> day of June, 2014, before me, the undersigned officer, personally appeared the above named Jonathan Peter Schwartz of Pembroke Timber LLC, a New Hampshire Limited Liability Company, and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

[Signature]  
Notary Public/Justice of the Peace  
Print Name: \_\_\_\_\_  
My Commission Expires \_\_\_\_\_



#9256 Recorded Nov. 3, 10:48 A.M., 1986  
Attest: Kathi L. Quay, Register.

I certify that this survey plat shows the property lines that are the lines of existing ownerships and that the lines of streets and ways shown are those of public or private streets or ways already established and that no new lines for division of ownership or for new ways are shown.

Date: October 22, 1986

n/f  
COFRAN  
Bk 426 - Pg 427

n/f  
MARSHALL  
Bk 1464 - Pg 176

MERRIMACK REGISTRY Bk 693 - Pg 403  
" 703 - " 481  
" 330 - " 248  
PROBATE 18147

Bk 307 - Pg 171  
PROBATE 17552  
80.32 acres

n/f  
TERRY  
Bk 462 - Pg 382, 383  
" 529 - " 261

n/f  
SAEGERT  
Bk 1245 - Pg 392

n/f  
ROTHWELL  
Probate 57236

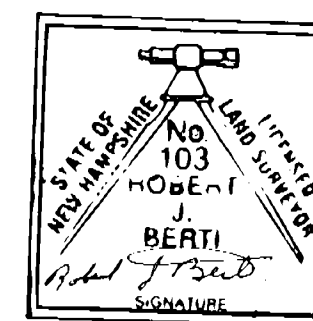
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SHOEMAKER  
Bk 1272 - Pg 770

n/f  
MAYO  
Bk 661 - Pg 103

n/f  
FLEURY

NOTES:

- HEMLOCK HILL ROAD is described by deed as the Third Range Road. The Third and Fifth Range Roads are also listed as the Fourth and Sixth Range Roads on some town maps.
- LAKEMAN ROAD is also called Brush Road and Cross Road.
- Both the Lakeman and Fifth Range Roads are Class VI. (1986)
- Road frontage totals 3742.2 ft on Lakeman Rd. and 1414.2 ft on Fifth Range Rd.
- Traverse based on Compass & Tape Survey with accuracy at 1:3100



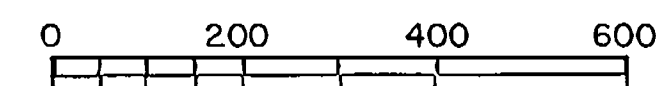
ORIGINAL NOT SUITABLE  
FOR PROPER REPRODUCTION

BOUNDARY SURVEY  
MILLS - LAKEMAN LOT  
WEST SIDE of the FIFTH RANGE Rd.  
PEMBROKE N.H.

OWNED BY  
Patriot Investment Company  
4 Park Street Concord N.H.

SURVEY BY  
FORECO: Forest Resource Consultants  
Box 161 Contoocook, N.H.  
T. Hahn, T. Natti, R. Klemarczyk, R. Berti

OCTOBER 1986



1" = 200'

Plat No. 9256

## **Conservation Easement Deed**



**PROPOSED DRAFT CONSERVATION EASEMENT DEED –  
FOR DISCUSSION PURPOSES ONLY**

THIS IS A NONCONTRACTUAL TRANSFER  
PURSUANT TO NEW HAMPSHIRE RSA 78-B  
AND IS THEREFORE EXEMPT FROM THE NEW  
HAMPSHIRE REAL ESTATE TRANSFER TAX.

**CONSERVATION EASEMENT DEED  
With Grant of Access**

**RENEWABLE PROPERTIES, INC.**, a New Hampshire corporation with a principal place of business at 780 North Commercial Street, Manchester, New Hampshire 03101, (hereinafter referred to as the "Grantor," which shall, unless the context clearly indicates otherwise, include the Grantor's successors and assigns),

for consideration paid, with WARRANTY covenants, grants in perpetuity to:

**EVERSOURCE ENERGY LAND TRUST, INC.**, a Connecticut nonprofit corporation, with a principal place of business at 107 Selden Street, Berlin, Connecticut 06037, having been determined by the Internal Revenue Service to be an income tax exempt corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

with Third Party Right of Enforcement therein granted to the STATE OF NEW HAMPSHIRE acting through its DEPARTMENT OF ENVIRONMENTAL SERVICES, an administrative agency duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 29 Hazen Drive, City of Concord, County of Merrimack, State of New Hampshire, 03302, (the "Third Party Holder"),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel or parcels of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon/being unimproved land situated at 522-578 Range Road, in the Town of Pembroke, County of Merrimack, State of New Hampshire, with said Property and Easement more particularly bounded and described in Appendix "A" attached hereto and made a part hereof, and on a plan set dated \_\_\_\_\_ prepared by, \_\_\_\_\_ titled "\_\_\_\_\_", and recorded at the \_\_\_\_\_ County Registry of Deeds as Plan # \_\_\_\_\_ (hereinafter referred to as the "Plan").

The Easement has been granted as a part of a compensatory wetlands mitigation package for NHDES File #\_\_\_\_\_.

**1. CONSERVATION PURPOSES**

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following

conservation purposes (herein referred to as the “Purposes”) for the public benefit:

- A. To promote the conservation of forests, wetlands, natural watercourses, and wildlife thereon as documented in the baseline documentation report dated April 2016 entitled “Northern Pass Transmission Project Natural Resource Compensatory Mitigation Plan – Preservation Area Z3 – Pembroke, NH – Mitigation Baseline Report” (the “Report”), which Report is on file at the office of the Department of Environmental Services and is incorporated herein in full;
- B. To preserve and protect in perpetuity the natural vegetation, soils, hydrology, natural habitat and the scenic and aesthetic character of the Property so that the Property retains its natural qualities and functions;
- C. To promote the Central Regional Planning Commission’s goals of preserving open space outside the urban growth boundary to limit growth and promote wetland conservation, including protection of wetlands and wetland buffers;
- D. To prevent any future development, construction, or use that will significantly impair or interfere with the conservation values of the Property, while allowing the reserved rights of Grantor as allowed under Section 3 hereof;
- E. To maintain or enhance the water quality and aquatic and wildlife habitat of the ground and surface water resources including wetlands, vernal pools, perennial streams, beaver pond/marsh, riparian areas, aquifers and ponds on the Property;
- F. To protect and enhance the value of abutting and neighboring natural resources, open spaces, and conservation areas;
- G. To permit recreational, scientific, and educational activities on the Property including, but not limited to, hiking, hunting, fishing, camping, cross country skiing, snowshoeing and horseback riding consistent with the terms and conditions herein; and
- H. To promote the conservation of open spaces, particularly the conservation of the productive forest land of which the Property consists and of the wildlife habitat thereon which includes the potential of rare species habitat, which are known to exist within one (1) mile of the Property, and the long-term protection of the Property’s capacity to produce economically valuable forestry products, including timber, pulpwood, and other forest products.

The above Purposes are consistent with New Hampshire RSA Chapter 79-A which states: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."

All of these Purposes are consistent and in accordance with the U.S. Internal Revenue Code of 1986, as amended (the “Code”), Section 170(h). The Grantee is an organization described in Section 501(c)(3) and Section 509(a)(1) of the Code, and meets the requirements of Section 509(a)(1) of the Code. Grantee is a "qualified organization," as such term is defined in Section 170(h)(3) of the Code.

## **2. USE LIMITATIONS**

Subject to the reserved rights specified in Section 3 hereof, the Grantor covenants for itself and its legal representatives, successors and assigns that the Property will at all times be held, used, and conveyed subject to, and not used in violation of, the following covenants that shall run with the Property in perpetuity:

A. The Property shall be maintained in perpetuity in an undeveloped and natural condition consistent with the Purposes of this Easement, without there being conducted thereon any industrial or commercial activities, except Forestry performed by the Grantee, as described below, and provided that such uses shall not degrade the conservation purposes of this Easement.

i. Description of Forestry: For the purposes hereof, “Forestry” shall include the growing, stocking, cutting, and sale of forest trees of any size capable of producing timber or other forest products, all as not detrimental to the Purposes of this Easement. Forestry shall include all forestry and forest management activities performed for commercial or industrial purposes, including barter transactions, and non-commercial timber stand improvement activities, wildlife habitat improvement, or thinning the forest stand to maintain a view.

ii. Requirements for Forestry:

- a. Forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property and shall not be detrimental to the Purposes of the Easement. For references on best management practices see:
  - “Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire” (J.B. Cullen, 2004); and
  - “Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire” (New Hampshire Forest Sustainability Standards Work Team, 2010), or similar successor publications.
- b. tree cutting and removal operations within and adjacent to wetlands, perennial streams and rivers, hereinafter referred to collectively as “water body or water bodies.” Streams and rivers shall be identified as those shown on 7.5 minute United States Geologic Survey Quadrangle maps. Wetlands shall include any wetlands shown on National Wetland Inventory maps, Town wetland inventory maps, NH GRANIT land cover maps, or other sources mutually agreed to by the Grantor and Grantee. The maps included in the Report designate the approximate locations of the water bodies and riparian buffer zones.
  - i. Forestry riparian buffers zones shall include one hundred (100) feet from each side of a water body and shall be expanded as necessary to encompass all vegetative communities with slopes greater than 35%, or soils classified as highly erodible that are adjacent to the water body.
  - ii. The distance of the riparian buffer shall be measured from the edge of the normal high water mark of the water body. In areas where there are wetlands contiguous to a stream or river the riparian buffer shall be measured from the upland edge of the wetland.
  - iii. There shall be no Forestry activities, soil disturbance, tree cutting and removal, or

application of herbicides or pesticides within the water body and the first twenty-five (25) feet from the normal high water mark or water body edge as defined above. The Grantee may request permission from the Grantor to conduct any of the before stated activities for wildlife habitat improvement purposes, construction of wildlife viewing platforms and maintaining the view from said platforms, or to meet other specific natural resource or ecological goals (e.g., invasive species removal). For wildlife habitat improvements or improvements for natural resource or ecological goals, the Grantee must submit the request to the Grantor as part of the Management Plan or an amendment thereto. For the construction of wildlife viewing platforms, the Grantee shall submit the request to the Grantor as a written plan with scaled drawings indicating the location, size, materials, vegetation to be impacted by the platform and viewing zone, and access to the viewing platform. The Grantor shall first consult with the Third Party Holder and either approve, deny, or approve with conditions the request at their sole discretion.

- iv. Within the remainder of the riparian buffer zone tree harvest methods shall be limited to single tree or small group selection cuts, leaving a well-distributed, uneven-aged stand of trees.
  - v. No new roads or log landings shall be constructed within riparian buffer zones, except in circumstances where complying with this provision may result in a greater overall negative environmental impact or would preclude reasonable access to areas suitable to Forestry. Existing roads, as identified by the Baseline Documentation Report, may be retained and maintained. Skid trails and log landings shall be kept to the minimum reasonably necessary for tree removal. Any roads, skid trails, and log landings within a riparian buffer zone shall be designed and maintained to minimize degradation of water quality and aquatic habitat.
- c. Forestry shall be performed using silvicultural practices that enhance or maintain the value of timber while recognizing that the ecological, aesthetic, wildlife, or other non-timber values are important components of the forest. To the extent reasonably practicable, Forestry shall meet the following goals.
- maintenance of soil productivity;
  - protection of water quality, wetlands, and riparian zones;
  - maintenance or improvement of the overall quality of forest products;
  - conservation of scenic quality and recreational access and trails;
  - protection of significant or fragile natural areas, exemplary natural communities, and rare, threatened and endangered species, including their habitats;
  - protection of significant historic and cultural features; and
  - conservation of native plant and animal species.
- d. Any Forestry shall be performed in accordance with a written Forest Management Plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantor, at the sole expense of Grantee (the "Management Plan"). The Management Plan shall be subject to the approval of the Grantor and the Third Party Holder, and the NH Fish & Game Department shall be permitted to provide the Third Party Holder with advisory comments and suggestions. The Management Plan shall not permit the Grantee to interfere with the Grantor's reserved

rights set forth in Section 3.G. and Section 3.H. hereof.

- e. Said Management Plan shall have been prepared not more than ten (10) years prior to the date any harvesting is expected to commence. Or, if more than ten (10) years old, the plan shall have been reviewed and updated as required by such a licensed forester or other qualified person at least thirty (30) days prior to the date of harvest.
- f. Said Management Plan shall include a statement of the objectives, and shall specifically address:
  - the accomplishment of those Purposes for which this Easement is granted, and
  - water bodies as defined herein, riparian buffer zones and their delineation on a map(s) in the plan and how water bodies and vernal pools will be protected in association with forest management activities including but not limited to road construction and maintenance and implementation of stand prescriptions.
- g. At least thirty (30) days prior to any Forestry activities, the Grantor shall have received from the Grantee a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that the Management Plan, as described in 2.A.ii, a-d, above, has been prepared in compliance with the terms of this Easement. The Grantor may request the Grantee to submit the Management Plan itself to the Grantor within ten (10) days of such request, but acknowledges that the Management Plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.
- h. Forestry activities shall be conducted in accordance with said Management Plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantor.
- i. Prior to conducting Forestry activities, in those areas proposed for the forest activities the riparian buffers shall be clearly marked by a licensed professional forester, or other qualified person approved in advance and in writing by the Grantor.
- j. In areas used by, or visible to the general public, such Forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Jones 1993), or similar successor publications.
- k. All costs related to the performance of any and all Forestry activities by the Grantee pursuant to the Management Plan shall be paid solely by the Grantee, and all profits from the Grantee's Forestry activities shall be deposited into the Grantee's stewardship fund and dedicated towards the perpetual stewardship of the Property.

B. The Property shall not be subdivided and, if the Property is comprised of more than one individual parcel, none of the individual parcels that together comprise the Property shall be conveyed separately from one another, except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.

C. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the Forestry, Reserved Transmission Line Rights (as hereinafter defined in Section 3.G.), conservation, habitat management, or noncommercial outdoor recreational uses of the Property and which may include but not be limited to a road, dam, fence, local utility distribution line, bridge, culvert, wildlife viewing platform, maple sugar

house, welcome center, nature center, portable bathrooms or a small unpaved parking lot as shown on the Plan or in the Report to facilitate public access to the Property; and ii) not detrimental to the Purposes of this Easement. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the following structures or improvements: dwelling, mobile home, cabin, barn, residential driveway, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, or aircraft landing area.

D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:

- i. are commonly necessary in the accomplishment of the Forestry, Reserved Transmission Line Rights, conservation, habitat management, or noncommercial outdoor recreational uses of the Property; and
- ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and
- iii. are not detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

E. No outdoor signs shall be displayed on the Property except as desirable or necessary in the accomplishment of the Forestry, Reserved Transmission Line Rights, conservation or pedestrian outdoor recreational uses of the Property, and provided such signs are not detrimental to the purposes of this Easement. No sign on the Property shall exceed sixteen (16) square feet in size, and no sign shall be artificially illuminated.

F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

G. There shall be no dumping, injection, burning, or burial of refuse, trash, rubbish, debris, junk, waste, man-made materials or materials then known to be environmentally hazardous, including vehicle bodies or parts, or other similar substances.

H. The Grantor shall not operate or grant permission to operate motorized vehicles on the Property, except as allowed in Section 3.A. and Section 3.G. below.

I. The Property shall not be posted against, and the Grantor shall keep access to and use of the Property open to the public for, pedestrian and bicycle, non-motorized, non-commercial, outdoor recreational and outdoor educational purposes as will have minimal impact on the Property, such as but not limited to

hiking, mountain biking, wildlife observation and cross-country skiing, but the landowner shall retain the right whether to allow hunting, fishing and camping. However, the Grantee shall be under no duty to supervise said access, use, or purpose. The Grantee reserves the right to post the Property against public access to forestland during harvesting or other Forestry activities. Notwithstanding the limitations imposed by this Section, Grantor shall be specifically permitted to gate the Property to prohibit access thereto by motorized vehicles (including, but not limited to, vehicles, snowmobiles, motorized bikes and small all-terrain vehicles) to prevent illegal dumping.

Nothing contained in this Easement shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The parties to this Easement agree that in the event of damage to the Property from acts beyond the Grantor's control, that if it is desirable that the Property be restored, the parties will cooperate in attempting to restore the Property if practicable.

### **3. RESERVED RIGHTS**

The Grantor hereby reserves to and for Grantor and its legal representatives, successors and assigns: (i) all customary rights and privileges of property ownership associated with the Property that are not specifically restricted by the terms of Section 2 of this Easement or that do not materially interfere with the Purposes of this Easement, and (ii) notwithstanding the terms of Section 2 hereof, the following rights and privileges set forth under the subparagraphs of this Section 3 shall be specifically permitted on the Property as rights and privileges of Grantor, its employees, agents, contractors, licensees, permittees, invitees, successors, assigns and other third parties, and in the event of a conflict between the Use Limitations set forth in Section 2 hereof and the Reserved Rights set forth in this Section 3, the provisions of this Section 3 shall control. Except as specifically set forth in this Easement as the responsibility of the Grantee, the costs of exercising any and all of the Reserved Rights set forth in this Section 3 shall be solely the responsibility of the Grantor.

A. The right to operate motorized vehicles, and permit others to operate said vehicles, for the purposes of maintaining and managing the Property, the Transmission Line ROW (as hereinafter defined) and the Transmission Lines (as hereinafter defined) or as expressly permitted pursuant to this Section 3, including but not limited to emergency rescue operations, Forestry, habitat management, the Reserved Transmission Line Rights and to control or remove non-native or invasive species. This provision is an exception to Section 2.H., above.

B. The right to construct, relocate, maintain, or use trails, fences, bridges, gates, stone walls, woods roads, and rights-of-way on the Property, as reasonably necessary for the exercise of Grantor's rights and privileges on the Property (including but not limited to rights associated with passive recreational activities), or necessary and desirable in controlling unauthorized use or facilitating authorized use of the Property. This provision includes the right to construct and maintain, or allow to be constructed and maintained, on the Property a small unpaved parking lot as shown on the Plan or in the Report to facilitate public access to the Property.

C. The right to construct, relocate, erect, and maintain signs setting forth and describing permitted

and prohibited uses of the Property (including the prohibition of hunting if Grantor so chooses to prohibit hunting on the Property by the general public), identifying trails, locations, property boundaries, natural features, or similar items, or identifying the owner of the Property and the holder of this Easement.

D. The right to restrict or permit hunting, fishing and camping on the Property.

E. The right to conduct, or allow to be conducted, "passive noncommercial outdoor recreational activities" on the Property. Passive outdoor recreational activities shall include but not be limited to hiking, running, snowshoeing, hunting, fishing, camping, target shooting, trapping, bicycling, skiing, nature studies, horseback-riding, and other similar forms of recreation and activities that expand human knowledge and appreciation of wildlife, forest management, and the natural world.

F. The right to require the Grantee to enter into the Required Assignment, as hereinafter defined in Section 6.E. Notwithstanding any other provision of this Easement, if the Grantee is found to be in breach of Section 6.E by a court of competent jurisdiction and venue, the Grantee shall be required to reimburse the Grantor for all reasonable costs incurred by the Grantor in enforcing the terms of Section 6.E, including, but not limited to, reasonable attorneys' fees and costs and expenses of suit.

G. Grantor's Reserved Transmission Line Rights.

- i. Notwithstanding the restrictions set forth in Section 2 hereof, the Grantor hereby excepts and reserves to itself, its successors and assigns forever, the following exclusive and perpetual rights and easements (the "Reserved Transmission Line Rights") over, under, in and on a 200-foot wide right of way (the "Transmission Line ROW"), as shown on the Plan or as relocated pursuant to a survey, as required by any governmental permit approval, or at the sole discretion of Grantor if unforeseen natural conditions or events require the relocation of the Transmission Lines (as hereinafter defined), to be exercised in compliance with all applicable federal, state and local laws, rules, regulations and permits:
  - a. The right to erect, install, construct, repair, maintain, rebuild, upgrade, uprate, replace, expand, relocate, inspect, operate and remove aboveground and/or underground transmission lines for electricity, including, without limitation, one or more poles, towers, wires, cables, conductors, ducts, transition stations, manholes and other equipment, structures, fixtures and appurtenances useful in conducting electricity and/or for providing and maintaining electric service (the "Transmission Lines"), in the Transmission Line ROW currently existing or to be created as set forth herein. In the event a Transmission Line ROW does not currently exist on the Property, prior to any use of the Property for the Transmission Lines, the parties shall create a Transmission Line ROW, no more than two hundred (200) feet in width, and in a location to be determined at the sole discretion of Grantor and consistent with all applicable federal and state permits and approvals governing the siting and permitting of the Transmission Lines and to be documented as to location by a survey;
  - b. The right to provide electric services to customers by means of the Transmission Lines and any other facilities installed by the Grantor, over, under, in and on the Transmission Line ROW from time to time;
  - c. The right to install, maintain, repair, upgrade and replace (i) any type of fencing, gates, equipment enclosures and any type of security system in any locations in any areas of the



Transmission Line ROW utilized pursuant to the Reserved Transmission Line Rights, among other things, to protect and secure the Transmission Lines and any and all of the Grantor's systems and facilities; and (ii) monuments and signs appropriate to locate the boundaries of the Easement and the Transmission Line ROW;

- d. The right to trim and keep trimmed, cut, clear and remove by mechanical means or otherwise, trees, limbs, branches, underbrush and other growth from any areas of the Transmission Line ROW utilized pursuant to or affected by the Reserved Transmission Line Rights and which in the sole opinion of the Grantor may interfere with the exercise of the rights herein reserved or create a hazard to the systems and facilities now or in the future constructed by the Grantor within said areas;
  - e. The right to control the growth of trees, limbs, branches, underbrush and other growth in the Transmission Line ROW by the use of chemicals or other means; the right to burn or otherwise dispose of all wood or brush cut in the performance of this right; and the right to remove "danger trees" pursuant to NH RSA 231:145.
  - f. The right to remove any structures on, at, above or below grade within or projecting into any areas of the Transmission Line ROW utilized pursuant to the Reserved Transmission Line Rights;
  - g. The right to enter upon, travel and transport personnel, materials and equipment, including by motorized vehicles, over and across the Property to the extent reasonably necessary for access to the areas of the Transmission Line ROW, and for such purposes, to construct, maintain, repair and/or replace necessary roads or access ways or related rights-of-way;
  - h. The right to grade, excavate, fill or otherwise improve any areas of the Transmission Line ROW utilized pursuant to the Reserved Transmission Line Rights;
  - i. The right to restore, remediate, monitor and maintain the Property as authorized and/or required pursuant to any federal, state or local permits issued to the Grantor;
  - j. The right to erect, install, construct, repair, maintain, rebuild, upgrade, uprate, replace, expand, relocate, inspect, operate and remove aboveground and/or underground utilities, communication lines, water lines, and drain lines, necessary or appropriate for the construction, operation, repair, replacement, upgrade or maintenance of the Transmission Lines;
  - k. The right to exclude the general public from the Transmission Line ROW; and
  - l. The right to enforce the covenants of the Grantee, as set forth below.
- ii. By acceptance of this conveyance, the Grantee, for itself and its successors and assigns, hereby further agrees, as a covenant running with the land, that except upon the prior written consent from the Grantor and the Third Party Holder:
- a. No buildings or structures shall be constructed or materials or vehicles permanently or temporarily stored within the Transmission Line ROW;
  - b. No grading, excavating, filling or flooding shall be performed within the Transmission Line ROW utilized pursuant or subject to the Reserved Transmission Line Rights;
  - c. No trees or other plantings which might adversely affect the Grantor's Transmission Lines, facilities or systems shall be placed within or near any areas of the Transmission Line ROW utilized pursuant or subject to the Reserved Transmission Line Rights; and
  - d. No use shall be made of any areas of the Transmission Line ROW utilized pursuant or subject to the Reserved Transmission Line Rights which, in the opinion of the Grantor,

may interfere with the rights herein reserved or may create a hazard to the Transmission Lines and/or the facilities now or in the future installed by the Grantor within the Transmission Line ROW.

- iii. Both Grantor, by its granting of the Easement subject to the Reserved Transmission Line Rights, and Grantee, by its acceptance of same, hereby acknowledge and further agree for themselves and their respective successors and assigns as follows:
  - a. That the Reserved Transmission Line Rights are intended to be permanent commercial easements in gross for the benefit of Grantor, its successors and assigns, and are to be fully apportionable and fully assignable and/or transferable, all or in part;
  - b. That the Grantee further agrees that nothing shall be attached to the property of the Grantor installed by virtue of the Reserved Transmission Line Rights except such things as are placed thereon by the Grantor, or are required by law;
  - c. In connection therewith, that Grantee hereby agrees that, upon request by Grantor, it shall assist Grantor, at Grantor's cost, under Grantor's reasonable direction, in obtaining (and shall not oppose, directly or indirectly, Grantor from obtaining) all permits, licenses, exemptions, waivers and other forms of approvals necessary and appropriate for Grantor's exercise of the Reserved Transmission Line Rights;
  - d. That the Grantee also agrees that no cessation of use or operation for any period of time of all or any portion of the Reserved Transmission Line Rights or any areas of the Transmission Line ROW utilized by Grantor pursuant to said rights shall be deemed an abandonment thereof resulting in the termination of any aspect of the Reserved Transmission Line Rights or of the easements or uses relating thereto, unless the holder of same at the time of such cessation of use or operation releases to Grantee, in a written instrument in recordable form, its particular right in the Reserved Transmission Line Rights, easements or uses;
  - e. That the Reserved Transmission Line Rights include any and all uses and activities reasonably necessary, in Grantor's judgment, to allow full exercise by the Grantor of the Reserved Transmission Line Rights, whether or not such uses and activities are specifically enumerated herein; and
  - f. That the Reserved Transmission Line Rights include any and all existing interests, easements, rights, other encumbrances and/or uses affecting the Property as of the date hereof.
- iv. In construing the language of this instrument, any references to "Grantor" and "Grantee" shall also include their respective successors and assigns, it being the intent of the parties that the rights, interests, easements and obligations of the parties herein shall run with the land and be permanent in nature; in addition, the Reserved Transmission Rights are the products of negotiations between the Grantor and Grantee, with advice of counsel, and, as a result, any ambiguities shall not be construed against the draftsman.
- v. In the event of any conflict or ambiguity between the Use Limitations and the Reserved Rights or the Reserved Transmission Line Rights, the Reserved Rights and the Reserved Transmission Rights shall control.



H. The rights reserved to any and all holders, and their successors and assigns, of utility easements on the Property, as described on Appendix "A" hereto.

#### **4. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE**

A. The Grantor agrees to notify the Grantee in writing ten (10) days before the transfer of title to the Property.

B. Except in connection with Grantee's Forestry activities on the Property, the Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

#### **5. BENEFITS AND BURDENS**

The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Sections 501(c)(3) and 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation Purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer. If Grantee ever ceases to exist or no longer qualifies under Section 170(h) of the Code, or applicable state law, a court of competent jurisdiction and venue shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement.

#### **6. AFFIRMATIVE RIGHTS AND OBLIGATIONS OF GRANTEE**

A. The Grantee and the Third Party Holder shall have access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.

B. The Grantee shall further have access to the Property in the event it determines to engage in commercial or noncommercial Forestry on the Property, subject to the terms and conditions of this Easement. For these purposes, the Grantor hereby also conveys and grants to the Grantee an appurtenant right of access for pedestrian access over the Property, subject to the Grantor's reserved rights set forth in Section 3 hereof. The burden and benefit of this right of access, as established herein, shall run with the land.

C. To facilitate such inspection and to identify the Property as conservation land protected by the Grantee, the Grantee shall have the right to place signs, each of which shall not exceed thirty (30) square inches in size, along the Property's boundaries.

D. Contemporaneously with the recording of this Easement, the Grantor shall pay to the Grantee a one-time fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00), to be deposited into the Grantee's

stewardship fund and dedicated towards the perpetual stewardship of the Property (the “Stewardship Fee”). The Grantee shall have a fiduciary duty to hold and manage the Stewardship Fee consistent with its then existing stewardship fund policies and practices and in furtherance of the Purposes of this Easement in New Hampshire and in accordance with the wetlands mitigation project.

E. Notwithstanding any other provision of this Easement, and as required by the Clean Water Act Section 404 permit issued to the Grantor by the United States Army Corps of Engineers Permit No.

\_\_\_\_\_ and NHDES Wetlands Permit No. \_\_\_\_\_, the Grantor shall attempt to identify a Replacement Grantee with more experience holding conservation easements in the State of New Hampshire. In the event that the Grantor within five (5) years from the date of this Easement finds another qualified organization within the meaning of Sections 501(c)(3) and 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation Purposes of this Easement (the “Replacement Grantee”), and the Third Party Holder consents in writing to such Replacement Grantee, the Grantee shall assign and transfer all of its rights, title and interest in and to this Easement and the then remaining balance of the Stewardship Fee (as hereinafter defined) to the Replacement Grantee within forty-five (45) days of receipt of notice from the Grantor requiring said assignment (the “Required Assignment”). The Grantor’s right to require the Grantee to enter into the Required Assignment shall only be exercised once by the Grantor. From and after five (5) years from the date of this Easement, the Grantee’s obligation to enter into the Required Assignment shall terminate if prior written notice of such Required Assignment has not been received by the Grantee as required by this paragraph. The failure by the Grantee to timely enter into the Required Assignment with the Replacement Grantee shall be deemed to be a breach of this Easement by Grantee.

## **7. RESOLUTION OF DISAGREEMENTS**

A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, “Resolution of Disagreements,” shall be referred to as the “Activity”) complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.

B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Manchester, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys’ fees and the costs of mediation shall be split equally between the parties.

C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement may be submitted to binding arbitration in accordance with New Hampshire RSA 542. The



parties shall have ten (10) days to accept or refuse binding arbitration. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Manchester, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.

D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, to require the restoration of the Property to its condition prior to the breach, and to recover such damages as appropriate.

E. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

## **8. BREACH OF EASEMENT – GRANTEE’S REMEDIES**

A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.

B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.

C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor’s name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Property, the Grantee may pursue its remedies under this Section, “Breach of Easement...,” without prior notice to the Grantor or without waiting for the period provided for cure to expire.

E. The Grantee shall be entitled to recover damages from the party found by a court of competent jurisdiction and venue to be directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor's liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

F. The Grantee's rights under this Section, "Breach of Easement...", apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, "Resolution of Disagreements," which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.

G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement...", both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

H. Provided that the Grantor is found by a court of competent jurisdiction and venue to be directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.

I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.

J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such

causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

#### **9. THIRD PARTY RIGHT OF ENFORCEMENT**

A. If the Easement Holder ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the Third Party Holder requesting such, then the notifying Third Party Holder shall have all the rights heretofore granted to the Easement Holder to enforce this Easement. All reasonable costs of such enforcement shall be paid by the Easement Holder.

B. The interests held by the Third Party Holder are assignable or transferable to any party qualified to become the Grantee or Third Party Holder's assignee or transferee as specified in Section 7 above. Any such assignee or transferee shall have like power of assignment or transfer. Any holder of an interest in this Easement desiring to transfer or assign its interest shall send written notice describing said intention to all other holders of any interest in this Easement at least thirty (30) days prior to such transfer or assignment taking effect.

#### **10. AMENDMENT**

If, owing to unforeseen or changed circumstances, Grantor and Grantee agree that an amendment to, or modification of, this Easement would be appropriate and desirable, Grantor and Grantee may jointly amend this Easement pursuant to: the provisions and limitations of this section; the then-current amendment policies of the Grantee; notification is given to the New Hampshire Attorney General's Office at least thirty (30) days prior to the adoption of the amendment; consent of the Third Party Holder; and applicable state and federal law. Any amendment shall be consistent with the Purposes of this Easement, and shall not impair the conservation attributes of the Property protected by this Easement. No amendment shall affect the qualification of this Easement or the status of the Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986, as amended, and NH RSA 477:45-47 as may be amended from time to time, nor shall any amendment affect the perpetual duration of this Easement. Any amendment shall be executed by the Grantor and the Grantee and shall be recorded in the \_\_\_\_\_ County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

#### **11. NOTICES**

All notices, requests and other communications, required or permitted to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

#### **12. SEVERABILITY**

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the



remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

### **13. EXTINGUISHMENT & CONDEMNATION**

A. Extinguishment. If circumstances arise in the future such as render the Purposes of this Easement impossible or impracticable to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction and venue. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment, shall be determined in accordance with Section 13.C. below. In making this grant of Easement, Grantor has considered and acknowledges the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Grantor pursuant to this Easement. It is the intent of both Grantor and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.

B. Condemnation. If all or any part of the Property is taken, in whole or in part, by exercise of the power of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The amount of the proceeds to which the Grantee shall be entitled, after payment of any expenses, shall be determined in accordance with Section 13.C. below.

C. Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Sections 13.A and 13.B above, shall have a fair market value which shall be determined by an appraisal prepared by a qualified appraiser as of the time of said extinguishment or condemnation. The balance of the amount recovered, after payment of any expenses, shall be divided between the Grantor and the Grantee in proportion to the fair market value, as determined by the appraisal, of their respective interests in that part of the Property extinguished or condemned. The Grantee shall use its share of the proceeds for conservation purposes consistent with the Purposes of this Easement in New Hampshire and in accordance with the compensatory wetlands mitigation package.

### **14. ADDITIONAL EASEMENT**

Should the Grantor determine that the expressed purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization, described in Section 5 above, accepts and records the additional easement.

### **15. MERGER**

The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assign shall be deemed to eliminate the Easement, or any portion thereof, granted hereunder under the doctrine of merger or any other legal doctrine.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GRANTOR:**

RENEWABLE PROPERTIES, INC.

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, \_\_\_\_\_, of Renewable Properties, Inc., a New Hampshire corporation, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained on behalf of said corporation.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires:



**ACCEPTED BY GRANTEE:**

EVERSOURCE ENERGY LAND TRUST, INC.

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, \_\_\_\_\_, of Eversource Energy Land Trust, Inc., a Connecticut nonprofit corporation, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed for the purposes therein contained on behalf of said nonprofit corporation.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires:

**Third Party Holder Accepted by the State of New Hampshire on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:**

\_\_\_\_\_  
Thomas Burack, Commissioner  
New Hampshire Department of Environmental Services

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared Thomas Burack, the Commissioner of the New Hampshire Department of Environmental Services, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same as his free act and deed for the purposes therein contained, on behalf of the State of New Hampshire acting through its Department of Environmental Services.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires:

## **APPENDIX A LEGAL DESCRIPTION**

Certain real property situate in Pembroke, Merrimack County, New Hampshire, more particularly described as follows:

A certain tract or parcel of land, together with any improvements thereon, located in Pembroke, Merrimack County, New Hampshire, shown on a plan of land entitled "Boundary Survey, Mills-Lakeman Lot West Side of the Fifth Range Road, Pembroke, N.H. owned by Patriot Investment Company, prepared by FORECO: Forest Resource Consultants, dated October, 1986, recorded with the Merrimack County Registry of Deeds as Plan No. 9256 (the "Plan"), which tract is referred to in the Town of Pembroke Assessor's Records as Map 260, Lot 39, and is more particularly described as follows:

Beginning on the westerly sideline of the road shown on the Plan as Fifth Range Road but now known as Sixth Range Road, so-called, at an iron rod set in a stone pile, said iron rod being the northeast corner of the herein-described premises;

Thence running South 62° 42' 47" West a distance of 1427.5 feet along land now or formerly of Cofran to a 7" diameter red maple tree and a wire fence;

Thence running South 71° 50' 52" West a distance of 321.6 feet along land now or formerly of Marshall and along a wire fence to the beginning of a stone wall;

Thence running South 70° 16' 10" West a distance of 193.2 feet along said Marshall land to the end of said stone wall;

Thence running South 71° 03' 25" West a distance of 490.3 feet along said Marshall land and along a wire fence to the beginning of another stone wall;

Thence running South 70° 43' 20" West a distance of 544.5 feet along said Marshall land and along said stone wall to an intersection of stone walls;

Thence turning and running South 03° 15' 54" East a distance of 83.6 feet along land now or formerly of Terry to a point on said stone wall;

Thence running South 24° 45' 37" East a distance of 74.4 feet along said Terry land to a point on said stone wall;

Thence running South 07° 15' 24" East a distance of 88.2 feet along said Terry land to a point on said stone wall;

Thence running South 12° 35' 55" West a distance of 190.2 feet along said Terry land to a point on said stone wall;

Thence running South 07° 37' 26" East a distance of 165.6 feet along said Terry land to a point on said stone



wall;

Thence running South 15° 55' 11" East a distance of 301.4 feet along said Terry land to an intersection of stone walls on the northerly sideline of the road shown on the Plan as Lakeman Road but also known as Brush Road, so-called;

Thence turning and running North 71° 00' 56" East a distance of 109.2 feet along said Brush Road to a point on said stone wall;

Thence running North 71° 08' 23" East a distance of 592.1 feet along said Brush Road to a point on said stone wall;

Thence running North 70° 55' 24" East a distance of 410.9 feet along said Brush Road to a point on said stone wall;

Thence running North 71° 16' 25" East a distance of 221.7 feet along said Brush Road to a point on said stone wall;

Thence running North 71° 54' 33" East a distance of 182.8 feet along said Brush Road to the end of the said stone wall;

Thence running North 73° 05' 52" East a distance of 221.2 feet along said Brush Road to a stake and stones ("Point A");

Thence running in a general northeasterly direction along land now or formerly of Rothwell to the beginning of a stone wall, said stone wall being North 87° 46' 17" East, a tie distance of 1209.6 feet from Point A (said last-described course partially running along said Brush Road);

Thence running North 62° 14' 30" East a distance of 119.9 feet along said Brush Road to a point on said stone wall;

Thence North 61° 47' 42" East a distance of 674.8 feet along said Brush Road to a drill hole at the intersection of stone walls at the corner of said Brush Road and said Sixth Range Road;

Thence turning and running North 43° 44' 13" West a distance of 172.1 feet along said Sixth Range Road and partially along said stone wall to the beginning of another stone wall;

Thence running North 41° 37' 11" West a distance of 286.1 feet along said Sixth Range Road to the end of said stone wall;

Thence North 41° 20' 26" West a distance of 98.3 feet along said Sixth Range Road to the beginning of another stone wall;

Thence North 40° 55' 10" West a distance of 265.8 feet along said Sixth Range Road to the end of said stone wall;

Thence North 40° 59' 26" West a distance of 291.7 feet along said Sixth Range Road to the beginning of another stone wall;

Thence running North 40° 06' 30" West a distance of 228.4 feet along said Sixth Range Road to the end of said stone wall;

Thence running North 41° 37' 53" West a distance of 71.8 feet along said Sixth Range Road to the point of beginning.

Containing 80.32 acres, more or less, according to the Plan.

SUBJECT TO the following:

- 1) Rights and easements granted by Laurence F. Whittemore to Public Service Company of New Hampshire, dated December 26, 1954, and recorded with said Registry of Deeds at Book 745, Page 79 and Book 745, Page 81, insofar as the same may affect the subject premises, if at all.
- 2) Recitation that "the roads described above as Fifth Range Road and Lakeman Road are shown on the Plan as being Class VI highways, and thus are subject to gates and bars" as noted in the Quitclaim Deed conveyed by Charles F. Whittemore et al., d/b/a Patriot Investment Company to Frederick B. Whittemore dated March 8, 1990, and recorded with the Merrimack County Registry of Deeds at Book 1833, Page 1829.
- 3) Land use taxation lien as set forth in the instrument recorded with said Registry of Deeds at Book 1331, Page 492, and any land use change tax together with any interest and penalties thereon, which may become due pursuant to New Hampshire RSA 79-A:7.
- 4) Such state of facts, including a right of way 150 feet in width in favor of Public Service Company of New Hampshire, as are disclosed on the plan recorded with said Registry of Deeds as Plan No. 9256.

Meaning and intending to describe the same premises conveyed to Renewable Properties, Inc. by Warranty Deed of Pembroke Timber LLC dated June 24, 2014, and recorded at Book 3447, Page 174 of the Merrimack County Registry of Deeds.