

From: [Perry Williams](#)
To: [Kaczowski, Debra](#); [Matthew Dieterich](#)
Cc: [Beyer, Stacie R](#)
Subject: Fw: Big Moose Mountain - FSM Interest in CE
Date: Tuesday, April 12, 2022 2:19:36 PM
Attachments: [BigMoose_2022_0412_FSM.pdf](#)
[BigMoose_Ski_CE_DRAFT_2022_0409.docx](#)
[2022_0412_LetterforLUPC.pdf](#)

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Hi Debra,

Attached please find the proposed conservation easement structure for the Bicknell Thrush habitat area at the top of Big Moose Mountain.

I believe we still owe you a plan to address the construction window in the Bicknell Thrush area, which Matt will provide today.

Regarding the wastewater questions, we would like to request more time to respond. We have had a difficult time reaching the staff at Moosehead Sanitary District, but they have a board meeting scheduled for this Thursday night in Greenville which Matt and I plan to attend. We should have answers for you on Friday this week.

Please confirm that all the other applications materials requested in your March 24, 2022 letter have been received.

Thanks,

Perry Williams
Managing Partner
Big Lake Development Co.
perry@skimoosehead.com
(207) 632-9616

From: jake@fsmaine.org <jake@fsmaine.org>
Sent: Tuesday, April 12, 2022 12:44 PM
To: Perry Williams <perry@skimoosehead.com>
Cc: Karin Tilberg <karin@fsmaine.org>; Kristin Peet <kpeet@fsmaine.org>
Subject: Big Moose Mountain - FSM Interest in CE

Perry –

Attached please find the following which you have requested for your submittal to LUPC.

1. A map showing the area of a potential conservation easement design;
2. A draft conservation easement that outlines the components that would likely work for this scenario; and
3. A letter signed acknowledging our interest in holding a CE as part of this project.

If you or LUPC staff have any questions please let me know and keep us in the loop as to next steps.

-Jake

Jake Metzler | Director of Forestland Conservation

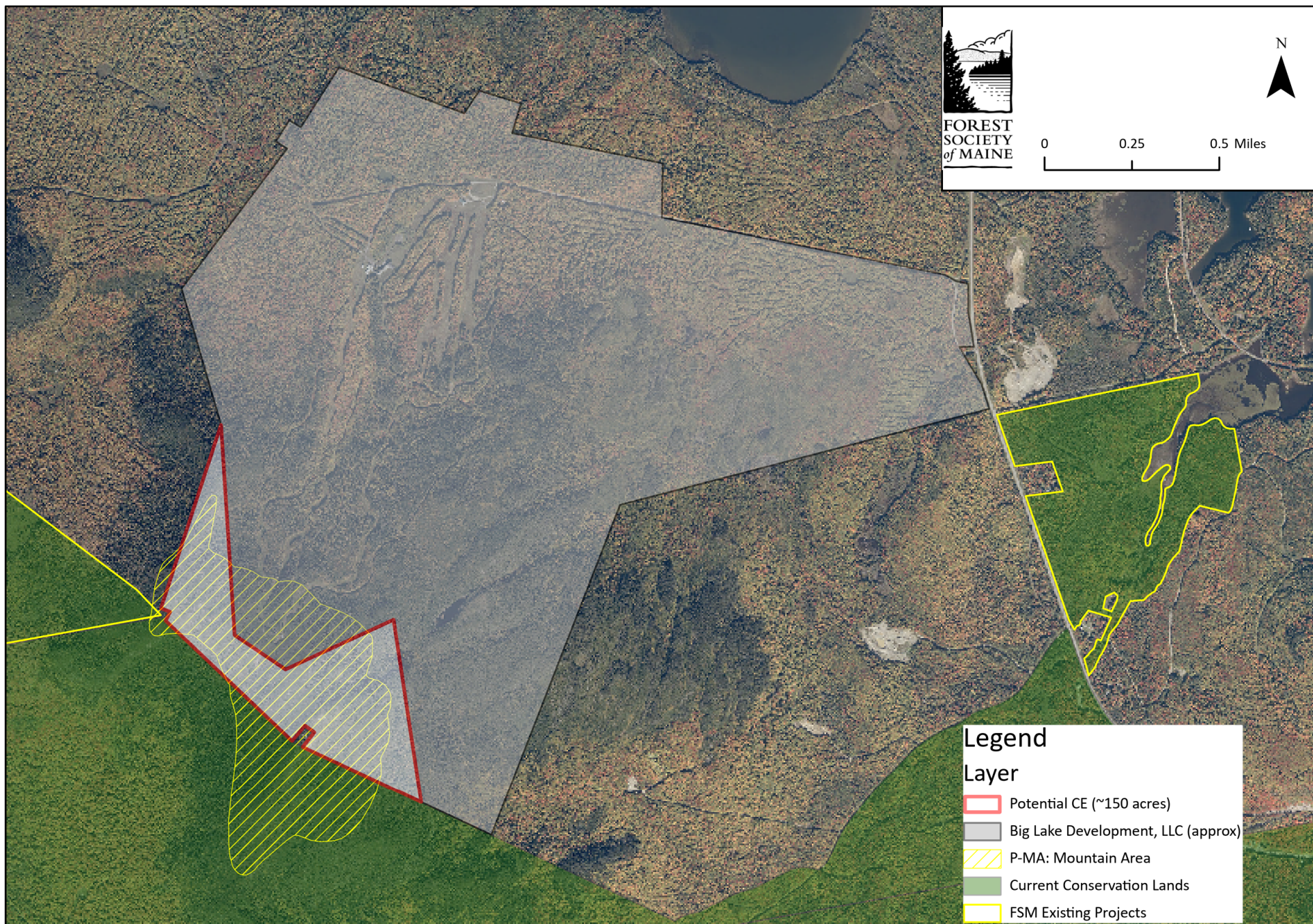
Maine Licensed Forester #3673 | Society of American Foresters Certified Forester #3990

Forest Society of Maine | 115 Franklin St, 3rd Floor, Bangor, ME 04401 | www.fsmaine.org

jake@fsmaine.org | office: 207.945.9200 | cell: 207.944.5169 | (he/him/his)

Forest Society of Maine –Your land trust for Maine’s North Woods

BIG MOOSE MOUNTAIN PROJECT



CONSERVATION EASEMENT
Big Moose Mountain Mitigation Parcel

This **DEED OF CONSERVATION EASEMENT** is made this ___ day of _____, 2022.

_____, hereinafter referred to as the “Landowner,” which word is intended to include and bind, unless the context clearly indicates otherwise, the above named Landowner, its successors and assigns for consideration being an absolute and unconditional gift

GRANTS to the

FOREST SOCIETY OF MAINE, a non-profit corporation organized and existing under the laws of the State of Maine, and qualified to hold conservation easements pursuant to Title 33 M.R.S. Sections 476 (2)(B), et seq., as amended, and Internal Revenue Code Section 170(h)(3) with a mailing address of 115 Franklin Street, 3rd Floor, Bangor, Maine 04401 (hereinafter referred to as the “Holder,” which word shall, unless the context clearly indicates otherwise, include the Holder’s successors and assigns), with QUITCLAIM COVENANT, in perpetuity, the following described Conservation Easement on land hereinafter referred to as the “Protected Property”, as described in Exhibit A attached hereto and incorporated hereof by reference and depicted on the conservation easement plan entitled “Conservation Easement for Forest Society of Maine” dated _____ and record in the Piscataquis County Registry of Deeds on _____ in Volume _____, Page ____ (the “Conservation Easement”).

PURPOSE

The purpose of this Conservation Easement is to provide a significant public benefit by protecting in perpetuity the Conservation Values of the Protected Property. This Conservation Easement is established exclusively for conservation purposes consistent with the provisions of the Internal Revenue Code as amended at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2031(c) and Title 33 M.R.S. Sections 476, et seq., as amended.

RECITALS

WHEREAS, the Landowner is the owner in fee simple of certain real property, hereinafter called the “Protected Property”, which has ecological, scientific, educational, and aesthetic value in its present state as a natural area;

WHEREAS, the Protected Property, consists of approximately ___ acres, which the Landowner and Holder agree will be managed for the long-term protection of the native plant and animal life and other natural resources found therein and consistent with the concepts of an ecological reserve;

WHEREAS, the Protected Property contains **wetlands, streams, and other aquatic resources**, and qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 U.S.C. § 170(h)(4)(A)(ii), as amended, and in regulations promulgated there under;

WHEREAS, the conservation of the Protected Property through the protection of wildlife and ecological areas and other conservation values will add to the protected and conserved lands in the Moosehead Lake region;

WHEREAS, the preservation of the Protected Property provides protection for certain critical ecological functions and significant wildlife resources;

WHEREAS, it is the Landowner's intent that, through this Conservation Easement, further development of the Protected Property shall be limited;

WHEREAS, the State of Maine has authorized the creation of conservation easements pursuant to Maine Revised Statutes, Title 33, Sections 476-479-C, as amended and Landowner and Holder wish to avail themselves of the provisions of that law; and

NOW, THEREFORE, in consideration of the foregoing and for the benefit of the general public, the Landowner and the Holder have established this Conservation Easement on, over, above, and across the Protected Property, consisting of the following terms, conditions, restrictions, and affirmative rights granted to the Holder, which shall run with and bind the Protected Property in perpetuity.

1. DEFINITIONS

1.1 Baseline or Baseline Documentation Report: Means the baseline documentation report prepared pursuant to Section 4.

1.2 Conservation Values: Means each and all of the following values associated with the Protected Property:

- 1.2.1 Natural Ecological Values. The condition of the Protected Property as substantially natural in character with natural ecological processes functioning with minimal interference or manipulation from human activity and available to serve as a site for scientific research, environmental monitoring, and education;
- 1.2.2 Aquatic Resources and Wetland Values. The Protected Property's undeveloped wetlands, rivers, streams, and other aquatic habitats, including fisheries habitats, their water quality, undeveloped shorelines and riparian areas, and the ecological values and processes of these areas;
- 1.2.3 Wildlife, Plant, and Natural Community Values. The Protected Property's diverse wildlife, plant, and fish habitats, natural communities, and the ecological values and processes of these areas;
- 1.2.4 Recreational Values. The opportunities on the Protected Property for low-impact, non-intensive outdoor recreational use by the public in a manner that is consistent with protecting the other Conservation Values of the Protected Property; and

1.2.5 Other Values. The historic, cultural, archaeological, geological, scientific, or educational attributes of the Protected Property and the attributes and resources of those attributes.

1.3 Activity Plan or Plan: means a document that provides a description of a proposed activity (including the anticipated dates of commencement and completion, a map depicting the location(s) of the proposed activity, a description of how any waste or discarded material generated by the proposed activity will be removed and other relevant information in sufficient detail to permit the Holder to undertake a meaningful review of the proposed activity for consistency with Conservation Values in accordance with Section 5.

1.4 Parties: means all signatories to this Conservation Easement and their successors and/or assigns.

1.5 Protected Property: means land located in Big Moose Township, Piscataquis County, Maine as described in Exhibit A and depicted on the conservation easement plan entitled _____ dated _____ and record in the Piscataquis County Registry of Deeds on _____ in Volume _____, Page _____.

1.6. Footprint: means the area of ground under a structure.

1.7. Viewing Platforms: means a nonpermanent structure or improvement constructed on the Protected Property to enhance recreational activities. Such structures shall not have a Footprint larger than 200 square feet. Additionally, there shall be no subsurface structures supporting the structure.

2. LANDOWNER'S RIGHT, TITLE AND INTEREST IN THE PROTECTED PROPERTY. The Landowner reserves all right, title and interest in and to the Protected Property, other than those specific rights granted to the Holder or extinguished by this Conservation Easement, including those reserved rights specifically described in this Conservation Easement.

3. PERMITTED USES OF THE PROTECTED PROPERTY.

3.1 Public Recreational Use. It is the intent of the Landowner to allow public use of the Protected Property for non-motorized recreational activities, including but not limited to the following: hiking, cross-country skiing, snowshoeing, wildlife viewing, and observation of our natural environment, insofar as such activities are consistent with the Purposes of this Conservation Easement. Minor structures associated with permitted pedestrian recreational uses are allowed including but not limited to trail markers, signs, steps, waterbars, foot bridges, registration boxes, and boundary markers, provided that each and all such structures minimize undue adverse effects on the Conservation Values and any minor structures involving movement of soil or removal of vegetation be included in an Activity Plan. Notwithstanding the foregoing, nothing contained herein should be construed as granting the general public a right of access to all or any portion of the Protected Property for any purpose whatsoever or to obligate the Landowner at any time to provide such access. The Landowner reserves the right to establish rules and to manage recreational activities on the Protected

Property, and it is the responsibility of the Landowner, not the Holder, to manage recreational activities on the Protected Property. Nothing herein shall prohibit or limit the Landowner from charging commercial or private recreational use fees to recover costs associated with managing the Protected Property.

- 3.2 Construction and Maintenance of Recreational Enhancements. Construction and maintenance of pedestrian trails and no more than two (2) viewing platforms are permitted provided undue adverse effects on the Conservation Values are minimized and such trails and viewing platforms are consistent with the Purpose of this Conservation Easement.

Plans to create new trails will be included in an Activity Plan.

- 3.3 Scientific Research. Non-manipulative scientific research, including archeological research may be conducted on the Protected Property including the placement of temporary or permanent plot markers and ancillary research equipment provided that they do not have an undue adverse effect on the Conservation Values.
- 3.4 Commercial Recreational Uses. Traditional backcountry recreational uses by commercial guides, by customers of commercial sporting camps, and by non-profit camping and educational and scientific institutions are allowed insofar as such activities are consistent with the Purpose of this Conservation Easement and the protection of the Conservation Values and provided that Landowner shall not grant exclusive use of the Protected Property to any person or entity for such recreational Purposes.
- 3.5 Vegetation Management. The limited removal of trees and vegetation associated with permitted uses such as the construction and maintenance of trails, for the safety of the public, and for the management of invasive species control is permitted. In addition, Landowner shall have the right to remove and replant trees and vegetation solely for the purpose of protecting species, restoring damaged habitat, and controlling the spread of diseases or blights, provided such measures are incorporated into an Activity Plan and are designed to reasonably minimize adverse effects on the Conservation Values. Emergency rapid response for the removal of newly identified or unanticipated rapid spread of invasive species may be undertaken by the Landowner without inclusion in an Activity Plan. Landowner shall provide notice to Holder of any emergency rapid response activities within 14 days following the treatment.
- 3.6 Natural Community and Rare Species Conservation. Management of the Property should allow for natural ecological processes to proceed with minimal interference or manipulation of the natural communities protected by this Conservation Easement and any rare species associated with them.

There may be instances where planned active management is necessary to replicate natural processes that maintain the natural communities protected by this Conservation Easement and the rare species associated with them and those anticipated

circumstances along with the communities or rare plants impacted shall be identified in an Activity Plan.

In the event that unanticipated ecological threats, including but not limited to newly detected invasive non-native plants and animals, are detected on the Protected Property, Landowner may take measures to address these threats, as long as they are designed to reasonably minimize adverse effects on the Conservation Values and provided those measures are incorporated into Activity Plan updates.

3.7 No Required Uses. No uses which are permitted in this Conservation Easement shall be deemed as required uses of the Protected Property by the Landowner, the Holder or any other party.

4. **BASELINE DOCUMENTATION REPORT**. The Baseline Documentation Report includes, as of the date of this Conservation Easement, documentation of the current knowledge of the physical and biological condition of the Protected Property, its physical improvements, and the special sites and resources that may require special protection or management, including but not limited to all such information as it relates to documenting the values contained in the Conservation Values. The Parties acknowledge and agree that prior to the date of this Conservation Easement, the Holder has prepared and completed the Baseline Documentation Report for the Protected Property, and that the Landowner has acknowledged in writing to the Holder the accuracy of the Baseline Documentation Report.

5. **ACTIVITY PLAN**. When an Activity Plan is required under Sections 3 and 6, the Landowner shall submit the Activity Plan to the Holder, for review by the Holder, at least thirty (30) days before commencing the activity that is the subject of the Activity Plan. For activities lasting more than one (1) year, the Landowner shall submit an updated Activity Plan at least thirty (30) days prior to each anniversary of the date of the previous Activity Plan.

Holder will have the right but not the obligation to review the Activity Plan for consistency with the Purpose and terms of this Conservation Easement. If the Holder finds that any portion of the Activity Plan is inconsistent with the terms of this Easement or that resulting activities could result in a violation of this Conservation Easement, the Holder will provide written comments to the Landowner identifying and explaining such inconsistencies, but it is acknowledged that the actual activities and outcomes on the Protected Property will determine compliance with this Conservation Easement. The Holder has no right of approval over an Activity Plan.

6. **RESTRICTED USES OF THE PROTECTED PROPERTY**. Other than the permitted uses described in Section 3 above, the Protected Property shall be maintained in perpetuity as open space and there shall be no residential, commercial, agricultural, farming, ranching, forest management, timber extraction or industrial uses of the Protected Property, specifically:

6.1. Extinguishment of Development or Mitigation Rights. All rights to develop or use the Protected Property that are prohibited by or inconsistent with this Conservation Easement are extinguished, and cannot be used to transfer development rights to other land, or to permit increased development or natural resource use or removal on other

land, or to achieve other regulatory mitigation credits for fiber, discharge of pollutants, or other similar accommodation, on land not subject to this Conservation Easement.

6.2. Trails and Roads for Motorized Vehicles. No motorized trails or roads may be created or maintained but this prohibition does not prohibit motorized wheelchairs or other power driven mobility devices as defined by the Americans with Disabilities and Act and regulations promulgated thereunder.

6.3. Division. The Protected Property shall remain in its current configuration without subdivision, partition, or other division into parcels or lots that results in the transfer or conveyance by deed, lease or contract of any portion of the Protected Property into separate ownership or control from the remainder of the Protected Property, except as follows:

6.3.1. Conveyances to Resolve Boundary Disputes. The Landowner may convey portions of the Protected Property to abutters to the extent necessary to resolve bona fide boundary disputes, provided that there is no more than a di minimus reduction in total acreage of land protected under this Conservation Easement and that there are minimal adverse impacts on the Conservation Values, without a court order.

6.4. Structures, Improvements and Utilities. No new structures, improvements, or utilities of any kind, temporary or permanent, may be located or created on the Protected Property except as permitted in Section 3.2. and this Section 6.4. As of the date of this Conservation Easement all known structures, improvements and utilities are documented in the Baseline Documentation Report, which existing or allowed structures, improvements and utilities may be maintained and replaced with substantially similar structures, improvements, and utilities in substantially the same locations, or as otherwise permitted herein, subject to the following conditions:

6.4.1. The Landowner shall submit an Activity Plan in connection with the construction, removal or replacement of the structures;

6.4.2. The Landowner shall submit an Activity Plan in connection with the maintenance of the structures when that maintenance likely will involve the movement of soil or sediment. No Activity Plan is required in connection with routine structure maintenance, such as painting or minor structural repairs;

6.4.3. All activities described in this Section 6.4. shall be conducted so as to minimize adverse impacts on the Conservation Values;

6.5. Surface Alterations. As of the date of this Conservation Easement, there are no surface alterations on the Protected Property except for unpaved trails (collectively "Surface Alterations"), as shown in the Baseline. No additional filling, dumping, excavation, new roads, or other alteration may be made to the surface or subsurface of the Protected Property or to its surface or ground waters, watercourses or wetlands except as permitted in Section 3.2.

- 6.6. Excavation of Minerals, Geothermal Resources and Hydrocarbon. There shall be no exploration for, or development and extraction of, geothermal resources, minerals, hydrocarbon, groundwater, or any other deposits by any surface or sub-surface mining or any other method on the Protected Property.
- 6.7. Waste; Hazardous Substance. There shall be no placing, filling, storing, burning, release, burial, disposal, injection or dumping on the surface or subsurface of the Protected Property of rubbish, garbage, debris, waste materials, landfill, hazardous substance or any type of material.
- 6.8. Forest Management Activities. Forest management activities are not allowed on the Protected Property except for those permitted in Section 3.

7. RIGHTS AND OBLIGATIONS OF THE HOLDER FOR MONITORING AND ENFORCEMENT PURPOSES. To accomplish the Purpose, the following rights and easements are granted to and obligations imposed upon the Holder:

- 7.1. Affirmative Rights and Obligations of the Holder related to Monitoring, Enforcement and Administration. The Holder shall have the right to assure compliance with the terms of this Conservation Easement. In connection with such right, the Holder shall have the right to enter the Protected Property at any reasonable time and in any reasonable manner, being the same rights of entry and manner as afforded the Landowner through provisions of this Conservation Easement and over any and all rights of way and roads over which the Landowner has rights of access, subject to the requirement of this paragraph, for the purposes of inspection, monitoring, enforcement and remedying any violations of this Conservation Easement.
 - 7.1.1. Annual Meeting. Absent an agreement to the contrary, the Landowner and the Holder, or their designees, shall meet annually at a date, location and time convenient for the parties to review the Landowner's management activities, the Holder's monitoring activities, and discuss any questions or concerns regarding the Protected Property and the exercise of the rights by either party under this Conservation Easement.
 - 7.1.2. Reports and Records. The Holder shall keep on file and provide to the Landowner reports made in connection with the Holder's monitoring of the condition of the Protected Property and Landowner's compliance with the terms of this Conservation Easement. The Holder shall also keep on file all documents pertinent to the interpretation and enforcement of this Conservation Easement.
 - 7.1.3. No Obligation to Create or Maintain Access. The Landowner is under no obligation to create or maintain vehicular access for the Holder or any other entity or individual. Further, the Holder's rights of access do not include any rights of construction or maintenance related to vehicular access or any other affirmative right to undertake site alteration or to place access-related structures or improvements on the Protected Property or on any other lands of the Landowner.

- 7.1.4. No Separate Assignment. The Holder's access rights are not assignable except in connection with the permitted assignment by the Holder of this Conservation Easement.
- 7.1.5. Holder's Stewardship Endowment. As part of the grant of this Conservation Easement, the Landowner has transferred funds to the Holder to support the Holder's stewardship oversight program in recognition of Holder's commitment to ensuring that the terms of this Conservation Easement are met. In the event the Holder assigns this Conservation Easement to a third party, the Holder shall transfer funds to such third party to similarly support ongoing stewardship oversight of the Conservation Easement.

8. THE HOLDER'S REMEDIES.

- 8.1. Notice of Violation; Corrective Action. If the Holder becomes aware of a violation of this Conservation Easement, the Holder shall notify the Landowner of such violation and request that the Landowner cure the violation, and, if the violation involves damage to the Protected Property resulting from any use or activity that the Holder determines, in its reasonable judgment, to be inconsistent with the Purpose, that the Landowner restore the portion of the Protected Property so damaged, to the extent practicable, to a condition substantially similar to that which existed prior to the violation.
- 8.2. Injunctive Relief. If the Landowner does not cure the violation within thirty (30) days after receipt of notice thereof from the Holder, or under circumstances where the violation cannot reasonably be cured within said period, does not begin curing such violation within said period, and/or does not continue diligently to cure such violation until finally cured, the Holder may, after fifteen (15) days' notice to the Landowner, bring an action at law or in equity in court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation by temporary or permanent injunction, and to require the restoration of the Protected Property to the condition substantially similar to that which existed prior to injury to the extent such restoration is practicable.
- 8.3. Damages. In the event of a judicial determination that the Landowner has violated this Conservation Easement, the Holder will be entitled to recover reasonable damages for violation of the terms of this Conservation Easement, including reasonable attorneys' fees and expenses.
- 8.4. Emergency Enforcement. If the Holder, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property resulting from an alleged violation of the terms of this Conservation Easement, the Holder may, with prior notice to the Landowner, enter upon the Protected Property for the purpose of assessing damage or threat to the Conservation Values thereon resulting from a violation of the terms of this Conservation Easement and determining the nature of curative or mitigation actions that should be taken; and pursue its remedies under this Section with at least twenty-

four (24) hours' prior notice to the Landowner, but without waiting for the cure or notice period provided under this Section to expire.

- 8.5. Costs of Enforcement. In the event that a circumstance of noncompliance with the Conservation Easement is corrected through negotiation and voluntary compliance, the party who was not complying shall reimburse the other party for all reasonable costs incurred in investigating the non-compliance and securing its correction. In the event that a dispute is resolved through judicial enforcement, the prevailing party shall be entitled to an award of its reasonable costs, including attorneys' fees and any other payments ordered by such decision-maker. In all other circumstances, each party shall bear its own costs of dispute resolution.
- 8.6. The Holder's Discretion. Enforcement of the terms of this Conservation Easement shall be at the discretion of the Holder, and any forbearance by the Holder to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by the Landowner shall not be deemed or construed to be a waiver by the Holder of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the Holder's rights under this Conservation Easement. No delay or omission by the Holder in the exercise of any right or remedy upon any breach by the Landowner shall impair such right or remedy or be construed as a waiver.
- 8.7. Acts Beyond the Landowner's Control. The Landowner shall be responsible for, and the Holder shall have the right to enforce the terms of this Conservation Easement against the Landowner with respect to violations of the terms of this Conservation Easement caused by the Landowner, its successors or assigns, or their respective officers, directors, trustees, members, employees, contractors and agents or by any person or entity who enters or occupies the Protected Property with the express permission of the Landowner or pursuant to a contractual relationship with the Landowner, such as a tenant of a leased lot. Notwithstanding any provision of this Conservation Easement to the contrary, the Landowner shall not be responsible or liable for any remediation, restoration, damages, cost and/or expenses in any way caused by third parties (except those described in the preceding sentence) or the public, except as required by state or federal laws or regulations. Nothing contained in this Conservation Easement shall be construed to entitle the Holder to bring any action against the Landowner for any injury to or change in the Protected Property resulting from causes beyond the Landowner's control, including, government action, fire, flood, storm, changes in climatic condition, catastrophic insect infestation, disease, acid rain or other airborne pollutants introduced into the atmosphere by third parties, naturally occurring earth movement and other similar natural events, or from any prudent action taken by the Landowner under what the Landowner reasonably and in good faith perceives to be emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Nothing contained in this Conservation Easement shall be construed to entitle the Holder to bring any action against the Landowner for any injury to or change in the Protected Property or any injury to any person or property resulting from the actions of the Holder or resulting

from the actions of any person whose presence on the Protected Property arises out of the exercise of the Holder's affirmative rights.

9. OTHER RIGHTS NOT IMPAIRED OR ENLARGED.

- 9.1. No Other Enforcement Rights. This Conservation Easement shall not be construed to entitle any person or entity other than the Holder or its duly authorized agents, to enforce any of the terms or conditions of this Conservation Easement against the Landowner, except in connection with the permitted assignment by the Holder of this Conservation Easement as permitted in Section 12, and except for the Attorney General as provided in 33 M.R.S. § 478(D).
- 9.2. No Additional Assumption of Responsibility. Nothing in this Conservation Easement shall be interpreted as an assumption of responsibility by, or basis for liability on the part of, the Landowner for any injury to person or damage to property or loss of life that may be sustained by any person while on the Protected Property pursuant to the Conservation Easement granted hereunder to the Holder or sustained by any such person as a result of any entry on or use of the Protected Property by any persons other than the Landowner, its agents, employees, contractors, licensees and invitees. The Landowner specifically retains all the protections provided under Maine law to owners of land, including, the protections contained in 14 M.R.S. § 159-A.
- 9.3. No Enlargement or Extension of the Holder's Rights. No right granted to the Holder and no right or restriction enforceable by the Holder arising under this Conservation Easement shall be enlarged, extended, or otherwise altered in any manner adverse to the right, title and interest of the Landowner through prescription, adverse use, waiver, laches or any failure of the Landowner to enforce its rights.
- 9.4. Rights against Third Parties. Nothing contained in this Conservation Easement shall be construed to preclude the Landowner's and the Holder's rights to recover damages from any third party for trespass or other violation of their respective rights in this Conservation Easement and the Protected Property. The parties agree to cooperate with and to join in such actions as are necessary to prevent the unlawful use of the Protected Property by third parties, which may include, taking legal action against third parties who trespass.
- 9.5. Additional Conservation Actions. Nothing contained in this Conservation Easement shall be construed either to limit the Landowner's rights to take additional conservation actions, such as further restrictions on the use of all or a portion of the Protected Property in order to protect the resources and Conservation Values of the Protected Property.
- 9.6. Taxes and liens. Landowner shall pay and discharge when due all property taxes and assessments imposed upon the Protected Property and any uses thereof, and avoid the imposition of any liens that may impact the Holder's rights hereunder. Landowner shall keep the Protected Property free of any liens or encumbrances, including without limitation those arising out of any work performed for, materials furnished to or

obligations incurred by Landowner. Holder may, at its discretion, pay any outstanding taxes, assessments, liens or encumbrances that may impact the Holder's rights hereunder, and shall then be entitled to reimbursement by Landowner, together with interest at the then-prevailing statutory post-judgment interest rate in Maine under Title 14 MRSA Section 1602-C or successor provisions thereof, calculated from the date of Holder's payment. Landowner and Holder agree that Holder shall have a lien on the Protected Property to secure Holder's right to reimbursement and that Holder may record such lien at any time. In any collection process or court action brought by Holder for reimbursement, Holder shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorney's fees.

10. **CONDEMNATION.** Landowner shall not exercise its own power of eminent domain to terminate or amend this Conservation Easement in a manner contrary to the provisions of Title 33 M.R.S. Section 477-A(2)(B). If either Landowner or Holder receives notice of the actual or threatened exercise of the power of eminent domain or purchase in lieu of condemnation (hereinafter a "Taking") with respect to any interest in or any part of the Protected Property, the party who receives the notice shall promptly notify the other and the parties may proceed jointly or either party may at its discretion take such legal action as it deems necessary to: (i) challenge the Taking; (ii) challenge the amount of allocation of any award tendered by the Taking authority; or (iii) otherwise participate in, challenge or appeal such proceedings, findings or awards. In the event that the parties proceed jointly, any third-party counsel and consultants (including appraisers) hired by either party shall be reasonably acceptable to the other party. Each party shall be responsible for its own costs and legal fees, absent written agreement of the parties. All proceeds or awards resulting from a Taking shall be used first to reimburse all expenses reasonably incurred by Landowner and Holder in connection with the Taking, secondly to cover increased stewardship costs of the remaining property to the Holder as a result of the taking, and thirdly spent for the protection of conservation lands of mutual interest to both Landowner and Holder, consistent, as nearly as possible, with the Purpose of this Conservation Easement. If only a portion of the Protected Property is subject to such exercise of the power of eminent domain, this Conservation Easement shall remain in effect as to all other portions of the Protected Property.

11. **AMENDMENT AND DISCRETIONARY CONSENTS.** Landowner and Holder acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Easement. Holder therefore may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Easement, or (b) alterations in existing uses or structures, are consistent with the Purposes of this Easement. Any legally permissible amendment hereto, and any discretionary consent by Holder contemplated by this Conservation Easement, may be granted only if the Holder has determined in its reasonable discretion, that the proposed use furthers or is not inconsistent with the purposes of this Conservation Easement, substantially conforms to the intent of this grant, meets any applicable conditions expressly stated herein, and does not materially increase the adverse effect of expressly permitted actions under this Conservation Easement on the Conservation Values. Holder has no right or power to consent to (i) any use that is prohibited by this Conservation Easement, or (ii) any other use on the Protected Property that would be inconsistent with the

Purpose of this Conservation Easement, that would limit the term or terminate this Conservation Easement, or that would impair the qualification of this Conservation Easement or the status of the Holder under any applicable laws, including Title 33 M.R.S. Section 476 et seq., and/or Section 170(h) or 501(c)(3) of the Internal Revenue Code, or successor provisions thereof. This Conservation Easement may not be terminated or amended in such a manner as to materially detract from the Conservation Values intended for protection without the prior approval of the court in an action in which the Attorney General is made a party. Amendments will become effective upon recording at the Somerset County Registry of Deeds.

12. **ASSIGNMENT.** This Conservation Easement is assignable, but only to an entity that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code, (or successor provisions thereof) and the requirements of Section 476(2) of Title 33 of the Maine Revised Statutes, as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the conservation Purpose of this grant. Landowner shall have the right to ninety (90) days' notice of any such proposed assignment and the right of approval of any such assignment, which approval shall not unreasonably be withheld, except, the Landowner agrees that assignment of this easement to the State of Maine, Department of Conservation, Bureau of Parks and Lands or its successor agencies shall not require the prior approval of the Landowner.
13. **SUBSEQUENT TRANSFERS.** Except as specifically provided in Section 6.3, nothing in this Conservation Easement shall be construed to prevent Landowner from selling or otherwise conveying or transferring the Protected Property Protected Property to a third party, subject to the terms of this Conservation Easement. Landowner agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Landowner divests itself of any interest in all or a portion of the Protected Property, including, a security or leasehold interest. Landowner agrees to give written notice to Holder of the transfer of any interest in the Protected Property ninety (90) days prior to the date of such transfer. Landowner shall provide Holder documentation recorded at any registry of deeds upon completion of such transfer. Landowner shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property.

NOTICE: This Property is Subject To a Conservation Easement recorded in [insert book and page references, county(ies) and date of recording.]

The failure of Landowner to perform any act required by this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

14. **MERGER.** The Landowner and Holder agree that the terms of this Conservation Easement shall survive any merger of the fee and conservation easement interest in the Protected Property.
15. **NOTICES.** All notices under this Conservation Easement shall be effective upon receipt or refusal if in writing and delivered by hand or sent by mail, postage prepaid, certified or registered mail, return receipt requested, or commercial delivery service providing proof of receipt, addressed as follows:

To Landowner:

XXXX
Street Address
Town, State, ZIP

To Holder:

Forest Society of Maine
c/o Executive Director
115 Franklin Street, 3rdFloor
Bangor, Maine 04401

16. **RECORDING.** Original counterparts of this Conservation Easement shall be recorded by Holder at its expense in the Registry of Deeds, Piscataquis County, Maine. Holder may re-record this Conservation Easement at Holder's expense at any time as may be required to preserve its rights in this Conservation Easement.

17. **GENERAL PROVISIONS.**

- 17.1. Controlling Law; Compliance with Laws. This Conservation Easement is created pursuant to Uniform Conservation Easement Act at Title 33, Maine Revised Statutes, Sections 476 through 479-C, inclusive and shall be construed in accordance with the laws of the State of Maine.
- 17.2. Including; Any. As used in this Conservation Easement, the words "include" or "including" means "including without limitation," and "any" means "any and all."
- 17.3. Discretionary Consents. Unless a consent required under this Conservation Easement is to be made by Holder in its sole discretion, any required consent shall be granted in accordance with Section 11. Nothing in this Conservation Easement may be construed to permit any activity otherwise prohibited by existing or future laws and regulations imposed by any federal, state, or local government agency having jurisdiction over the Protected Property, nor to prohibit the imposition of further land use restrictions by agreement of the parties or by operation of law, provided, however, that any activity already in practice on the Protected Property at the time of any such future laws and regulations may be continued to the extent that the concept of 'grandfathering' under any applicable law would allow the continuation of any such activity.
- 17.4. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the purpose and the policy of 33 M.R.S. §§ 476 and 479-C inclusive, as amended. If any provision of this Conservation Easement is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.

- 17.5. Severability. If any provision of this Conservation Easement, or its application to any person or circumstance, is found to be invalid, the remainder, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby so long as the Purpose of this Conservation Easement can still be carried out.
- 17.6. Entire Agreement. This Conservation Easement contains the entire agreement of the parties with respect to its subject matter and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement, all of which are merged in this Conservation Easement. This Conservation Easement may not be amended except as provided in Section 11.
- 17.7. No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of Landowner's fee title in any respect.
- 17.8. Successors. This Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.
- 17.9. Captions. Captions used in this Conservation Easement are solely for convenience of reference and shall not be used for construction or interpretation.
- 17.10 Counterparts. Each party may execute this Conservation Easement in counterparts, and each counterpart shall be deemed an original instrument. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 17.11 Construction. In all matters of interpretation, whenever necessary to give effect to any clause of this agreement, the neuter, masculine and feminine include each other, and the singular includes the plural, and the plural includes the singular.

This Conservation Easement is granted to Holder subject to all rights and reservations of record.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this _____ day of _____, 2013.

XXXXXX

Witness

By: _____
Its: _____

State of Maine

SS: _____, 20__

Personally appeared before me and acknowledged the foregoing instrument to be his free act and deed in their capacity duly authorized by _____ and the free act and deed of _____.

Before me,

Notary Public
Printed Name:
My Commission Expires:

HOLDER ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by the Forest Society of Maine, the Holder as aforesaid, and the said Holder does hereby accept the foregoing Conservation Easement, by and through _____, its _____, hereunto duly authorized, this ____ day of _____, 20__.

Forest Society of Maine

Witness

By: _____
Its: _____

State of Maine

SS: _____, 20__

Personally appeared before me and acknowledged the foregoing instrument to be their free act and deed in their capacity and the free act and deed of Forest Society of Maine.

Before me,

Notary Public
Printed Name:
My Commission Expires:

EXHIBIT A

**CONSERVATION EASEMENT - FOREST SOCIETY OF MAINE
XX ACRES +/- BIG MOOSE MOUNTAIN TOWNSHIP, MAINE**

A certain conservation easement over a parcel of land depicted on a plan entitled



115 Franklin Street, 3rd Floor
Bangor, ME 04401

207-945-9200 tel
www.fsmaine.org
info@fsmaine.org

April 12, 2022

VIA EMAIL

Big Lake Development, LLC
Attn: Perry Williams
PO Box 390
Spruce Head, ME 04859

RE: Big Moose Mountain

Dear Mr. Williams:

Please share the following information with the Land Use Planning Commission (LUPC) as proof of the Forest Society of Maine's (FSM) interest and capability to hold a conservation easement on land to be owned as part of the Big Lake Development, LLC application to amend Development Permit 3639. Our credentials are presented herein, organized following the categories of LUPC's "Guidelines for Selecting Conservation Easement Holders".

Legal Qualifications

The Forest Society of Maine is a nonprofit organization incorporated in Maine for the purpose of "protecting and conserving the forests of Maine". FSM qualifies under 33 MRSA to hold conservation easements. (Articles of Incorporation, IRS Letter of Determination, and Bylaws can be provided.)

Compatible Goals and Purpose

The following is excerpted from the 2020-2025 Forest Society of Maine Strategic Plan and demonstrates the organization's focus on conserving natural resource values in Maine's forestlands and our compatibility, in goals and purpose, with the contemplated easement(s):

Mission: The Forest Society of Maine conserves Maine forestlands to sustain their ecological, economic, cultural, and recreational values with a particular focus on large working forest landscapes.

Vision for the Maine North Woods: Maine's North Woods is a well-managed, ecologically diverse, climate resilient, working forest landscape comprising approximately 12 million acres. It sustains ecological, economic, cultural/historic, and recreational values, while playing a key role in mitigating the effects of climate change. Traditional public recreational activities and access continue in the North Woods. Important habitats, strategically targeted ecological reserves, and other special features are conserved as appropriate. These forestlands are supporting twenty-first century forest products and tourism activities that are thriving and enhancing the well-being and economic vitality of nearby communities, the region, and the State.



A statewide land trust working to conserve and maintain the many values of forestlands in Maine



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207-945-9200 tel
www.fsmaine.org
info@fsmaine.org

Collaboration: FSM continues relationships with a diverse array of local, regional, and national non-government organizations (NGOs), and maintains a leadership role regarding forestland conservation in Maine. FSM will seek out strategic collaborative relationships to reach goals on large projects, avoid duplicating the work of other organizations, and secure access to funding sources that would otherwise be unavailable.

Community engagement: FSM works with local communities that are proximate to lands that FSM is helping/has helped to conserve. Community engagement is vital to all stages of FSM's work, from identifying possible new projects, to building support for conservation projects in progress, to creating connections to Maine's forests. FSM believes that land conservation offers a level of stability, and predictability for the future, to communities adjacent to permanently conserved lands. This stability can enhance and support efforts by local communities to grow their economies, attract new residents and visitors, and improve the mental and physical health of their citizens.

Conservation tools: Conservation easements continue to serve as a primary tool for FSM's conservation work. The organization has built a strong conservation easement stewardship program and is committed to maintaining that focus and competency while also evaluating new tools that may become useful in the future.

Past Success and Partnerships

To date, the Forest Society of Maine has helped conserve nearly 1,000,000 acres of forestlands in Maine, primarily using conservation easements. In 1984, FSM pioneered – nationally – the use of large, multi-faceted forestland conservation easements, with the 18,000-acre Attean easement. In December 2003 in partnership with the state, we completed the 329,000-acre West Branch project which abuts Moosehead Lake and encompasses the headwaters of the West Branch of the Penobscot and the St. John rivers. We currently hold more than 45 conservation easements throughout Maine including the easements granted as a result of the Moosehead Region Concept Plan (360,000-acres around Moosehead Lake), the Attean Twp./Dennistown Plt. Concept Plan (3,700-acres west of Jackman), and the Fish River Concept Plan (16,900 acres). In addition, we have worked with the Town of Jackman on a mitigation project to offset impacts to wetlands at Newton Airfield by conserving approximately 150 acres in two separate transactions. Having earned accreditation from the Land Trust Accreditation Commission, FSM continues to be a national leader in the conservation and stewardship of multi-faceted working forest conservation projects.

Board Accountability

By policy and practice, the board is responsible for and must approve every land transaction – fee or easement. The board will be actively engaged in our potential involvement with the conservation easement related to Big Moose Mountain. FSM's board will make the final decision regarding FSM's acceptance of any easements resulting from LUPC action, in full recognition of the legal responsibilities for monitoring and enforcement that would be assumed with holding the easements. A list of FSM's board of directors and officers can be provided if necessary.



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Conflict of Interest

The Forest Society of Maine was established to operate in the public interest by protecting and conserving forestlands in Maine. It is not an “advocacy” organization. FSM also follows a board-adopted policy on conflicts of interest. The policy requires that any board member who is a landowner or agent of a landowner with whom FSM is involved in negotiations to acquire an interest in real estate must resign from the board. FSM’s policy also requires disclosure of any potential conflicts by board members at all meetings, and board members with conflicts must remove themselves from board actions on related issues. As far as we know, currently no conflict or potential conflict exists in regards to this project.

Financial Resources

The Forest Society of Maine is an organization dedicated to the long-term conservation of forestlands and with a strong commitment to the perpetual responsibilities of easement monitoring and enforcement. FSM has a staff of ten, four of whom are fully focused on FSM’s stewardship program that includes easement monitoring and enforcement. Other staff members, board members, and consultants are also involved as needed. FSM policy requires that a contribution be made to a stewardship endowment in support of any easement it accepts of an amount FSM deemed necessary to meet ongoing costs associated with responsibilities of holding the easement. FSM has and follows a policy that guards the principal and allocates annual disbursements toward the easement stewardship program.

Commitment to Monitoring

FSM has 37 years of successful experience in monitoring conservation easements and is committed to continuing as a leader in this area. FSM develops and follows a systematic approach to monitoring each of its easements. Monitoring activities are conducted at least annually. Our monitoring activities involve an array of coordinated actions, including: on the ground visits; regular meetings and communications with landowners and managers; reviews of forest management plans and activities; aerial flights; satellite and geo-spatial data analysis, and thorough record keeping. A committee of the board of directors oversees and guides the work of the stewardship staff and reports regularly to the full board. FSM monitors nearly 1 million acres of easements annually, including easements held by FSM and easements held by others with FSM providing easement-monitoring services.

Commitment to Enforcement

FSM’s approach to easement stewardship is designed, first and foremost, to maintain compliance and prevent violations. However, our ongoing monitoring efforts are also structured to detect activities that are not in compliance with easement terms. We are committed and fully prepared to enforce easement terms and take necessary steps, including legal action. Our commitment and capability are demonstrated by our track record of detecting non-conformance issues and resolving them in a business-like manner. Resolutions have included corrective action and restitution. As part of any violation, we also work to identify its cause and institute measures to prevent future problems.

Conclusion and Next Steps

Should the LUPC grant a permit with the condition of a conservation easement being placed on lands of the applicant to mitigate impacts of the proposed development of areas of Big Moose Mountain, FSM is committed to working with the applicant to ensure an easement is crafted that is appropriate for the





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ecological conditions and ongoing intended uses of the mountain in a way that satisfies the conditions of an LUPC permit. Along with this letter is a draft conservation easement that we intend to use as a starting point for the development of such a project. Finally, as with all projects FSM has worked on in conjunction with LUPC and other regulatory permitting, FSM's board of directors reserves the right to accept the conservation easement only after a permitting decision has been made and agreement is reached between the parties on the terms and conditions of said conservation easement.

Sincerely,

A handwritten signature in black ink, appearing to read "Jake Metzler".

Jake Metzler
Director of Forestland Conservation

Enclosures: Map of draft CE area
Draft conservation easement



A statewide land trust working to conserve and maintain the many values of forestlands in Maine