

Proposed easement language
for use in LIP funded projects.

July 25, 2007

Conservation easement deeds for projects receiving LIP funding can use these statements as written, or use other language that is similar. Specific verbiage is always subject to modification and updating during legal and FWS reviews.

Whereas clause

Sample 1:

Whereas, this Conservation Easement has been acquired, in part, with a grant from the New Hampshire Fish and Game Department (hereinafter “the Department”) of federal funds from the Landowner Incentive Program, administered by the Department of Interior, U.S. Fish and Wildlife Service (hereinafter “the Service”), and enacted to protect and restore habitats on private lands, to benefit federally listed, proposed, or candidate species or other species determined to be at risk in the New Hampshire Wildlife Action Plan;

Sample 2:

Whereas, the preservation of the protected property will help to conserve at-risk species and critical habitats identified in the NH Wildlife Action Plan, and further the goals and objectives of the Landowner Incentive Program administered by the U.S. Fish and Wildlife Service.

Purpose

Sample:

It is the Purpose of this Easement to further the goals of the NH Wildlife Action Plan and the Landowners Incentive Program administered by the Department of Interior, U.S. Fish and Wildlife Service, including but not limited to protecting and conserving critical habitats and threatened, endangered plants and animals or other species at risk identified in the Wildlife Action Plan; to preserve the Conservation Values and undeveloped open space of the property; to ensure the protection and sound management of natural resources including the protection of wildlife bio-diversity and habitat preservation.

Stewardship Plan

Sample:

The Easement Holder shall provide the New Hampshire Fish and Game Department with a copy of the Stewardship Plan, if requested to do so by the Department. The Department may, upon review of the Plan, request changes to ensure that the purposes of the easement are met.

Other specific language may need to be inserted in the stewardship plan to provide NHFG with the ability to ensure that activities allowed on the property do not negatively impact species or habitats at-risk.

Public Access

Sample:

Pursuant to New Hampshire chapter 227-M, the public has the right of pedestrian access in perpetuity, on and across the Property for transitory, low-impact, non-commercial outdoor recreation activities including but not limited to hunting, fishing, hiking, cross-country skiing and nature observation, in accordance with current laws and regulations, the right of overnight camping, motorized access or construction of fires on the Property by the public is not hereby conveyed. The Department agrees to cooperate with the Easement holder and the Grantor if the public use is not consistent with the Purposes or stewardship goals listed in Sections _____ of this Easement.

Executory Interest

NOTE: NHFG may require they or another qualified entity be granted an executory interest in the easement. The determination will be made based on the easement holders experience in acquiring and monitoring conservation easements.

Sample:

A primary Executory Interest to the State of New Hampshire acting through the New Hampshire Fish and Game Department with its principle place of business at 11 Hazen Drive, Concord, N.H. 03301 (herein after referred to as the “Primary Executive Interest Holder”) and more fully described in Section X below.

Section X Executory Interest

If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the “Primary Executory Interest Holder”, requesting such enforcement delivered in hand or by certified mail, return receipt requested, then the Primary Executory Interest Holder shall have all the rights heretofore granted to the Grantee to enforce this easement. All reasonable costs of such enforcement shall be paid by the Grantee. In such circumstances, or in the event the Grantee acquires the underlying fee interest in the Property, The Primary Executory Interest holder shall then also have the right to terminate the easement interest of the Grantee in the Property by recording a notice to that effect in the Registry of Deeds referring hereto and shall thereupon assume the thereafter have all interest, rights, responsibilities and duties granted and incumbent upon the Grantee in this easement.

- a. The interest held by the Primary Executory Interest Holder is assignable or transferable to any party qualified to become the Grantee’s assignee or transferee as specified above. Any such assignee or transferee shall have like power of assignment or transfer

Assignment

Sample:

The burdens of this 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 (a) the State of New Hampshire, the United States of America, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, which government unit has among its purposes the conservation and preservation of land and water areas and agrees and is capable of enforcing the conservation Purposes of this Easement; or (b) to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land, and agrees to and is capable of enforcing the conservation and preservation Purposes of this Easement. Provided that, by virtue of the Landowner Incentive Program grant associated with the purchase of this Easement, the Grantee has first obtained the approval of the Regional Director of the U.S. Fish and Wildlife Service as specified in the Notice of Federal Grant Agreement. Any such assignee or transferee shall have like power of assignment or transfer.

Sample paragraph to be inserted in deed (as reference for [Notice of Federal Grant Agreement](#)):

The conservation easement on the above-described property is acquired in part with funding received by the Grantee from Grant Agreement Number _____ dated _____ between the U.S. Fish and Wildlife Service and the State of New Hampshire, Fish and Game Department as grantee and the (LAND TRUST) as subgrantee. All present and future terms and conditions of the property are and shall remain subject to the terms and conditions described in the Notice of Federal Grant Agreement, executed on _____, and recorded herewith in the _____ County Register of Deeds attached hereto as Exhibit B (or reference as appropriate) and to the other administrative requirements of the applicable grant funding program of the Service.