

APPENDIX A

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TITLE L

WATER MANAGEMENT AND PROTECTION

CHAPTER 486-A

AID TO PUBLIC WATER SYSTEMS

Section 486-A:1

486-A:1 Purpose. – The purpose of this chapter is to provide a state contribution to aid all public water systems in achieving compliance with the requirements of the surface water treatment rules of the federal Safe Drinking Water Act, to provide a state contribution to aid public water systems in the formation or improvement of regional water systems that provide a benefit to public health, safety, and economic well-being, to provide a state contribution to aid public water systems in the evaluation of the groundwater contributing area of public wells that have recorded levels of chemical contaminants, excluding MTBE, and to protect sources of public drinking water that serve community or non-transient non-community water systems and associated natural resources through the acquisition of land or conservation easements within source water protection areas.

Source. 1993, 341:1. 2000, 310:1, eff. June 21, 2000. 2003, 178:1, eff. July 1, 2003.

Section 486-A:2

486-A:2 Definitions. – In this chapter:

I. "Construction" means:

(a) The installation or building of:

(1) New wells or well buildings;

(2) Filtration systems and associated pump stations, pump equipment, chemical treatment systems, telemetry and metering equipment, and storage tanks; and

(3) Distribution mains and valves needed to interconnect the new wells or filtration system to the existing system as may be required by the department and the EPA or to interconnect public water systems to form a regional water system.

(b) Altering, improving or adding to existing water treatment or water source, storage or transmission main facilities or regional water system interconnections in order to meet the requirements of the surface water treatment rules or to meet the water needs of a regional water system.

(c) Engineering services related to the activities identified under this paragraph, including the scientific evaluation of the groundwater contributing area of public wells with recorded levels of chemical contaminants, excluding MTBE, using a method approved by the department.

I-a. "Community water system" means a community water system as defined in RSA 485:1-a, I.

II. "Department" means the department of environmental services.

III. "Eligible surface water treatment costs" means the actual cost of construction and related services necessary for a municipality to comply with the surface water treatment rules of the department of environmental services and the EPA, but shall not include the following:

(a) Land acquisition, except for land which shall be an integral part of a well system or filtration system;

(b) Easements and rights-of-way necessary to the project;

(c) Distribution systems and any improvement thereto not necessary for the municipality to achieve compliance with the surface water treatment rules; and

(d) Any administrative, legal, and fiscal costs related to the project.

III-a. "Eligible water supply land protection costs" means the actual cost of permanently conserving substantially undeveloped land within one or more source water protection areas for active or proposed sources of public drinking water supplying a community or non-transient non-community water system, including the cost of land or conservation easement acquisition and associated legal and transaction costs.

III-b. "Eligible regional water system costs" means that portion of the costs of construction and related services attributable, as determined by the department, to the provision of water for domestic, commercial, or fire protection purposes, whether as routine supply or emergency reserve supply, through one or more of the interconnections that form a regional water system, but shall not include any of the following:

(a) Land acquisition, except for land which shall be an integral part of a well system or filtration system.

(b) Easements and rights-of-way necessary to the project.

(c) Distribution systems and any improvement thereto not necessary for the municipality to achieve compliance with the surface water treatment rules.

(d) Administrative, legal, and fiscal costs related to the project.

III-c. "Eligible evaluation of the groundwater contribution area of public wells that have recorded levels of chemical contaminants excluding MTBE" means that portion of the actual costs of scientific evaluation of the contribution area of the sources of public drinking water, such as a well or surface water intake, through which water is likely to flow towards the source and related services attributable, as determined by the department, to the provisions of water for domestic, commercial, or fire protection purposes, whether as routine supply or emergency backup supply, through one or more interconnections that form a regional water system, but shall not include the following:

(a) Land acquisition, except for land which shall be an integral part of a well system or filtration system;

(b) Easements and rights-of-way necessary to the project;

(c) Distribution systems and any improvement thereto not necessary for the municipality to achieve compliance with the surface water treatment rules; and

(d) Any administrative, legal, and fiscal costs related to the project.

IV. "EPA" means the United States Environmental Protection Agency.

V. "Non-transient non-community water system" means a non-transient non-community water system as defined in RSA 485:1-a, XI.

V-a. "Regional water system" means the system which results from the interconnection of 2 or more discrete public water systems to provide routine or emergency reserve supply.

V-b. "Groundwaters" means all areas below the top of the water table, including aquifers,

wells, and other sources of groundwater.

VI. "Source water protection area" means the area around a source of public drinking water, such as a well or surface water intake, through which water is likely to flow towards the source.

VII. "Stewardship" means ongoing surveillance of water supply protection land acquired pursuant to this chapter to ensure that the conservation intent is maintained.

VIII. "Water supply land protection grantee" means an entity that receives a water supply land protection grant to acquire and maintain in perpetuity land or easements for the purpose of protecting a drinking water source. A water supply land protection grantee shall be a nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code and having public water supply as its principal mission or a municipality.

Source. 1993, 341:1. 1996, 228:94, 106. 2000, 310:1, eff. June 21, 2000. 2003, 178:2-4, eff. July 1, 2003.

Section 486-A:3

486-A:3 State Contribution; Surface Water Treatment Costs; Water Supply Land Protection Costs; Regional Water System Costs. –

I. (a) Any public water system which is or was required, beginning in 1986, to achieve compliance with the surface water treatment rules of the EPA or the rules of the New Hampshire department of environmental services adopted to implement the federal Safe Drinking Water Act amendments of 1986 shall be eligible for a state contribution. As its contribution, the state shall pay 20 percent of the annual amortization charges, meaning the principal and interest, on the eligible surface water treatment costs resulting from the construction of new wells or a filtration system to meet the requirements of the surface water treatment rules.

(b) To be eligible under RSA 486-A:3, I(a), construction shall be necessary in order for the public water system to comply with the surface water treatment rules of the department or the EPA, or both. Plans for construction shall be approved in accordance with the provisions of RSA 485:8.

II. The state may pay up to 25 percent of the eligible water supply land protection costs.

III. Any public water system which incurs eligible regional water system costs or eligible evaluation of contributing area of groundwaters contribution to public wells that have recorded levels of chemical contaminants costs, excluding MTBE, after the effective date of this paragraph shall be eligible for a state contribution in accordance with the provisions of this chapter. As its contribution, the state shall pay 25 percent of the annual amortization charges, meaning the principal and interest, on the bonded eligible regional water system costs, or 25 percent of non-bonded, eligible regional water system costs. Plans for construction shall be approved in accordance with the provisions of RSA 485:8.

Source. 1993, 341:1. 1996, 228:106. 2000, 310:1, eff. June 21, 2000. 2003, 178:5, 6, eff. July 1, 2003.

Section 486-A:4

486-A:4 Additional State Contribution. –

I. In addition to any other state contribution provided in this chapter, the commissioner of the

department, with the approval from the governor and council, may, upon review of plans submitted by a public water system and within the limits of available appropriations, pay 10 percent of the annual amortization charges, meaning principal and interest, on the eligible surface water treatment costs resulting from the installation and construction of water supply facilities required by the surface water treatment rules of the Safe Drinking Water Act.

II. This additional contribution may be provided when such installation or construction will result in user fees that are 20 percent above the statewide average for residential customers.

Source. 1993, 341:1. 2000, 310:1, eff. June 21, 2000.

Section 486-A:5

486-A:5 Equitable Allocation of Costs. – The department shall not approve any contribution for surface water treatment or for the formation or improvement of a regional water system or for evaluation of contribution of groundwaters to public wells that have record levels of chemical contaminants, excluding MTBE under this chapter unless it shall first have determined that the applicant:

I. Has adopted or will adopt a system of charges to assure that each recipient of water service within the applicant's jurisdiction, as determined by the department, will pay its proportionate share of the costs of operation and maintenance, including replacement, of water services provided by the applicant. For a regional water system project, the department must also determine that each public water system that is to make payments to the applicant for water service provided through area regional water system interconnection has adopted or will adopt a system of charges to assure that each recipient of water service within the public water system will pay its proportionate share of the such payments.

II. Has legal, institutional, managerial, and financial capability to ensure adequate construction, operation, and maintenance of water works throughout the applicant's jurisdiction.

Source. 1993, 341:1. 1996, 228:106. 2000, 310:1, eff. June 21, 2000. 2003, 178:7, eff. July 1, 2003.

Section 486-A:6

486-A:6 Application for Funding. – Application for payments under the provisions of this chapter shall be made in accordance with rules adopted by the commissioner under RSA 541-A, and, for surface water treatment projects and regional water system projects and evaluation of groundwaters contributing area of public wells, shall be based upon reports filed with the commissioner prior to January 31, in the calendar year for which payment is being requested.

Source. 1993, 341:1. 1996, 228:110. 2000, 310:1, eff. June 21, 2000. 2003, 178:8, eff. July 1, 2003.

Section 486-A:7

486-A:7 Applicant Agreement. –

I. Applications for state grants for surface water treatment and for regional water systems and

evaluation of groundwaters contributing area of public wells with recorded levels of chemical contaminants shall contain an agreement that the applicant:

(a) Has installed or will install the water works facilities in accordance with the plans and specifications approved by the department;

(b) Will provide proper and efficient operation and maintenance of facilities;

(c) Agrees that failure to install the facilities in accordance with the approved plans and specifications or to provide proper and efficient operation and maintenance of such facilities shall result in loss of payments of the annual grant installment next following such failure. The loss of payment of the annual grant installment shall continue in effect until such time as the applicant has completed the steps necessary to install the facilities in accordance with plans and specifications approved by the department, or made provisions for proper and efficient operation and maintenance of the facilities in accordance with department instructions or both;

(d) For a grant to aid in the development of a regional water system and evaluation of groundwaters contributing area of public wells with recorded levels of chemical contaminants, agrees to participate in regional and statewide water supply planning initiatives and to consider the results of such initiatives for purposes of long-term water supply planning and infrastructure development.

II. Applications for water supply land protection grants shall contain a statement that the applicant shall comply with the following conditions:

(a) The applicant shall purchase the land or conservation easement from a willing seller, and the purchase shall include only land within the source water protection area of an active or proposed public drinking water source supplying a community or non-transient non-community water system or only small portions of land beyond the source water protection area under circumstances which make subdivision impractical;

(b) The land or conservation easement shall be owned, in perpetuity, by a water supply land protection grantee;

(c) The land shall be maintained in perpetuity to protect the drinking water source and no land use or development shall occur that would diminish the quantity or quality of the drinking water;

(d) The land, if purchased in fee simple, shall not be posted to prohibit hiking, hunting, and fishing, unless the department deems such posting necessary to protect the associated water supply or other natural resources;

(e) The applicant shall provide required stewardship and submit annual stewardship reports to the department.

Source. 1993, 341:1. 1996, 228:106. 2000, 310:1, eff. June 21, 2000. 2003, 178:9, eff. July 1, 2003.

Section 486-A:8

486-A:8 Priority of Applications. –

I. For surface water treatment projects, the department shall establish and maintain a priority list of projects eligible to receive grants under RSA 486-A:3. The priority list shall include the highest priority projects ready for construction and anticipated to receive grants from appropriated funds within the next fiscal year. The list required by this section shall not be considered rules subject to the provisions of RSA 541-A.

II. For water supply land protection projects, the department shall prioritize projects in accordance with rules established under RSA 486-A:11. Prioritization factors shall include, but not be limited to:

- (a) Distance from and relation to the drinking water source.
- (b) Size of the area proposed for protection relative to the size of the source water protection area.
- (c) Natural resource values, including wetlands, habitat protection, and recreational uses.
- (d) Current protection status of the source water protection area.
- (e) Ability of the applicant to pay for water supply land protection.

III. For regional water system projects and evaluation of groundwaters contributing area of public wells with recorded levels of chemical contaminants, the department shall adopt prioritization factors by rule under RSA 541-A, to assist in determining which new projects to fund under this chapter. Prioritization factors shall include, but not be limited to:

- (a) The population of the service area that would receive water through the regional water system interconnection.
- (b) The degree to which the public's health, safety, and economic well-being will benefit.
- (c) The fiscal impact on user fees and taxes in the area of the regional water system.
- (d) The consistency with land use master plans in the affected municipalities and with the provisions of RSA 9-B and RSA 162-C:2, V, to the extent that a proposed regional water system project may impact the municipality's growth and development patterns.

Source. 1993, 341:1. 2000, 310:1, eff. June 21, 2000. 2003, 178:10, eff. July 1, 2003.

Section 486-A:8-a

486-A:8-a Public Notice. –

I. For surface water treatment projects, regional water system projects, and evaluation of groundwaters contributing area of public wells with recorded levels of chemical contaminants the commissioner of environmental services or designee shall hold an annual public hearing to receive testimony on the projects recommended by the department, in accordance with RSA 486-A:8, to receive grants in the next fiscal year. After considering the testimony offered at the hearing, the commissioner shall finalize the priority list for the next fiscal year, and project assistance shall be granted accordingly.

II. The department shall provide notice by certified mail to the municipality in which the land is located of each water supply land protection project recommended by the department, in accordance with RSA 486-A:8, to receive a grant, and shall wait 20 days for a hearing request. Upon request of the governing body of the municipality in which the land is located, the commissioner of environmental services or designee shall hold a public hearing to receive testimony on any project recommended to receive a grant. The department shall provide notice of any such hearing at least 30 days prior to the hearing by notices posted in at least one public place in the municipality and in at least 2 newspapers of general circulation in the region, and by certified mail to the governing body of the municipality. After considering the testimony offered at all of the public hearings requested for that year's recommended projects, the commissioner shall finalize the priority list for the next fiscal year, and project assistance shall be granted accordingly. If no hearing is requested, the department shall select projects for funding without a public hearing.

Source. 2000, 310:2, eff. June 21, 2000. 2003, 178:11, eff. July 1, 2003.

Section 486-A:9

486-A:9 Administration. –

I. The department shall perform the following functions related to the administration of the provisions of this chapter applicable to surface water treatment and to any regional water system and evaluation of groundwaters contributing area of public wells with recorded levels of chemical contaminants:

- (a) Assist public water systems to:
 - (1) Develop an acceptable grant application for funding under RSA 486-A.
 - (2) Conduct pre-construction conferences.
- (b) Review the defined project and confirm that it meets the surface water treatment rule requirements of the state of New Hampshire and the EPA in accordance with the requirements of 40 C.F.R., part 141, subpart H.
- (c) Review and approve preliminary and final facilities' plans for the defined project.
- (d) Review construction plans and specifications in accordance with RSA 485:8.
- (e) Process grant applications for state approval.
- (f) Approve construction plans and specifications and issue authorizations to advertise contracts for bids.
- (g) Review and approve any revisions to plans and specifications prior to formal advertisement by the public water system.
- (h) Review and approve formal addenda to plans and specifications during the formal advertising process.
- (i) Review bid documentation to establish the low responsive and responsible bidder.
- (j) Issue authorization to award the construction contract to the lowest responsive and responsible bidder.
- (k) Perform periodic site inspections to ensure compliance with executed construction contract documents.
- (l) Review and approve operation and maintenance manuals.
- (m) Review and approve change orders during the construction period.
- (n) Review all invoices related to the project submitted to the grantee on a monthly basis.
- (o) Conduct a final inspection of completed facilities and certify substantial completion.
- (p) Based upon a satisfactory final project inspection, review and approve final eligible surface water treatment costs, regional water system project costs and evaluation costs of groundwaters contributing area of public wells with recorded levels of chemical contaminants, and authorize release of retainage.
- (q) Evaluate the defined project for consistency with municipal master planning, RSA 9-B, and RSA 162-C:2, V and require limitations on future water system connections where appropriate.
- (r) For a regional water system project and evaluation of groundwaters contributing area of public wells with recorded levels of contaminants, evaluate the defined project to ensure that it is designed to provide an overall benefit to public health, safety, and economic well-being and that it is a cost-effective means of achieving these benefits.

II. The department shall perform the following functions related to the administration of this chapter applicable to water supply land protection grants:

- (a) Assist applicants with water supply land protection grant applications.
- (b) Review defined projects and confirm that they meet eligibility criteria.
- (c) Prioritize projects in accordance with the procedures established under RSA 486-A:8.
- (d) Select projects for funding and administer grant funds.
- (e) Review all invoices related to the project submitted to the department by the grantee.
- (f) Prepare a biennial activity report listing all land and land rights acquired under this program, the expenditure for each acquisition, and stewardship activities; copies of the report shall be forwarded to the speaker of the house of representatives, to the senate president, to the governor and council, and to the chairpersons of the senate environment and the house resources recreation, and development committees.

Source. 1993, 341:1. 1996, 228:106. 2000, 310:3, eff. June 21, 2000. 2003, 178:12-14, eff. July 1, 2003.

Section 486-A:10

486-A:10 Notice to Public Utilities Commission. – Any public water system regulated by the public utilities commission shall notify the public utilities commission when it receives funds under the provisions of this chapter, to ensure that the money received is not used in calculating rate setting.

Source. 1993, 341:1, eff. June 30, 1993.

Section 486-A:11

486-A:11 Rulemaking. – The department shall adopt rules, pursuant to RSA 541-A, relative to providing water supply land protection grants. Such rules shall include, but not be limited to:

- I. Appraiser and surveyor standards.
- II. Eligibility determination criteria and procedures.
- III. Application requirements and procedures.
- IV. Project selection and prioritization requirements and procedures.
- V. Stewardship requirements and procedures, including annual reporting to the department by the grantee.

Source. 2000, 310:4, eff. June 21, 2000.

Section 486-A:12

486-A:12 Water Supply Land Protection Grant Match. – The percent match supplied by the water supply land protection grantee for water supply land protection projects shall consist of cash, expenses necessary to complete the transaction including associated legal and transaction costs, donations of source water protection lands or conservation easements assessed at fair market value and protected in perpetuity, or a combination of cash, transaction expenses, and such donations. Gifts of land and interests in land must be held by a water supply land protection grantee.

Source. 2000, 310:4, eff. June 21, 2000.

Section 486-A:13

486-A:13 Public Trust. –

I. The lands and interests in lands acquired by the state or other public entity with a water supply land protection grant under this chapter shall be held in public trust and used and applied for the purposes of this chapter. Notwithstanding any other provision of law relating to the disposal of publicly-owned real estate, no deviation in the uses of any land or interest in land so acquired to uses or purposes not consistent with the purposes of this chapter shall be permitted. The sale, transfer, conveyance, or release of any such land or interest in land from public trust is prohibited except when the conditions of RSA 486-A:13, II or III are met.

II. Land may be released from public trust in order to be converted to another use if:

(a) The municipality, holding title to the land or conservation easement proposed for release from the program, votes in favor of such a release by a two-thirds vote of its legislative body;

(b) A public hearing is held prior to the municipal vote, after the municipality provides notice of such hearing at least 30 days prior to the hearing by notices sent to the department, notices posted in at least one public place in the municipality, certified notice to any other municipality whose water supply might be affected by the proposed release, and notices in at least 2 newspapers of general circulation in the region;

(c) All other municipalities using the water supply protected by the land or conservation easement vote to release the land by a two-thirds vote of their legislative bodies and after holding a public hearing noticed according to the procedures set forth in subparagraph (b);

(d) The land proposed for release from the program will be publicly owned after its release from the program; and

(e) The municipality proposing to release the land or conservation easement from the program repays the department the amount of the water supply land protection grant plus interest compounded annually at the rate of 10 percent, which repayment shall be used by the department to further the water supply land protection purposes of this chapter.

III. Land may be released from public trust due to termination of use if:

(a) The grantee has successfully demonstrated to the department that the source of drinking water that the land or conservation easement is intended to protect is not and will not be viable due to the inability to remediate contamination or to provide treatment which improves water quality so that it is suitable for human consumption; and

(b) The municipality voting to release the land or conservation easement from the program repays the department the amount of the water supply land protection grant plus interest compounded annually at the rate of 3.5 percent, which repayment shall be used by the department to further the water supply land protection purposes of this chapter.

Source. 2000, 310:4, eff. June 21, 2000.

Section 486-A:14

486-A:14 Administrative Fines. –

I. The commissioner of the department, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$500 for each offense upon any person who violates

the reporting requirement of RSA 486-A:7, II(e). Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. The commissioner shall adopt rules, under RSA 541-A, relative to procedures for notice and hearing prior to the imposition of an administrative fine.

II. The proceeds of administrative fines levied pursuant to paragraph I shall be used by the department to further the water supply land protection purposes of this chapter.

Source. 2000, 310:4, eff. June 21, 2000.

Section 486-A:15

486-A:15 Repayment Responsibility. – Any party found, by means of a scientific or hydrogeological study, or other evaluation as approved by the department, of the groundwaters contributing area of public wells with recorded levels of contaminants, to be responsible for contaminating a wellhead area, shall be required to repay to the state, the amount the state contributed for the evaluation.

Source. 2003, 178:16, eff. July 1, 2003.

APPENDIX B

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LAND GRANT PROJECT RANKING SHEET
(pursuant to Env-Dw 1002)

Criteria		Points	TOTAL
Water System Type			
	Non-transient Non-community	0	
	Community	1	
	Municipality	5	
Water System Size			
	25-100 Customers	0	
	101-500 Customers	1	
	501-2500 Customers	2	
	2501-5000 Customers	3	
	Over 5000 Customers	4	
Water Source Status			
	Proposed Sources	1	
	Active Sources	2	
# of Sources Protected			
	1 Source	0	
	2 Sources	1	
	3 or more	2	
% SWPA* Protected			
	< 10% Protected	0	
	10-20% Protected	1	
	21-40% Protected	2	
	41-60% Protected	3	
	Over 60% Protected	4	
Land Being Protected			
	< 10 Acres	0	
	10-40 Acres	1	
	40-99 Acres	2	
	99-250 Acres	3	
	Over 250 Acres	4	

Natural Resources Present

	<input type="checkbox"/> A. For projects containing or abutting great ponds; perennial stream or rivers; non-forested wetlands, or floodplains greater than 5 acres; <input type="checkbox"/> B. Significant habitat, rare & threatened species, and exemplary communities <input type="checkbox"/> C. Significant/productive forest soils, classified in the Important Forest Soil Groups as Group 1A or 1C, and management potential/capability. <input type="checkbox"/> D. Significant farmland with “prime” or “statewide important soils” according to the Natural Resource Conservation Service classification system, and where there is management. <input type="checkbox"/> E. Significant recreation lands, such as trails and boat access. <input type="checkbox"/> F. Significant historical, cultural or archeological land <input type="checkbox"/> G. Significant Scenic Land <input type="checkbox"/> F. Any other identified conservation value If the land contains A. above 1 – 3 attributes 4 – 5 attributes 6 or more attributes	1 1 2 3	
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Distance from Source

	Within sanitary radius	25	
	Between sanitary radius to within 600 feet	20	
	Between 600-1000 feet	15	
	Between 1000-2000 feet	10	
	Between 2000-3000 feet	5	
	Between 3000-4000 feet	2	
	Between 4000-5000 feet	1	
	Beyond 5000 feet	0	

Distance Up Gradient From Intake & Within Watershed (Rivers)

	Within 0-400 feet	20	
	Between 400-1000 feet	15	
	Between 1000-2000 feet	10	
	Between 2000-3000 feet	5	
	Between 3000-4000 feet	2	
	Between 4000-5000 feet	1	
	Beyond 5000 feet	0	

Distance of Waterfront Land From Intake (ponds, lakes, impoundments)			
	Water frontage on pond, lake or impoundment within 1000 feet of intake	2	
	Land located on pond, lake or impoundment within 1000-4000 feet from intake	1	
	Land located on pond, lake or impoundment beyond 4000 feet from intake	0	
Percentage of Total Project Value as Match			
	75-85%	1	
	85-100%	2	
Water Supply Protection Measures			
	SWPP** is being implemented	1	
	SWPA* regulations in effect	1	
	SWPA* educational program in effect	1	
	Existing SWPA* ownership or easement control	1	
	Established acquisition plan	1	
	Long term plan for meeting demand	1	
	Water conservation measures in effect	1	
Financial Need Criteria			
	Applicant with both or either of the averages \geq the statewide average	0	
	Applicant with both of the averages below the statewide averages	2	
First Time Applicant			
	First time applicant	1	
	Previous grantee	0	
Contractual Agreement Between Applicant and Landowner(s)			
	Signed contractual agreement	1	
	No signed contractual agreement	0	
TOTAL			

SWPA-Source Water Protection Area; **SWPP-Source Water Protection Plan; *

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APPENDIX C

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NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Dw 1000 GRANTS FOR PUBLIC WATER SYSTEMS

PART Env-Dw 1002 WATER SUPPLY LAND PROTECTION GRANT PROGRAM

Statutory Authority: RSA 486-A

REVISION NOTE:

Document #9490, effective 6-23-09, readopted with amendments and renumbered former Part Env-Ws 394, entitled Water Supply Land Grant Program, under a new subtitle as Part Env-Dw 1002 entitled Water Supply Land Protection Grant Program within a new Chapter Env-Dw 1000 entitled Grants for Public Water Systems. The redesignation from subtitle Env-Ws to subtitle Env-Dw was done pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

Document #9490 replaces all prior filings for rules formerly in Env-Ws 394. The prior filings for rules in former Env-Ws 394 include the following documents:

- #7400, INTERIM, eff 11-3-00, EXPIRED: 5-2-01
- #7487, eff 5-3-01
- #9461, INTERIM, eff 5-3-09

Env-Dw 1002.01 Purpose. The purpose of these rules is to establish procedures and standards for the application and award of grants to purchase land or conservation easements for land within the source water protection areas of active, proposed, or future sources of public water supply for community or non-community, non-transient water systems to ensure the permanent protection of these critical drinking water resources.

Source. (See Revision Note at part heading for Env-Dw 1002) #9490, eff 6-23-09; ss by #9932, eff 5-27-11

Env-Dw 1002.02 Definitions.

- (a) "Active" means being subject to RSA 485, the NH Safe Drinking Water Act.
- (b) "Applicant" means an entity that is applying for a water supply land protection grant under this program and that is:
 - (1) A municipality; or
 - (2) A nonprofit organization exempt from taxation under §501(c)(3) of the Internal Revenue Code which has public water supply as its principal mission.
- (c) "Community water system" means "community water system" as defined in RSA 485:1-a, I, namely "a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents."
- (d) "Conservation easement" means a legally-enforceable agreement between a land owner and a person who holds the conservation easement, such as a land trust or governmental agency, that permanently restricts the uses of the land to which it applies in order to protect the land's conservation values.
- (e) "Conservation interest" means:
 - (1) The fee simple ownership of a parcel of land where the land is to be protected from development in perpetuity; or
 - (2) A conservation easement.

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- (f) "Department" means the department of environmental services.
- (g) "Future source of public drinking water supply" means "future source of public drinking water supply" as defined in RSA 486-A:2, IV-a.
- (h) "Grantee" means "water supply land protection grantee" as defined in RSA 486-A:2, VIII.
- (i) "Grant property" means:
- (1) Fee ownership of a parcel of land, or portion thereof, that will be acquired using grant funds and protected from development in perpetuity; or
 - (2) An interest in land that will protect the land from development in perpetuity, such as a conservation easement, that is to be acquired using grant funds.
- (j) "Known contamination source" means a source of contamination that is identified in the department's geographic information system (GIS).
- (k) "Match property" means:
- (1) Fee ownership of a parcel of land, or portion thereof, that is to be protected from development in perpetuity as part of the match requirements specified in Env-Dw 1002.06; or
 - (2) An interest in land, such as a conservation easement, that will be used to meet the match requirements specified in Env-Dw 1002.06.
- (l) "Municipality" means a city, town, village district, or precinct.
- (m) "Non-transient non-community water system" means "non-transient non-community water system" as defined in RSA 485:1-a, XI, namely "a system which is not a community water system and which serves the same 25 people, or more, over 6 months per year."
- (n) "Person" means "person" as defined in RSA 485:1-a, XIII, namely "any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity."
- (o) "Potential contamination source" means, as specified in RSA 485-C:7, I, human activities or operations upon the land surface that pose a foreseeable risk of introducing regulated substances into the environment in such quantities as to degrade the natural groundwater quality. Examples of potential contamination sources are listed in RSA 485-C:7, II.
- (p) "Proposed source" means a proposed well or surface water intake for which a community or non-transient non-community water system has received all required approvals from the department.
- (q) "Riparian frontage" means the extent of the frontage of land along a surface water that is:
- (1) Depicted in the high resolution National Hydrography Dataset (NHD) maintained by the New Hampshire geological survey at 1:24,000-scale or better as lake/pond, stream/river, swamp/marsh, canal/ditch, connector, or reservoir, and which drains to the water supply source via surface flow; or
 - (2) A perennial stream that has continuous flow during years of normal rainfall and which drains to the water supply source via surface flow.

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(r) "Sanitary protective area" means the sanitary protective area determined pursuant to Env-Dw 302.06(b) and (c).

(s) "Source" means groundwater or surface water which contributes water to a well or surface water intake.

(t) "Source water protection area" means "source water protection area" as defined in RSA 486-A:2, VI, namely "the area around a source of public drinking water, such as a well or surface water intake, through which water is likely to flow towards the source."

(u) "Stewardship" means "stewardship" as defined in RSA 486-A:2, VII, namely "ongoing surveillance of water supply protection land acquired pursuant to this chapter to ensure that the conservation intent is maintained."

(v) "Undeveloped" means forest, farm, or other land that has not been substantially altered from its natural state and contains no structures or alterations which would jeopardize water quality.

Source. (See Revision Note at part heading for Env-Dw 1002) #9490, eff 6-23-09; amd by #9932, eff 5-27-11

Env-Dw 1002.03 Process for Obtaining Water Supply Land Protection Grants. The process for obtaining a water supply land protection grant shall be as follows:

(a) The applicant shall complete a project eligibility application in accordance with Env-Dw 1002.07 and submit it to the department prior to the deadline specified by the department in accordance with Env-Dw 1002.04;

(b) The department shall make an eligibility determination on each project eligibility application and notify each applicant in accordance with Env-Dw 1002.08;

(c) For each project that is determined to be eligible, the applicant shall:

(1) Complete a final grant application in accordance with Env-Dw 1002.09, which includes documentation of at least a 75% match as specified in Env-Dw 1002.06; and

(2) Submit the final grant application to the department in accordance with Env-Dw 1002.09 by the deadline established by the department in accordance with Env-Dw 1002.04;

(d) The department shall review and rank the final applications in accordance with Env-Dw 1002.12 and notify each applicant of project selection in accordance with Env-Dw 1002.14;

(e) For each project that is selected for a grant, the applicant shall submit the following to the department prior to the grant being awarded:

(1) An environmental site assessment, if required by Env-Dw 1002.15(b), prepared in accordance with Env-Dw 1002.15(c) and (d);

(2) A property survey prepared in accordance with Env-Dw 1002.16;

(3) An appraisal prepared in accordance with Env-Dw 1002.17;

(4) A title examination and an opinion of title prepared in accordance with Env-Dw 1002.18;

(5) Baseline documentation in accordance with Env-Dw 1002.21(c); and

(6) A stewardship plan in accordance with Env-Dw 1002.21(b)(3); and

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- (f) For each grant that is awarded, the grantee shall:
- (1) Execute the land transaction(s) in accordance with Env-Dw 1002.22;
 - (2) Record the deed(s) and survey(s), if applicable, in accordance with Env-Dw 1002.22;
 - (3) Adhere to grant contract conditions; and
 - (4) Provide ongoing stewardship of each grant property and match property in accordance with Env-Dw 1002.21(d).

Source. (See Revision Note at part heading for Env-Dw 1002) #9490, eff 6-23-09; amd by #9932, eff 5-27-11

Env-Dw 1002.04 Application Deadlines.

(a) The deadline for submission of project eligibility applications shall be no sooner than 60 days following the date that grant funds become available and no later than 180 days following such date.

(b) The department shall announce the deadline by publishing the date on the department's web page, issuing a press release, and mailing an announcement by U.S. Postal Service or electronic mail, or both, to those entities who have requested to be informed of such deadlines.

(c) For each round of funding, the final application deadline shall be:

- (1) No later than 120 days from the project eligibility application deadline; and
- (2) Announced at the same time as the project eligibility application deadline.

(d) Eligibility applications for projects that occur between grant rounds shall be considered for funding in a subsequent grant round provided the eligibility application is submitted prior to the applicant acquiring the land or conservation easement(s).

Source. (See Revision Note at part heading for Env-Dw 1002) #9490, eff 6-23-09

Env-Dw 1002.05 Eligibility Criteria. A project shall be eligible for a grant only if all of the following conditions are met:

(a) Each grant property and each match property is in a source water protection area for an active, proposed, or future source of public drinking water for a community or non-transient non-community water system, except for any small portions of land which extend beyond the source water protection area boundary which would be impractical to subdivide off, as specified in RSA 486-A:7, II(a);

(b) Each grant property and each match property that is being obtained for the protection of a surface water supply either:

- (1) Is within 5 miles of the intake on a river or, in the case of reservoirs or lakes, is within 5 miles of the source being protected; or
- (2) Contains riparian frontage within the watershed of the water supply source;

(c) Each grant property and each match property is outside the sanitary protective area for a proposed or future source, provided that any portion of a property that is within the sanitary protective area for a proposed or future source is not eligible for funding;

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(d) The applicant's share of the project value, or match, meets the criteria specified in Env-Dw 1002.06;

(e) Each grant property and each match property is undeveloped land and free of known contamination sources and potential contamination sources that are known to the applicant or identified in the department's geographic information system;

(f) No grant property is already permanently protected or owned by the applicant prior to submitting a project eligibility application;

(g) No match property is already permanently protected more than one year prior to the date the project eligibility application is submitted; and

(h) Title to each grant property and each match property will be held by a grantee.

Source. (See Revision Note at part heading for Env-Dw 1002) #9490, eff 6-23-09; amd by #9932, eff 5-27-11

Env-Dw 1002.06 Match Criteria.

(a) The value of the match shall equal at least 75% of the eligible water supply land protection costs as defined by RSA 486-A:2, III-a, which include the costs for the land or interest in land and associated legal and transaction costs associated with the protection of each grant property and each match property.

(b) The match shall consist of one or more of the following:

(1) A municipal, state, or federal appropriation;

(2) A private cash donation;

(3) A donation, or partial donation, of match property in one or more existing or proposed source water protection areas, providing the following conditions are met:

a. Title to the match property will be held by a grantee;

b. The transaction(s) to acquire the match property will be completed prior to or simultaneously with the completion of the transaction(s) for the grant property(ies);

c. The match property is located within the same source water protection area as that for the grant property(ies), or is in a protection area for another source serving the same grantee; and

d. The match value for the match property has been or will be established by an appraisal in accordance with Env-Dw 1002.17; and

(4) A donation, or partial donation, of services or payment for services necessary to complete the transaction, including land transaction consultant, survey, appraisal, title opinion, environmental assessment, stewardship baseline documentation, and attorney fees.

Source. (See Revision Note at part heading for Env-Dw 1002) #9490, eff 6-23-09; amd by #9932, eff 5-27-11

Env-Dw 1002.07 Project Eligibility Application. The applicant for project eligibility shall provide the following on or with a form obtained from the department:

(a) The name, mailing address, and daytime telephone number of the applicant and, if available, and e-mail address or web site address;

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- (b) Whether the applicant is a municipality or a §501(c)(3) non-profit having public water supply or land conservation as a principal mission;
- (c) The name, mailing address, and daytime telephone number of an individual who is authorized to interact with the department on behalf of the applicant relative to the application and, if available, and e-mail address for that individual;
- (d) The US Environmental Protection Agency public water system identification number(s) for the source(s) of public drinking water that will be protected or, for a proposed source, the public water system's identification number;
- (e) The location of each grant property and each match property, including tax map, lot number, and deed reference, including book and page;
- (f) Geographic information system (GIS) shape file(s) or a paper map showing the boundaries of each grant property and each match property;
- (g) The acreage of each grant property and each match property;
- (h) The total acreage of the area proposed for protection, that is, the total combined acreage of all the grant properties and match properties;
- (i) A description of each grant property and each match property, which includes:
 - (1) The location of structures, impoundments, and gravel pits or other disturbances;
 - (2) The approximate area, in acres or by percentage, covered by field, forest, wetlands, and surface waters respectively;
 - (3) A statement that the property does not have any known contamination source; and
 - (4) A statement that the property does not have any potential contamination sources known to the applicant or identified by the department's geographic information system;
- (j) A description of how each of the eligibility criteria specified in Env-Dw 1002.05 has been met;
- (k) A description of conservation values for each grant property and each match property, including:
 - (1) Watershed, floodplain, wetland, and water-quality protection value;
 - (2) Public recreational uses, accessibility, and potential;
 - (3) Significant scenic value;
 - (4) Historic, cultural or archaeological value;
 - (5) Unique geologic features;
 - (6) Rare species value or "exemplary natural communities" value, as identified by the New Hampshire department of resources and economic development, division of forest and lands, natural heritage bureau ("NH NHB");
 - (7) Length of undeveloped shoreline on pond, lake, stream, or navigable river;
 - (8) Wildlife value and management potential, such as being identified as a conservation focus area by the New Hampshire fish and game department's Wildlife Action Plan;

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- (9) Forestry value, management status, and acres of productive soils;
- (10) Agricultural value, including acres of “important farmland” identified by the U.S. Department of Agriculture, Natural Resources Conservation Service; and
- (11) Any other identified conservation value;
- (l) The identity of each owner of each grant property and each match property and a statement, signed and dated by each owner, stating the owner’s willingness to negotiate the acquisition of the property;
- (m) An estimated fair market value or ad valorem price for each grant property and each match property;
- (n) If known, the price at which each owner of each grant property and each match property will sell the property;
- (o) The total value of the match, including:
 - (1) Funds, whether authorized, received, or anticipated; and
 - (2) The estimated cost of services being used as a match;
- (p) The amount of funding sought from the department to acquire the grant property(ies);
- (q) Whether the property interest anticipated to be acquired is fee simple title or a conservation easement;
- (r) Directions to each grant property and each match property, with instructions on how to gain access to it for purposes of inspection;
- (s) A copy of a source water or wellhead protection plan, if available; and
- (t) The signed and dated statements specified in Env-Dw 1002.10(a).

Source. (See Revision Note at part heading for Env-Dw 1002) #9490, eff 6-23-09; amd by #9932, eff 5-27-11

Env-Dw 1002.08 Eligibility Determination.

- (a) The department shall determine that a proposed project warrants review as a grant application if the eligibility application demonstrates that the project meets the eligibility requirements specified in Env-Dw 1002.05.
- (b) The department shall notify the applicant in writing of the project’s eligibility within 30 calendar days of the project eligibility application submission deadline.
- (c) If the project as proposed does not meet the eligibility requirements specified in Env-Dw 1002.05, the applicant may revise the project eligibility application and resubmit it in a subsequent grant round.

Source. (See Revision Note at part heading for Env-Dw 1002) #9490, eff 6-23-09

Env-Dw 1002.09 Final Grant Application Requirements. After being notified that the project is eligible, the applicant shall submit the following on or with a final grant application form obtained from the department:

- (a) The information specified in Env-Dw 1002.07(a) through (s); and

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(b) The signed and dated statements specified in Env-Dw 1002.10(b).

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.10 Statements Required for Grant Applications.

(a) The signed and dated statements required by Env-Dw 1002.07(t) shall be as follows:

- (1) A statement signed and dated by the applicant that all data and information submitted to qualify for the grant are true and correct to the best of the applicant's knowledge; and
- (2) A statement signed and dated by each landowner acknowledging the landowner's willingness to enter into negotiations for the acquisition and listing all liens and encumbrances on the property.

(b) The signed and dated statements required by Env-Dw 1002.09(b) shall be as follows:

- (1) A statement signed and dated by each owner of each grant property and each match property that the owner:
 - a. Agrees to not sell or commit to sell the property(ies) covered by the application except to the applicant for 120 days;
 - b. Agrees to allow the property(ies) to be inspected, surveyed, and appraised within 120 days from the date of receipt by the department of a copy of the application; and
 - c. Identifies all liens and encumbrances on the property(ies); and
- (2) A statement signed and dated by the applicant that the applicant will comply with the conditions specified in RSA 486-A:7, II(a) through (e) and that the data and information submitted to qualify for the grant are true and correct.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.11 Confidentiality of Certain Information. The price at which each owner of grant property or match property will sell the property provided pursuant to Env-Dw 1002.07(n) and the statement of liens and encumbrances that is submitted in accordance with Env-Dw 1002.10(a)(2) or (b)(1)c., shall be:

(a) Treated as confidential under the provisions of RSA 91-A:5, IV; and

(b) Subject to disclosure only with the consent of the applicant until the department has selected the application for grant funding.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.12 Application Ranking and Selection.

(a) The department shall rank each project within 60 days of the final application submittal deadline established pursuant to Env-Dw 1002.04.

(b) Subject to (f), below, the ranking shall be based on the points awarded to each application by the department using the point system specified in Env-Dw 1002.13 after the department reviews the application and conducts a site walk, with the application receiving the most points being ranked the highest.

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(c) The department shall:

- (1) Provide notice and otherwise proceed in accordance with RSA 486-A:8-a, II; and
- (2) Select projects for funding in each grant round starting with the highest ranked project and continuing until all available funding is depleted.

(d) No single applicant shall receive greater than 30% of the available funding in any one grant application round.

(e) Projects not selected for funding in a grant round due to insufficient funds shall be reconsidered in future grant rounds providing the applicant notifies the department that the grant application is to be reconsidered and any date-sensitive aspects of the application are updated.

(f) Notwithstanding the number of points assigned pursuant to Env-Dw 1002.13, for the purpose of allocating funds provided by the department of transportation as part of the mitigation package associated with the wetlands permit for the interstate highway I-93 widening project to permanently protect critical water supply lands in municipalities located near the project, the department shall give first priority to projects in the Lake Massabesic watershed.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.13 Scoring System.

(a) The department shall assign points to each application as specified in (b) through (q), below, and then add the points together to get one point total, or score, for the application as a whole.

(b) For each project that is located within more than one source water protection area, the department shall calculate a score for each source water protection area and then use the highest score to rank the project in relation to other projects.

(c) The department shall assign points based on the type of water system as follows:

- (1) For a non-transient non-community system, 0 points;
- (2) For a community system other than a municipally-owned system, one point; or
- (3) For a municipal system, 5 points.

(d) The department shall assign points based on the population served by the water system as follows:

- (1) For a system serving 25 to 100 people, 0 points;
- (2) For a system serving 101 to 500 people, one point;
- (3) For a system serving 501 to 2,500 people, 2 points;
- (4) For a system serving 2,501 to 5,000 people, 3 points; or
- (5) For a system serving over 5,000 people, 4 points.

(e) The department shall assign points based on the number of community water supply sources to be protected as follows:

- (1) For one source, 0 points;
- (2) For 2 sources, one point; or
- (3) For 3 or more sources, 2 points.

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(f) The department shall assign points based on the total acreage of grant property and match property as follows:

- (1) For a project containing less than 10 acres, 0 points;
- (2) For a project containing 10 acres or more but not more than 40 acres, one point;
- (3) For a project containing more than 40 but not more than 99 acres, 2 points;
- (4) For a project containing more than 99 but not more than 250 acres, 3 points; or
- (5) For a project containing more than 250 acres, 4 points.

(g) The department shall assign points based on the presence of any or all of the following natural resource, cultural, and historical attributes on the grant property and match property, as follows:

- (1) For a project containing or abutting great ponds, perennial streams or rivers, non-forested wetlands, or floodplains greater than 5 acres, one point;
- (2) For a project containing state- or federally-listed threatened or endangered species, habitat for such species that has been determined by the executive director of the New Hampshire fish and game department, pursuant to RSA 212-A:9, III, to be critical, or rare plants, rare animals, or exemplary natural communities that have been identified by the NH NHB, ½ point;
- (3) For a project that abuts conservation land such that there is an unfragmented block of undeveloped land 500 acres or more in size, ½ point;
- (4) For a project containing important farmland according to the U.S. Department of Agriculture, Natural Resources Conservation Service classification system, ½ point;
- (5) For a project with existing or potential outdoor recreation amenities, such as public trails and public boat access points, ½ point;
- (6) For a project containing historical, cultural, or archaeologically significant lands that are on the National Register of Historic Places or identified by the New Hampshire department of cultural resources, division of historical resources, ½ point; and
- (7) For a project containing any other identified conservation value, ½ point.

(h) For groundwater sources, the department shall assign points based on the distance of the grant property or match property from the existing or proposed source to be protected as follows:

- (1) If any of the land is located within the sanitary protective area for an existing source, 25 points;
- (2) If any of the land is located within 600 feet of the edge of the sanitary protective area, 20 points;
- (3) If any of the land is located 600 to 1,000 feet from the edge of the sanitary protective area, 15 points;
- (4) If any of the land is located 1,000 to 2,000 feet from the edge of the sanitary protective area, 10 points;
- (5) If any of the land is located 2,000 to 3,000 feet from the edge of the sanitary protective area, 5 points;

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- (6) If any of the land is located 3,000 to 4,000 feet from the edge of the sanitary protective area, 2 points;
 - (7) If any of the land is located 4,000 to 5,000 feet from the edge of the sanitary protective area, one point; or
 - (8) If any of the land is located more than 5,000 feet from the edge of the sanitary protective area, 0 points.
- (i) For river sources, the department shall assign points based on the distance of the grant property and match property up gradient from the intake and within the watershed of the source being protected, as follows:
- (1) If any of the land is located within 400 feet of the intake, 20 points;
 - (2) If any of the land is located 400 to 1,000 feet from the intake, 15 points;
 - (3) If any of the land is located 1,000 to 2,000 feet from the intake, 10 points;
 - (4) If any of the land is located 2,000 to 3,000 feet from the intake, 5 points;
 - (5) If any of the land is located 3,000 to 4,000 feet from the intake, 2 points;
 - (6) If any of the land is located 4,000 to 5,000 feet from the intake, one point; or
 - (7) If any of the land is located more than 5,000 feet from the intake, 0 points.
- (j) For surface water sources, the department shall assign points based on riparian frontage as follows:
- (1) For riparian frontage that is within 5 miles of the intake or shore, 2 points for every 1,000 feet of frontage;
 - (2) For riparian frontage that is greater than 5 miles and less than 10 miles from the intake or shore, one point for every 1,000 feet of said frontage; and
 - (3) If the project includes land on both sides of a river or stream, the frontage on both sides shall be counted.
- (k) For pond, lake, or impoundment sources, the department shall assign points based on the distance of the grant property or match property from the intake of the source being protected, as follows:
- (1) If any of the land is within 400 feet of the shore, 20 points;
 - (2) If any of the land is 400 to 1,000 feet from the shore, 15 points;
 - (3) If any of the land is 1,000 to 2,000 feet from the shore, 10 points;
 - (4) If any of the land is 2,000 to 3,000 feet from the shore, 5 points;
 - (5) If any of the land is 3,000 to 4,000 feet from the shore, 2 points;
 - (6) If any of the land is 4,000 to 5,000 feet from the shore, one point; or
 - (7) If any of the land is more than 5,000 feet of the shore, 0 points.
- (l) The department shall assign points based on the percentage of total project value, including cash and interests in land to be donated, that is to be provided as match by the applicant as follows:
- (1) For a percentage of total project value greater than 75% but less than 85%, one point; or
 - (2) For a percentage of total project value of 85% or greater, 2 points.

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(m) The department shall assign points based on the water supply protection measures that are or will be in effect, as follows:

- (1) For sources for which a comprehensive source water protection program plan is being implemented, one point;
- (2) For sources with source water protection area regulations in effect, one point;
- (3) For sources with a source water protection area educational program in effect, one point;
- (4) For sources with an established land acquisition plan, one point;
- (5) For sources with existing source water protection area ownership beyond sanitary radius or control through easement by water suppliers or others, one point;
- (6) For sources with a long-term plan for meeting system demand, one point; and
- (7) For sources for which a water conservation plan is being implemented, one point.

(n) The department shall assign points based on the average per capita income and equalized taxable valuation for the municipality where those served by the water supply to be protected reside, based on the most recent available data, as follows:

- (1) For an applicant with either or both of the averages above the statewide average, 0 points; and
- (2) For an applicant with both of the averages below the statewide average, 2 points.

(o) The department shall assign 2 points for applications initiated or supported by the water supplier.

(p) The department shall assign one point for first time applicants.

(q) The department shall assign one point to projects with a signed contractual agreement between the applicant and the landowner(s).

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.14 Notice of Selection; Required Actions.

(a) The department shall notify each applicant in writing within 60 days of the final application deadline regarding whether the application has been selected for grant funding. The notice shall specifically state that the selection is contingent upon the completion of the requirements specified in (b) and, if applicable, (c), below.

(b) After a project has been selected for grant funding, the applicant shall complete the following for each grant property and match property prior to the department awarding a grant:

- (1) An environmental site assessment, in accordance with Env-Dw 1002.15(c) and (d), if required by Env-Dw 1002.15(b), which indicates that the land is not contaminated;
- (2) A property survey in accordance with Env-Dw 1002.16;
- (3) An appraisal in accordance with Env-Dw 1002.17;
- (4) A title examination and legal opinion that there is clear and marketable title to the property in accordance with Env-Dw 1002.18;

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(5) Baseline documentation in accordance with Env-Dw 1002.21(c); and

(6) A stewardship plan in accordance with Env-Dw 1002.21(d).

(c) Where the grantee is a municipality, the project shall be approved by the local governing body, as defined in RSA 672:6, of the municipality applying for the grant prior to the department awarding a grant.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.15 Environmental Site Assessment Requirements.

(a) The environmental site assessment specified in Env-Dw 1002.14(b)(1) shall be done in accordance with this section.

(b) The applicant shall submit an environmental site assessment for each grant property and match property that contains any known contamination source or potential contamination source known to the applicant or identified in the department's geographic information system, or if the site walk performed by the department in accordance with Env-Dw 1002.12(b) identifies actual or potential sources of contamination.

(c) An environmental site assessment shall be performed by an environmental consultant who has at least 5 years' experience in preparing site assessments.

(d) An environmental site assessment shall include the following:

(1) A history of land usage that covers no less than 50 years;

(2) A description of the site inspection;

(3) A review of all department records relating to site investigations or other environmental assessments for all properties located within 1,000 feet of the property;

(4) A description of the review conducted pursuant to (3), above, including the date of the review and who conducted the review;

(5) A description of the findings from the review; and

(6) An opinion by the consultant that there are no contamination concerns on the grant property or any match property.

(e) The applicant shall submit the environmental site assessment to the department upon completion.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.16 Property Survey Requirements.

(a) The property survey required by Env-Dw 1002.14(b)(2) shall be done in accordance with this section if a survey of each grant property and match property does not already exist that meets the survey standards that were established by the New Hampshire board of land surveyors created under RSA 310-A:55 and that were in effect in New Hampshire at the time the notice under Env-Dw 1002.14(a) is provided.

(b) A New Hampshire licensed land surveyor shall perform a standard property survey for each property in accordance with the standards established by the New Hampshire board of land surveyors created under RSA 310-A:55. If 2 or more properties are contiguous, the survey may be done on the combined contiguous properties.

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(c) In addition to marking turning points as specified in the established survey standards, the boundary lines shall be visibly marked so that they can be located by an individual who wishes to walk the boundary of the property. If the marking is not permanent, it shall be renewed at sufficient intervals so as to remain visible.

(d) The survey plan shall include the boundaries and acreage of each property and the method and accuracy of the survey.

(e) Subject to (f), below, the applicant shall provide the department with one paper copy of the standard property survey for each grant property and each match property.

(f) The applicant may provide a digitized polygon file of the standard property survey for each grant property and each match property in lieu of the paper copy required by (e), above.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.17 Appraisal Requirements.

(a) The appraisal required by Env-Dw 1004.14(b)(3) shall be done in accordance with this section.

(b) A land appraiser with at least 2-years' experience in water supply land appraisals or conservation interest appraisals of land shall perform the appraisal, as appropriate for the application.

(c) An appraisal shall be conducted for the grant property and match property based on the terms of the proposed conservation easement deed, if any, and the survey performed pursuant to Env-Dw 1002.14(b)(2).

(d) The appraisal shall determine the fair market value of the grant property and match property.

(e) The appraisal shall be completed prior to the grant being awarded but no earlier than one year prior to the land transaction.

(f) If the appraisal was completed within one year but more than 6 months prior to the land transaction, the applicant shall submit either:

(1) A new appraisal; or

(2) An update letter from the appraiser who conducted the original appraisal confirming that a market analysis demonstrates the fair market value of the property has not changed.

(g) The applicant shall submit the appraisal to the department.

(h) The department shall accept the appraisal if the appraiser certifies that the appraisal was conducted in accordance with the Uniform Standard of Professional Appraisal Practice established by the Appraisal Foundation.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.18 Title Examination and Opinion Requirements.

(a) The title examination and opinion required by Env-Dw 1004.14(b)(4) shall be obtained in accordance with this section.

(b) The title opinion shall be based on an examination of the title of each grant property and each match property.

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(c) The applicant shall submit the title examination and opinion to the department.

(d) The department shall accept the title examination and opinion if the individual rendering the opinion certifies that the title examination was conducted in accordance with the title examination standards established by the New Hampshire Bar Association that are in effect when the opinion is rendered.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.19 Conservation Interest Instrument Requirements.

(a) Each conservation interest instrument shall:

- (1) Uphold the conservation purposes of RSA 486-A in perpetuity;
- (2) Protect the quality and sustainable yield of ground and surface water resources associated with the property;
- (3) Safeguard the environmental values of the property which are dependent on water quality and quantity; and
- (4) Convey the right to the State of New Hampshire to enforce the conditions and restrictions of the conservation interest and to recover the costs of such enforcement from the easement holder or property owner, or both, if the easement holder and property owner fail to enforce the conditions and restrictions.

(b) Each conservation interest instrument shall contain, at a minimum, the following restrictions:

- (1) No industrial or commercial activities or improvements shall occur on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, subject to such conditions as are specified in the instrument;
- (2) No land surface alterations shall occur on the property, such as filling, excavation, mining, and dredging, except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, and only to the extent that they do not degrade or threaten to degrade the quality and sustainable yield of ground and surface water resources associated with the property;
- (3) No wastes generated off the property shall be disposed of, stored, or discharged on the property;
- (4) No substances that would be hazardous waste if discarded or abandoned shall be disposed of on the property, and no such substances shall be stored or applied on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, and provided that the storage and use do not threaten water supply protection and are specifically allowed by the instrument, subject to such conditions as are specified in the instrument;
- (5) No motorized vehicles shall be allowed for recreational purposes, provided that snowmobiles as defined in RSA 215-A:1, XIII may be allowed if they are operated:
 - a. Only on snow and ice outside the sanitary protective area of public water supply well(s);
 - b. More than 250 feet from a surface water body being used as a public water supply;

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c. More than 100 feet from tributaries contributing to such water bodies; except when crossing such tributaries; and

d. Only on designated snowmobile trails depicted on a plan approved by the department in accordance with Env-Dw 1002.20;

(6) No acts or uses shall occur on the property that would:

a. Degrade the water quality such that the standards set for public drinking water by the department would be threatened;

b. Cause an unsustainable quantity of water to be withdrawn; or

c. Harm state or federally recognized rare, threatened or endangered species; and

(7) Allowable activities, such as community drinking water supply, agriculture, forestry, and outdoor recreation, shall be conducted in accordance with a plan, best management practices, or conditions set forth in the instrument.

(c) If the instrument is conveying a conservation easement, all other customary rights and privileges of fee ownership shall be retained by the fee owner, including the right to privacy and to carry out all regular agricultural and forestry practices that are not prohibited by the restrictions.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.20 Snowmobile Trail Plan Approval.

(a) Designated snowmobile trails described in Env-Dw 1002.19(b)(5)d. shall be shown on a plan submitted to the department prior to the conservation interest document being filed.

(b) The plan shall:

(1) Show all existing and proposed trails; and

(2) Describe how users of the trails will be educated regarding the need to protect the conservation values of the property over which the trails run.

(c) If a new trail is added or an existing trail is moved after the original plan is approved, a modified plan shall be submitted to and approved by the department prior to the new or relocated trail(s) being used.

(d) The department shall review the plan and issue a written decision to approve or deny it within 30 days of receipt of a new or modified plan.

(e) The department shall approve the plan if the trails meet the criteria specified in Env-Dw 1002.19(b)(5)a. through c. and users of the trails will be educated regarding the need to protect the conservation values of the property over which the trails run.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.21 Stewardship Requirements.

(a) The grantee shall be responsible for ongoing stewardship of each conservation interest acquired, whether as grant property or as match property.

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(b) The grantee shall:

- (1) Determine the financial and management resources needed to monitor and enforce the terms of the conservation interest for each grant property and match property;
- (2) Establish that it has or can obtain funds to monitor and enforce the terms of the conservation interest;
- (3) Develop and submit to the department a stewardship plan to meet the requirements of (d), below; and
- (4) Implement the stewardship plan to safeguard the drinking water source.

(c) Prior to acquisition, the grantee shall prepare and submit a baseline documentation report that describes, in writing and with photographs, the condition of the property at the time of acquisition, including water quality and quantity data;

(d) The stewardship plan shall require the grantee to:

- (1) Inspect the property annually to confirm that boundaries are being maintained and land is being appropriately protected according to the terms of the conservation interest and for the purpose of RSA 486-A;
- (2) For property not held in fee simple, contact all landowners annually to inform the landowners of their obligations under the easement;
- (3) Prepare and submit the annual stewardship report required by RSA 486-A:7, II(e) to the department, prior to January 31 of each year, containing the following:
 - a. A description of the site inspection conducted;
 - b. A description of any physical changes to the property;
 - c. A description of any landowner contact conducted;
 - d. A description of any conditions that violate or may violate the intent of the conservation interest; and
 - e. A description, including current status of any violations witnessed and remedial steps taken; and
- (4) If snowmobiles are allowed by the conservation interest instrument, ensure that individuals using snowmobiles comply with the snowmobile trail plan approved pursuant to Env-Dw 1002.20.

(e) The grantee may contract with a person having expertise in conservation land management to perform one or more of the requirements of this section, however the grantee shall retain ultimate responsibility for all requirements.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.22 Final Approval, Execution, and Deed Recordation.

(a) The department shall approve a land transaction based on the following:

- (1) Confirmation that the property is not contaminated based on any environmental site assessment performed in accordance with Env-Dw 1002.15;

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- (2) Confirmation of the property boundaries and acreage by the property survey performed in accordance with Env-Dw 1002.16;
- (3) Negotiation of a price not to exceed the fair market value determined by the appraisal performed in accordance with Env-Dw 1002.17;
- (4) Confirmation of clear and marketable title for the property as determined by the title examination conducted in accordance with Env-Dw 1002.18;
- (5) Determination that the deed language requires that the land or interest in land remains in the public trust, prohibits land uses detrimental to water supply protection, and allows for public access all in accordance with RSA 486-A:7,II (c) and (d); and Env-Dw 1002.19;
- (6) Receipt by the department of the baseline documentation and stewardship plan prepared in accordance with Env-Dw 1002.21; and
- (7) Confirmation that the match requirements have been met.

(b) Final execution, payment of acquisition cost, and recording of the necessary instruments of transfer shall be conducted after governor and council approval.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

Env-Dw 1002.23 Procedure for Release of Lands Acquired with Grant Money.

(a) As provided in RSA 486-A:13, I:

- (1) No deviation in the uses of any grant property to uses or purposes not consistent with the purposes of this chapter shall be allowed; and
- (2) The sale, transfer, conveyance, or release of any such land or interest in land from public trust shall be prohibited except when the conditions of RSA 486-A:13, II or III are met.

(b) A grantee who believes that the conditions of RSA 486-A:13, II or III are met may submit a written request to the department to release lands acquired with water supply land protection grant funds.

(c) The request shall explain why the grantee believes that the conditions of RSA 486-A:13, II or III, as applicable, are met.

(d) The department shall review the request to determine whether to release the land, using all available hydrogeologic and treatment technology information.

(e) The department shall inform the grantee of the decision in writing within 90 days of receiving the request.

(f) If the department releases the land, the department shall provide the grantee with a payment schedule within 90 days of approving a release of lands for repaying the grant as provided in RSA 486-A:13, II or III, as applicable.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Dw 1002.24 Waivers.

(a) The rules contained in this part are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein might not fit every conceivable situation. Thus, an applicant or grantee who is or would be directly and adversely affected by the strict application of a rule in Env-Dw 1002 may request a waiver thereof in accordance with this section.

(b) Each request for a waiver shall be filed with the department in writing and contain the information specified in (c), below.

(c) The person requesting the waiver shall provide the following information:

- (1) A description of the grant or grant application to which the waiver request relates;
- (2) A specific reference to the section of the rule for which a waiver is being sought;
- (3) A full explanation of why a waiver is necessary, including an explanation of the consequences of complying with the rule as written;
- (4) A full explanation of the alternative(s) proposed to be used in lieu of the requirement, if any, with backup data for support, as appropriate;
- (5) Whether the need for the waiver is time-limited and, if so, the estimated length of time the waiver will be needed;
- (6) A full explanation of why granting the waiver would meet the criteria specified in (e) and (f), below.

(d) The person requesting the waiver shall sign and date the request. The signature shall constitute certification that the information provided is true, complete, and not misleading to the knowledge and belief of the signer.

(e) Subject to (f), below, the department shall grant a waiver if:

- (1) Granting the request will not result in an adverse impact on the environment, public health, or public safety, that is more significant than that which would result from complying with the rule; and
- (2) One or more of the following conditions is satisfied:
 - a. Granting the request is consistent with the intent and purpose of the rule being waived; or
 - b. Strict compliance with the rule will provide no benefit to the public or the environment.

(f) No waiver shall be granted if the effect of the waiver would be to waive or modify a statutory requirement.

(g) The department shall issue a written response to a request for a waiver within 30 days of a complete request. If the waiver is denied, the denial shall specifically set forth the reason(s) for the denial.

(h) The department shall include such conditions in a waiver as are necessary to ensure that the criteria of (e) and (f), above, are met.

(i) If the need for a waiver is temporary, the waiver shall specify the date on which it will expire.

Source. (See Revision Note at part heading for Env-Dw 1002)
#9490, eff 6-23-09; amd by #9932, eff 5-27-11

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Appendix

Rule Section(s)	Statute(s) Implemented
Env-Dw 1002.01	RSA 486-A:1
Env-Dw 1002.02	RSA 486-A:2
Env-Dw 1002.03(a) & (b)	RSA 486-A:11, II
Env-Dw 1002.03(c)	RSA 486-A:11, III
Env-Dw 1002.03(d)	RSA 486-A:9, II(d); RSA 486-A:11, IV
Env-Dw 1002.03(e) & (f)	RSA 486-A:9, II(d); RSA 486-A:11, I, III, & V; RSA 486-A:13
Env-Dw 1002.04	RSA 486-A:11, II & III
Env-Dw 1002.05	RSA 486-A:2, III-a & VIII; RSA 486-A:7, II(a); RSA 486-A:11, II
Env-Dw 1002.06	RSA 486-A:2, III-a & VIII; RSA 486-A:3, II; RSA 486-A:12
Env-Dw 1002.07	RSA 486-A:11, II & III
Env-Dw 1002.08	RSA 486-A:9, II; RSA 486-A:11, II & III
Env-Dw 1002.09	RSA 486-A:11, III
Env-Dw 1002.10	RSA 486-A:7, II(a) - (e); RSA 486-A:11, III
Env-Dw 1002.11	RSA 486-A:11
Env-Dw 1002.12 - Env-Dw 1002.14	RSA 486-A:8, II; RSA 486-A:11, IV
Env-Dw 1002.15	RSA 486-A:11, III
Env-Dw 1002.16 & Env-Dw 1002.17	RSA 486-A:11, I & III
Env-Dw 1002.18	RSA 486-A:11, III
Env-Dw 1002.19	RSA 486-A:1; RSA 486-A:11, III
Env-Dw 1002.20	RSA 486-A:11, III
Env-Dw 1002.21	RSA 486-A:11, III & V
Env-Dw 1002.22	RSA 486-A:7, II(c) & (d); RSA 486-A:11
Env-Dw 1002.23	RSA 486-A:13
Env-Dw 1002.24	RSA 486-A:11; RSA 541-A:22, IV

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APPENDIX D

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**Water Supply Land Grant Program Projects completed prior to August 2014
(Listed in reverse chronological order of project completion date)**

Grantee	Acres of land funded (rounded to the nearest acre)/type of protection	Source protected/ Population served	Grant Amount
Auburn	34 acres Conservation Easement	City of Manchester (Lake Massabesic)/133,000	\$28,812.46
Bear Paw Regional Greenways	353 acres funded (total project = 465 acres) Conservation Easement	City of Manchester (Lake Massabesic)/133,000	\$156,000
Bear Paw Regional Greenways	172 acres Conservation Easement	City of Manchester (Lake Massabesic)/133,000	\$66,500
Rochester	55 acres Conservation Easement	City of Rochester/20,000	\$18,667.25
Hooksett	79 acres funded (total project = 539 acres*) Conservation Easement	City of Manchester (Lake Massabesic)/133,000	\$30,000.00
Rochester	155 acres Conservation Easements	City of Rochester/20,000	\$64,500.00
Dover	23 acres Conservation Easement	City of Dover well/28,000	\$85,000.00
Jaffrey	3 acres funded (total project = 14 acres*) Fee Ownership with Deed Restrictions	Town of Jaffrey (Squantum and Contoocook Wells)/3,612	\$6,405.00
Windham	78 acres Conservation Easement	Town of Salem (Arlington Mill Reservoir)/18,000	\$177,500.00
Lebanon	21 acres Conservation Easement	City of Lebanon (Mascoma River)/10,050	\$12,635.00
Lee	62 acres Conservation Easement	UNH/Durham(Oyster River Reservoir and Lamprey River)/16,000	\$104,000.00
Concord	46 acres Fee Ownership with Deed Restrictions	City of Concord (Penacook Lake)/43,000	\$47,500.00
Newmarket	116 acres Conservation Easement	Town of Newmarket (Sewell and Bennett Wells, and Follet's Brook)/5,000	\$138,615.00
Wakefield	202 acres Conservation Easements	Sanbornville (Town of Wakefield and Brookfield wells)/1,500	\$123,407.00
Lee	129 acres Conservation Easements	UNH/Durham (Oyster River Reservoir)/16,000	\$350,316.50
Lee	43 acres Conservation Easement	UNH/Durham (Oyster River Reservoir)/16,000	\$104,000.00
Durham	86 acres Conservation Easement	UNH/Durham (Oyster River Reservoir)/16,000	\$194,369.24

Grantee	Acres Protected (rounded to the nearest acre)/type of protection	Source protected/ Population served	Grant Amount
Walpole	60 acres Conservation Easement on 52 ac; Fee Ownership with Deed restrictions on 8 ac	Town of Walpole (River Well)/975	\$153,000.00
Brentwood	92 acres Conservation Easements	Town of Exeter (Exeter River/11,000 Louisburg Circle/55	\$138,849.00
Barrington	98 acres Conservation Easement	City of Portsmouth (Bellamy Reservoir)/33,000	\$125,000.00
Rochester	25 acres Fee Ownership with Deed Restrictions	City of Rochester/20,000	\$200,000.00
Hopkinton	69 acres Conservation Easement	Hopkinton Village Precinct wells/215	\$173,750.00
Orford	11 acres Fee Ownership with Deed Restrictions	Orford Village District wells/128	\$20,306.54
Lee	62 acres Conservation Easements on 34 ac; Fee Ownership with Deed Restrictions on 28 ac	UNH/Durham (Oyster River Reservoir)/16,000	\$225,000.00
Newfields	327 acres Conservation Easements	Town of Newmarket/5,000	\$331,994.00
Dover	40 acres Conservation Easements	City of Dover wells/28,000	\$92,200.00
Wilton	27 acres funded (total project = 68 acres*) Conservation Easements	High Mowing School/140 Pine Hill Waldorf School/190	\$83,675
Brentwood	79 acres Conservation Easements	Town of Exeter (Exeter River)/11,000	\$143,500.00
Stratham	13 acres Conservation Easement	Aquarian Water Company/23,000 Muirfield Cluster/69	\$68,348.25
Hollis	173 acres Conservation Easements	Pennichuck (Harris Pond Reservoir and Supply Pond)/86,630	\$205,606.25
Lee	379 acres Conservation Easements	UNH/Durham (Oyster River Reservoir)/16,000	\$360,118.75
Newmarket	215 acres; Fee Ownership with Deed Restrictions on 45 ac; Conservation Easement on 170 ac	Town of Newmarket (Lamprey and Piscassic Rivers and Sewell Well)/5,000	\$442,762.50

Grantee	Acres Protected (rounded to the nearest acre)/type of protection	Source protected/ Population served	Grant Amount
Nashua	100 acres Conservation Easement	Pennichuck (Harris Pond Reservoir and Supply Pond)/86,630	\$300,000.00
Brentwood	112 acres Conservation Easements	Swasey Central School/465 and Town of Exeter/11,000	\$328,810.00
Londonderry Hudson Windham	97 acres funded (total project = 179 acres*) Conservation Easements	Oakridge Condos/250 and Beaver Valley LLC/41	\$245,969.75
Stratham	53 acres Conservation Easement	Town of Exeter (Exeter River)/11,000	\$130,638.63
Nashua	295 acres Fee Ownership with Deed Restrictions on 253 ac; Conservation Easement on 42 ac	Pennichuck (Harris Pond Reservoir and Supply Pond)//86,630	\$450,000.00
Barrington	1378 acres Conservation Easement	UNH/Durham/16,000 and City of Portsmouth (Bellamy Reservoir)/33,000	\$740,000.00
Raymond	46 acres Fee Ownership with Deed Restrictions	Town of Raymond wells/2,600	\$25,125.00
Portsmouth	193 acres Conservation Easement	City of Portsmouth wells/33,000	\$138,000.00
	5,601 acres funded (Total land protected = 6,307 acres*)	Average population protected is 31,647	Total grants: \$6,830,881.12

* "Acres funded" = land eligible for a Water Supply Land Protection grant; "Total project" includes acres just outside of the eligible area but still protected through a conservation easement or deed restrictions.

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APPENDIX E

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Source: The Nature Conservancy

<http://www.nature.org/aboutus/howwework/conservationmethods/privatelands/conservationeasements/about/art14925.html>

Conservation Easements

What are Conservation Easements?

A conservation easement is a restriction placed on a piece of property to protect its associated resources.

The easement is either voluntarily donated or sold by the landowner and constitutes a legally binding agreement that limits certain types of uses or prevents development from taking place on the land in perpetuity while the land remains in private hands.

Conservation easements protect land for future generations while allowing owners to retain many private property rights and to live on and use their land, at the same time potentially providing them with tax benefits.

In a conservation easement, a landowner voluntarily agrees to sell or donate certain rights associated with his or her property – often the right to subdivide or develop – and a private organization or public agency agrees to hold the right to enforce the landowner's promise not to exercise those rights. In essence, the rights are forfeited and no longer exist.

An easement selectively targets only those rights necessary to protect specific conservation values, such as water quality or migration routes, and is individually tailored to meet a landowner's needs. Because the land remains in private ownership, with the remainder of the rights intact, an easement property continues to provide economic benefits for the area in the form of jobs, economic activity and property taxes.

A conservation easement is legally binding, whether the property is sold or passed on to heirs. Because use is permanently restricted, land subject to a conservation easement may be worth less on the open market than comparable unrestricted and developable parcels. Sometimes conservation easements will enable the landowner to qualify for tax benefits in compliance with Internal Revenue Service rules.

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APPENDIX F

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WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that *Property Seller*,
(*single/husband and wife*), with a principal place of residence of _____,
Town of _____, County of _____,
State of New Hampshire, for consideration paid, grants to the Town of _____,
a municipal corporation with an address at _____, County of _____,
State of New Hampshire, with WARRANTY COVENANTS, a
certain tract of land (herein referred to as the "Property") situated on
_____ Road, in the Town of _____, County of _____, State
of New Hampshire.

The Property being conveyed is subject to the following restrictions pursuant to NH RSA 486-A:1-14:

- (1) No industrial or commercial activities or improvements shall occur on the Property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities;
- (2) No land surface alterations shall occur on the Property such as filling, excavation, mining, and dredging except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities;
- (3) No wastes generated off the Property shall be disposed of or discharged on the Property;
- (4) No hazardous substances shall be stored, applied, or disposed of on the Property, except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that do not threaten water supply protection;
- (5) No acts or uses shall occur on the Property that would:
 - a) Degrade the water quality such that the standards set for public drinking water by the State of New Hampshire Department of Environmental Services would be threatened;
 - b) Cause an unsustainable quantity of water to be withdrawn;
 - c) Harm state or federally recognized rare, threatened, or endangered species.
- (6) Permitted activities may include a community drinking water supply owned by a municipality, agriculture, forestry, and outdoor recreation, and shall be conducted in accordance with a stewardship plan prepared for the Property and with the State of New Hampshire best management practices then applicable.

The restrictions above shall be enforceable in perpetuity by action at law or by injunction or other proceedings in equity.

A certain tract or parcel of land situate in the Town of _____, County of _____ and State of New Hampshire, more particularly bounded and described as follows:

[Insert legal description of land]

Meaning and intending to release to the Town of _____ any interest *I/we* may have in a portion of the premises conveyed by _____, to _____, by deed dated *Month, Day, Year* and recorded in the _____ County Registry of Deeds at Book _____, Page _____.

WITNESS our hands and seals this _____ day of _____, 200X.

Property Seller's Name

STATE OF NEW HAMPSHIRE
COUNTY OF _____

On this ____ day of _____, 200X, the above named, *Property Seller's name*, personally known to me or satisfactory proven to be the person whose name is subscribed to the within instrument and acknowledged the same to be his free act and deed.

Before me,

Justice of the Peace/Notary Public
My Commission Expires:

APPENDIX G

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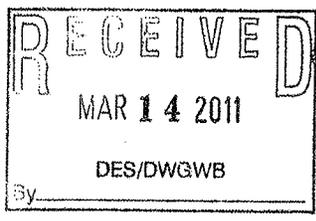
THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



GEORGE N. CAMPBELL, JR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

February 2, 2011



His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) and the Department of Transportation (DOT) to enter into a Memorandum of Understanding for \$3,000,000.00 for water supply land conservation grants to permanently protect critical water supply lands within the region served by the I-93 expansion, effective upon Governor and Council approval through June 30, 2016. 100% Federal Funds.

Funding is available in the account as follows:

	<u>FY 2011</u>
04-096-096-963015-3054-401-500877	\$ 3,000,000
Dept Transportation, Consolidated Federal, Land and Interest	

EXPLANATION

As part of the mitigation package associated with the wetlands permit dated May 2, 2006 and as required by the Record of Decision dated June 28, 2005 issued by the Federal Highway Administration for the widening of Interstate 93 between the Massachusetts border in Salem and the I-93/I-293 interchange in Manchester, three million dollars (\$3,000,000) will be spent to permanently protect critical water supply lands within the region served by this project. This part of the mitigation package was in recognition of water quality concerns in the region.

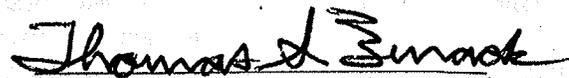
To accomplish this mitigation goal, DOT will provide the existing Water Supply Land Protection Grant Program (WSLGP) located at DES with \$3,000,000. The WSLGP was established by the Legislature in 2000 to provide eligible municipalities and non-profit water systems (and non-profit land conservation organizations since 2009) with matching funds to acquire land or interest in land in the areas that protect source(s) of public drinking water (i.e. wells, reservoirs, rivers, lakes). The laws pertaining to this program are RSA 486-A and Administrative Rules Env-Dw 1002. The WSLGP grants will cover up to 25% of eligible land protection costs, with at least 75% coming from other sources. These and other applicable program parameters established by statutes and rules (or any changes in said statutes and rules) will apply to all funding received from the I-93 mitigation package for water supply protection.

His Excellency, Governor John H. Lynch
and the Honorable Council
Page 2 of 2

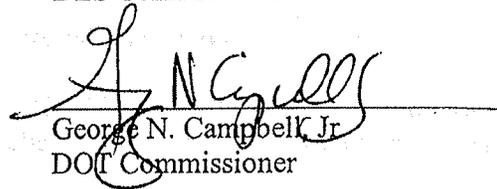
Employee support from the existing WSLGP will be utilized to administer this program. The funding for this project is being incorporated into the FY2012/2013 budget for DES.

In the event that Federal funds no longer become available, general funds will not be requested to support this program. This agreement has been approved by the Attorney General's Office as to form, substance and execution.

We respectfully request your approval.



Thomas S. Burack
DES Commissioner



George N. Campbell Jr.
DOT Commissioner

Memorandum of Understanding
Between
New Hampshire Department of Transportation (NHDOT)
And
New Hampshire Department of Environmental Services (NHDES)
Concerning
I-93 Widening Mitigation Funding Provided by NHDOT to NHDES
For
Water Supply Land Protection

December 10, 2010

1. **PURPOSE:** The purpose of this document is to create an understanding of how NHDES will receive, utilize and account for I-93 mitigation funds received from NHDOT for the purpose of providing grants to protect critical water supply lands.

2. **BACKGROUND:** As part of the mitigation package associated with the wetlands permit dated May 2, 2006 for the widening of Interstate 93 between the Massachusetts border in Salem and the I-93/I-293 interchange in Manchester, three million dollars (\$3,000,000) will be spent to permanently protect critical water supply lands within the region served by this project. This part of the mitigation package was in recognition of overall water quality concerns in the region. To accomplish this mitigation goal, NHDOT will provide the existing Water Supply Land Protection Grant Program located at NHDES with \$3,000,000. The Water Supply Land Protection Grant Program was established by the legislature in 2000 to provide eligible municipalities and non-profit water systems with matching funds to acquire land or interest in land in the areas that protect their source(s) of public drinking water (i.e. wells, reservoirs, rivers, lakes). The laws pertaining to this program include RSA 486-A and Administrative Rules Env-Dw 1002. The match amount specified in RSA 486-A:3, II. is 25%, with the municipality required to provide at least 75%. These and other applicable program parameters established by statutes and rules (or any changes in said statutes and rules) will apply to all funding received from the I-93 mitigation package for water supply protection.

3. **CRITERIA FOR USE OF FUNDS:** The intent of these funds is to address water quality concerns associated with the project. The following criteria will be used by NHDES to prioritize and select projects to receive I-93 mitigation funding:

- a. The acquisition of property rights for water quality protection shall be limited to “eligible water supply land protection costs” as defined in RSA 486-A:2,III-a., in the Lake Massabesic watershed and/or in the following I-93 corridor municipalities: Salem, Windham, Derry, Londonderry, and Manchester.
- b. The acquisition of property rights within the Lake Massabesic Watershed will be given highest priority.
- c. Administrative and other associated costs will be absorbed by the Water Supply Land Protection Grant Program or another appropriate program at NHDES and will not be charged against the \$3,000,000 in transferred funds.
- d. In order to ensure that property rights for water quality protection are acquired in accordance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, NHDES shall ensure that:
 - (i.) Fair market value of property rights shall be determined in accordance with Env-Dw 1002.17; and
 - (ii.) No projects shall be funded that would be eligible for relocation.

4. **GRANT ROUNDS:** NHDES will have one or more public solicitations for grant applications in order to expend the funds provided by NHDOT. These grant rounds may be in conjunction with grant rounds to award non-NHDOT related funding. The goal will be to have all funds expended within five years of their receipt. NHDOT will be notified of all grant rounds.

5. TECHNICAL ASSISTANCE TO ELIGIBLE MUNICIPALITIES: Within the limits of available resources, NHDES will provide outreach and technical assistance to the eligible municipalities listed in paragraph 3 with respect to the availability of funds under this MOU. NHDOT will include (or have others include) information on the Water Supply Land Protection Grant Program in the Community Technical Assistance Program also being provided as a mitigation measure for the I-93 widening project.

6. STEWARDSHIP OF LANDS PROTECTED: NHDES will be responsible for monitoring protected lands to ensure that they retain the values for which they were protected (i.e. water supply protection and other values identified) in accordance with RSA 486-A:13, I. A stewardship plan and annual report provided by the grantee to ensure that the conditions listed in RSA 486-A:7, II. are met will be a grant condition. In addition, NHDES will ensure that the properties are inspected on a periodic basis.

7. MITIGATION FUND TRANSFERS: Upon execution of this MOU, NHDOT will make federal funds designated for this mitigation element available to NHDES. NHDES will then seek Governor and Council approval to accept and expend these funds, with the goal of expending them over a five-year period.

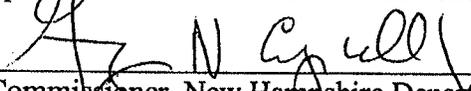
NHDES will submit to NHDOT quarterly vouchers of grant award expenditures. These vouchers will serve as the basis for transfer of funds designated above.

8. PROGRESS REPORTS: NHDES will prepare a supplement to the biennial report required under RSA 486-A:9, II(f) that describes how the I-93 mitigation funding has been used during the biennium. Upon expenditure of all funds, a final summary report will be prepared by NHDES for NHDOT.

9. AMENDMENT OR TERMINATION: This agreement may be amended or terminated by mutual consent of the Commissioners of NHDOT and NHDES, in writing, at any time.

10. DURATION: This agreement will remain in effect from the date of signature until the I-93 mitigation funds for water supply lands have been expended or until it is terminated by agreement of the parties.

11. AGREEMENT: The undersigned have reviewed this memorandum of understanding and agree to operate in accordance with this document.



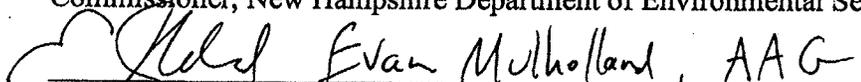
Commissioner, New Hampshire Department of Transportation

1/27/11
Date



Commissioner, New Hampshire Department of Environmental Services

1/18/2011
Date



Attorney General

2-2-11
Date


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**Areas Eligible for Grants for
Water Supply Land Protection
Under DOT I-93 Mitigation**

Eligible Areas

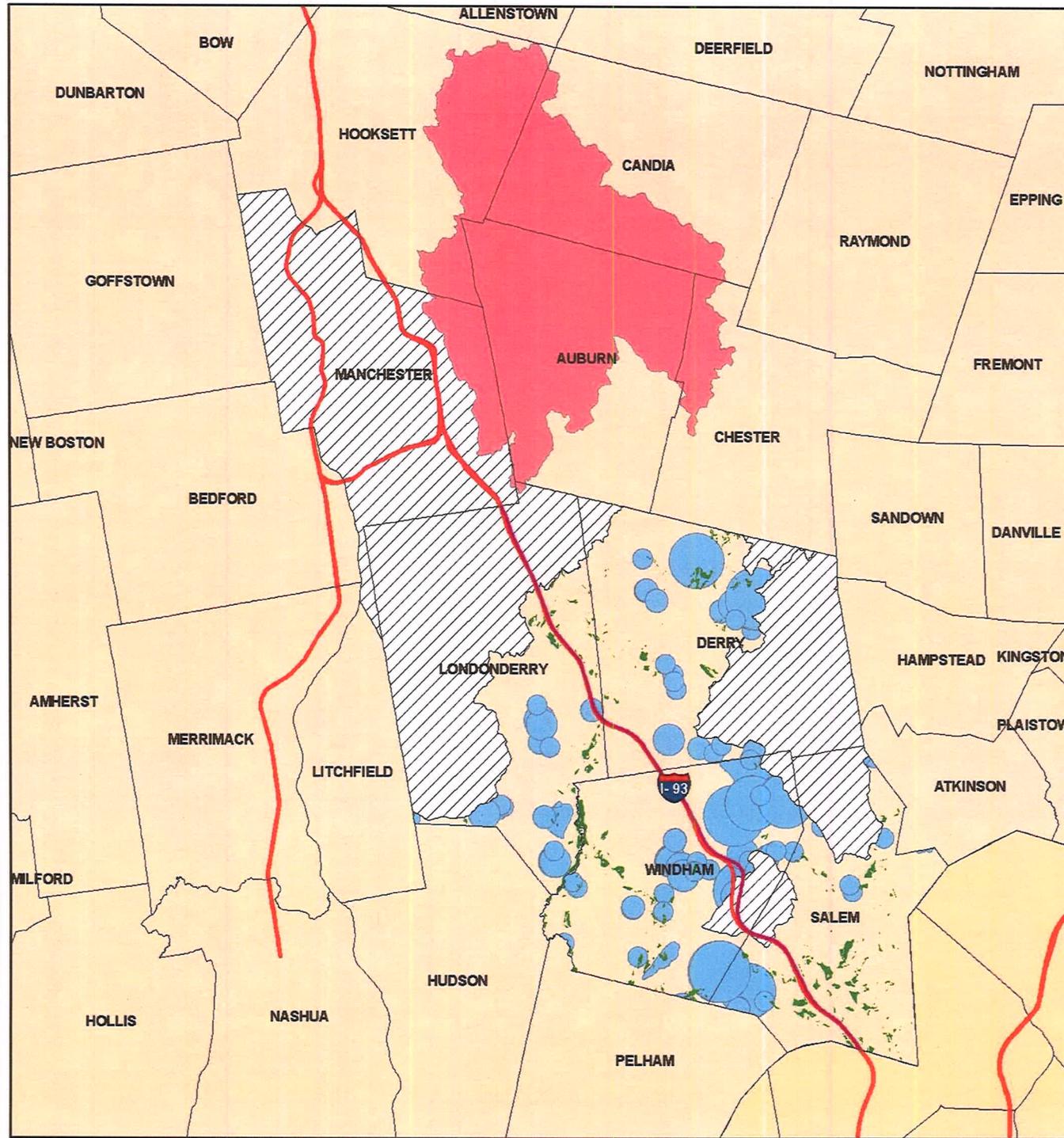
-  Massabesic Lake Watershed
-  Other Water Supply Watersheds
-  Well Head Protection Areas
-  Future Water Supply Sources

Ineligible Areas

-  Ineligible Areas

Other

-  Interstate Highways
-  Town Boundary



New Hampshire Department of Environmental Services
Watershed Management Bureau
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

*Note: Favorable Gravel Well Areas have the potential for municipal wells pumping at a rate of 75 gpm, or greater after removing areas that are unfavorable due to quality and yield considerations.



New Hampshire State Plane
North American Datum 1983

Map Prepared March 29, 2011

