

**JOINT MEETING OF THE GROTON BOARD OF SELECTMEN AND THE
CONSERVATION COMMISSION**

Minutes

December 2, 2010

Vice Chairman David Pitkin called the meeting to order at 7:15 p.m. in the 1st floor meeting room in Town Hall. Members Marshall Giguere, Nadia Madden, and Bill Neacy were also present. Members Craig Auman, Bruce Easom, and Peter Morrison were absent. Conservation Administrator Barbara Ganem was also present. Selectmen Peter Cunningham, Fran Dillon, Anna Eliot, and Stuart Schulman were present, and Chairman Schulman called the Selectmen's meeting to order at 7:15 p.m. Selectman Josh Degen was absent. Ray Lyons, Esq. was also present.

Mr. Pitkin announced the purpose of the meeting is the review and recommendation on the Purchase & Sale Agreement submitted by attorney Ray Lyons with input from Town Counsel for the NEFF Baddacook Pond parcel. Mr. Lyons said the easement that will be used for access has been GPS'd by D. Pitkin and follows an existing walking trail on NEFF's property. The Baddacook Pond outlet is between 20 and 25 ft. wide. He indicated the cottage will be gone before the Town takes ownership of the property. The demolition bid that was selected will be \$6000, with NEFF paying \$5500 and the Town paying \$500.

Selectman Cunningham asked if Town Counsel has begun the title research. Members indicated this was authorized once the state grant was signed and would be paid from the Conservation Fund and then partially reimbursed by the state grant. M. Giguere asked if the clause about re-location of the trail covers the Water Department's potential acquisition of a well site, and R. Lyons responded the trail would be re-located at NEFF's expense. D. Pitkin asked if NEFF no longer owns the land does the easement language go into the deed, and R. Lyons replied in the affirmative. Mr. Lyons indicated NEFF does not want vehicles to travel the walking trail on the easement as there is an existing ATV problem. P. Cunningham asked why Paragraph #25 was included as he understood it was not to be structured as a taking. B. Neacy said he had had an issue with the first draft P & S because of the taking question. He understood it may be necessary if there are title issues. Mr. Cunningham pointed out this could become a political issue because NEFF has previously mortgaged the property, and the Town wants the best possible title to the land. Mr. Lyons stressed that this technique is used by Fisheries & Wildlife when they wish to do a friendly taking, and it can work very well for both the buyer and the seller. This paragraph allows a taking as a joint option for the buyer and seller. B. Neacy said he was okay with it as long as it satisfied both parties' needs. M. Giguere pointed out it is also a way to clean the title Paragraph #31 covers the re-location or creation of a trail. Mr. Lyons stated that all rights in the Baddacook Pond Road that come close to well #2 would pass to the Town. Upon a motion by N. Madden, seconded by B. Neacy, it was

VOTED: to sign the revised Purchase & Sale Agreement contingent upon prior review and approval by Town Counsel before release.

The vote was unanimous.

Upon a motion by Selectman P. Cunningham, seconded by A. Eliot, it was

VOTED: to sign the Purchase & Sale Agreement for the Baddacook Pond property contingent upon written approval of Town Counsel before release.

The vote was unanimous.

There being no further business, the meeting was adjourned at 7:35 p.m.

Respectfully submitted,

Barbara V. Ganem
Conservation Administrator

Approved as drafted 12/20/10.

PURCHASE AND SALE AGREEMENT

This ____ day of December 2010.

1.) PARTIES AND MAILING ADDRESSES

New England Forestry Foundation, Inc.
PO Box 1346
32 Foster Street
Littleton, MA 01460

hereinafter called the SELLER, agrees to sell, and the

Town of Groton, acting by and through its Board of Selectmen and Conservation Commission
173 Main Street
Groton, MA 01450

hereinafter called the BUYER or PURCHASER, agrees to purchase, for open space purposes, subject to the protections of Article 97, upon the terms hereinafter set forth, the following described premises:

2.) DESCRIPTION

A certain parcel of land off Old Dunstable Road, Groton, containing approximately 52± acres ("Parcel A") as shown on the sketch plan attached hereto as Exhibit A-1 and incorporated herein (the "Plan"), said Parcel A being a portion of the premises containing approximately 183 acres and described in a deed recorded at the Middlesex South District Registry of Deeds at Book 11625, Page 556 (the "Property") (see deeds 6, 7, and 15), together with the following rights and easements and rights: (a) all rights the SELLER holds in and to use Baddacook Pond Road; (b) an 6 - foot wide permanent easement for pedestrian and non-motorized access to and from Old Dunstable Road to Parcel A (the "Access Easement"), and (c) a permanent easement for parking two vehicles on portions of SELLER's remaining Property (the "Parking Easement"). Parcel A and foregoing rights and easements are referred to, together, as the "premises." SELLER shall retain a 20 foot wide easement through the premises for utilities and access related thereto ("Grantor's Reserved Easement"), for the benefit of SELLER's remaining Property. The Access Easement and the Parking Easement are marked in red and approximately shown on the sketch plan attached hereto as Exhibit A-2; the Access Easement follows the existing path that begins at the point at Baddacook Pond, passes along the easterly side of the esker, then turns towards and ends at Old Dunstable Road. The Grantor's Reserved Easement is approximately shown on the Plan (Exhibit A-1).

3.) BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

The existing house and out buildings on the Property shall be demolished and removed by the SELLER prior to the Closing and in accordance with a Request for Determination of Applicability filed by the SELLER with the BUYER on September 14, 2010. SELLER shall pay the *greater* of \$5,000 or half the cost to demolish and remove the house and outbuildings, and BUYER agrees to pay the remainder. SELLER shall hire the contractor who demolishes the house and outbuildings. All hazardous materials and appliances, if any, shall be removed by the contractor in accordance with applicable laws, rules, and regulations, and all construction debris shall be removed from the premises. SELLER states and BUYER acknowledges that SELLER is demolishing the existing house and outbuildings (“Buildings”) in anticipation of the closing for this sale. If for any reason the Buildings are removed and BUYER does not purchase the premises, BUYER acknowledges SELLER’S intent to obtain a permit to build a replacement home. It is SELLER’S opinion and intent that the demolition of the Buildings in pursuance of this Agreement does not constitute abandonment.

4.) TITLE DEED

Said premises to be conveyed to the BUYER by quitclaim deed, with clear record and marketable title thereto, free and clear of record from all easements and other encumbrances, except the Grantor’s Reserved Easement and a 20-foot wide access and utility easements for the benefit of property identified on the Groton Assessor’s maps as Parcel 4 on Map 242 currently owned by Neil Murray and Georgianna Collins (the “Parcel 242-4 Easement”), the approximate location of which is shown on the sketch plan attached hereto as Exhibit A-1 (together with the Grantor’s Reserved Easement, the “Reserved Easements”). BUYER shall have no obligation to maintain or improve the portion of the premises subject to the Reserved Easements.

Any matter or practice arising under or relating to this agreement which is the subject of a title standard or practice standard of the Real Estate Bar Association (REBA) at the time of delivery of the deed shall be covered by such title standard or practice standard to the extent applicable.

5.) PLANS

BUYER shall prepare and record an appropriate plan showing the premises at the Middlesex South Registry of Deeds at or before the Closing. SELLER shall pay 20 percent of these expenses and BUYER shall pay the remainder. Said plan shall be subject to SELLER’S review and acceptance prior to recording, not to be unreasonably delayed, conditioned, or withheld. The plan shall also show the Access Easement, the Parking Easement, and the Reserved Easements in approximately the same location as shown on the sketch plans attached hereto as Exhibit A-1 and A-2. The exact location of the Parking Easement, the Access Easement, and the Reserved Easements shall be agreed to by BUYER and SELLER.

6.) PURCHASE PRICE THREE HUNDRED SEVENTY THOUSAND DOLLARS

The agreed purchase price of said premises is \$370,000.00 dollars, of which
\$ NONE have been paid as a deposit this day and

\$ 370,000.00 shall be paid at the time of Closing, at BUYER'S discretion, by certified, treasurer's or bank check or municipal treasurer's check or by wire transfer.

\$ 370,000.00 TOTAL

7.) TIME FOR PERFORMANCE

The Closing shall be held at noon on January 20, 2011, at the Middlesex South District Registry of Deeds, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.

8.) POSSESSION AND CONDITION OF PREMISES

SELLER shall deliver the premises free of all tenants and occupants, said premises to be then (a) in the same condition as they now are, reasonable use and wear thereof, excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in paragraph 4 hereof. The BUYER shall be entitled personally to inspect said premises prior to the Closing in order to determine whether the condition thereof complies with the terms of this paragraph.

9.) EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the BUYER shall be unable to take title as herein provided or if at the time of the Closing the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended to March 31, 2011, provided that BUYER'S funding by grant or otherwise is not jeopardized. SELLER shall not be required to spend more than \$1,000 to remove such defects or deliver possession as provided herein.

10.) FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

11.) BUYER'S ELECTION TO ACCEPT TITLE

The BUYER shall have the election at either the original or any extended time for performance, to take such title as the SELLER may hold to the said premises in their then condition and to pay therefore the purchase price without deduction.

12.) CLOSING OF THE PROPERTY

The acceptance of the deed to the premises shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms thereof, to be performed after the Closing.

13.) USE OF MONEY TO CLEAR TITLE

To enable the BUYER to take title as herein provided, the SELLER may, at the time of Closing, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed, or, for mortgages held by institutional mortgagees, in accordance with customary conveyancing practice.

14.) INSURANCE

Until the Closing, the SELLER shall maintain insurance on said premises as follows:

<i>Type of Insurance</i>	<i>Amount of Coverage</i>
NONE	\$ NONE

15.) ADJUSTMENTS

Taxes for the then current fiscal year shall be adjusted in accordance with G.L. c. 59, § 72A. Any taxes paid by the SELLER prior to the Closing shall not be refunded. Any and all utility fees or charges owed on the buildings demolished under this agreement shall be paid prior to the closing.

16.) BROKER’S FEE

Both the SELLER and the BUYER each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. Each agrees, to the extent permitted by law, to indemnify the other against and to hold the other harmless from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other in connection with this transaction arising out of the contacts of each with any real estate brokers.

17.) DEPOSIT

No deposit is payable by BUYER hereunder.

18.) LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc.

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

19.) WARRANTIES AND REPRESENTATIONS

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by the SELLER: None

20.) ENVIRONMENTAL MATTERS

SELLER represents and warrants to BUYER that, to the best of SELLER's knowledge, information and belief, (i) there has been no release of any hazardous materials or oil on, from or near the premises (as used in this agreement, the terms "release," "hazardous materials" and "oil" shall have the meaning given to them in G.L. c.21E), (ii) there are no underground storage tanks or other subsurface facilities holding petroleum or oil products currently in use or previously abandoned on the premises and (iii) chlordane has not been used by SELLER or SELLER's agents or representatives as a pesticide on the premises. SELLER'S representations and warranties herein shall survive the Closing.

21.) STANDARDS

Any title matter or conveyancing practice which is the subject of a title standard or practice standard of the Real Estate Bar Association for Massachusetts at the time of Closing shall be governed by said title standard or practice standard to the extent possible.

22.) INSPECTION

BUYER or BUYER'S agent(s) shall have the right, upon providing SELLER with at least twenty-four (24) hours' prior notice, which may be oral notice, to enter the Premises at BUYER'S own risk for the purposes of surface and subsurface surveys, inspections and tests. BUYER shall, to the extent permitted by law, hold harmless SELLER against any claim by BUYER of any harm to BUYER arising from said entry and shall restore the Premises to substantially the same condition as prior to such entry if the closing does not occur. BUYER'S performance hereunder is conditional, at BUYER'S option, upon BUYER not having found on the Premises any hazardous waste or hazardous material. In the event hazardous waste or hazardous material is found, BUYER shall have the right, to be exercised in its sole and absolute discretion, to terminate this agreement, whereupon all the rights and obligations of the parties shall cease, unless SELLER agrees to remediate such hazardous condition, with SELLER paying all of the costs of remediation. Provided SELLER remediates the hazardous condition in full compliance with applicable law and within a reasonable time, BUYER shall perform under

the terms of this agreement, provided that BUYER'S funding by grant or otherwise is not jeopardized.

23.) CLOSING DOCUMENTS

SELLER agrees to execute and deliver at the Closing: (a) a statement under oath to any title insurance company issuing a policy to BUYER to the effect that: (1) there are no tenants, lessees or parties in possession of the premises, (2) SELLER has no knowledge of any work having been done to the premises which would entitle anyone now or hereafter to claim a mechanic's or materialmen's lien on the premises; and SELLER agrees to indemnify and hold harmless the title insurance company for any loss, costs, or damages sustained as a result of issuing a policy without exceptions covered by such representations; (b) an affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, SELLER'S United States taxpayer identification number, that SELLER is not a foreign person subject to the withholding provisions of the Internal Revenue Code of 1986, as amended (FIRPTA), and SELLER'S address; and (c) Internal Revenue Service Form W-8 or Form W-9, as applicable, with SELLER'S tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Services and stating SELLER is not subject to back-up withholding. SELLER'S representations made to the BUYER as of the Closing under this paragraph shall survive the Closing.

24.) BUYER'S CONTINGENCIES

BUYER's obligations under this agreement are, at BUYER's option, expressly contingent upon the following conditions:

- (a) BUYER shall have complied with the provisions of G.L. c.30B (the Uniform Procurement Act), to the extent applicable.
- (b) SELLER shall have complied with the disclosure provisions of G.L. c.7, §40J. SELLER agrees to execute a Disclosure of Beneficial Interests in Real Property Transaction form as required by G.L. c.7, §40J.
- (c) BUYER has inspected the premises and is reasonably satisfied with the condition thereof.
- (d) SELLER shall have waived any right to claim relocation benefits under the provisions of G.L. c. 79A and 760 CMR 27.03 for SELLER and for any present occupant(s) of the premises and SELLER shall represent and warrant in writing at closing that all such waivers have been provided as to all occupants. SELLER hereby waives any rights SELLER may have to relocation benefits under the provisions of G.L. c. 79A.

These contingencies shall be satisfied by the Closing date, provided, however, that if any of the foregoing conditions are not satisfied by the Closing date contemplated hereunder, BUYER shall have the option of extending the Closing date until such conditions are satisfied or February 22, 2011, whichever occurs first.

25.) TAKING

BUYER and SELLER agree that BUYER may, at its sole discretion, acquire the premises by a so-called friendly taking. SELLER hereby waives any right to claim additional damages in excess of the purchase price (and the amounts to be paid by BUYER under the provisions of Sections 3 and 5) and relocation benefits in the event BUYER elects to acquire title to the Premises by eminent domain. Upon BUYER’S request, SELLER shall execute a waiver of appraisal, damages and relocation benefits under G.L. c. 79A in the form attached hereto as Exhibit B. Notwithstanding anything herein to the contrary, in the event of a taking of all or part of the premises by eminent domain by any entity other than BUYER, then at BUYER’S sole option, this agreement may be terminated.

26.) NOTICES

Any notice or other communication given by either party to the other relating to this agreement shall be in writing and shall be sent by facsimile, registered or certified mail, return receipt requested, or by any overnight courier, including but not limited to Federal Express, United Parcel Service and U.S. Postal Express Mail, addressed to the attorney of such other party at the respective addresses set forth below, and such notice or other communication shall be deemed given when so faxed, mailed or delivered to the courier.

The attorney for any party may give notice on behalf of such party, and agreements for extensions of time may be entered into between such attorneys, which agreements shall be binding upon the parties, provided that such agreements are in writing and faxed, mailed or delivered in the manner herein above provided.

Attorney for the Seller:
Ray Lyons, Esq.
206 Ayer Road, Suite 4
Harvard, MA 01451
Telephone: (978) 456-8400

Attorney for the Buyer:
Shirin Everett, Esq.
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110
Telephone: (617) 556-0007

A party may at any time advise the other party of a change in the address of its attorney or designate a different attorney or person(s) to whom notices shall be mailed or delivered by sending written notice to the other party of such change in the manner herein above provided.

27.) MERGER

This agreement contains the entire agreement between the SELLER and the BUYER with respect to its subject matter, and supersedes any and all offers and or counteroffers between the parties.

28.) CONSTRUCTION OF AGREEMENT

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and ensures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the interest of the parties to it.

29.) CONDITION OF PREMISES AT CLOSING.

SELLER agrees to deliver the Premises at the time of delivery of SELLER'S deed in a condition substantially similar to its condition at the time of the signing of this Agreement, removing all of the SELLER'S possessions and other property therefrom (including construction debris). SELLER agrees that, from the date of this agreement, SELLER shall not cut or remove any wood on or from the premises or bring any heavy vehicle or machinery upon the Premises that will or is reasonably likely to disturb or damage the Premises, including the trees and other vegetation thereon.

30.) EXTENSIONS -

BUYER and SELLER hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile signatures shall be construed as original.

31.) RELOCATION -

The parties agree that the SELLER may relocate the Access Easement and/or the Parking Easement, at its sole cost and expense, to another location(s) on SELLER'S remaining Property with BUYER'S prior written permission, which shall not be unreasonably withheld if the relocated easement area(s) is reasonably comparable to the area(s) subject to the Access Easement and/or the Parking Easement, as applicable, and provides BUYER with substantially equivalent access to the premises and/or substantially equivalent parking rights. In the event BUYER consents to the relocation, SELLER shall, at its sole cost and expense, prepare a survey plan, draft and record a new grant of easement (on terms identical to those stated herein) and proceed with all due diligence to make any and improvements that have been constructed by BUYER in the areas originally subject to the Access Easement and/or the Parking Easement and take any and all actions to provide BUYER with reasonably comparable easement areas.

[signature page follows]

Executed under seal as of the date and year written above.

SELLER:

BUYER:

New England Forestry Foundation, Inc.
By its Board of Selectmen

TOWN OF GROTON,

Lynn Lyford, Executive Director

TOWN OF GROTON,
By its Conservation Commission

413543v3/GROT/0020

TOWN OF GROTON, MASSACHUSETTS

Waiver of Appraisal, Damages, and Relocation Benefits

KNOW ALL MEN BY THESE PRESENTS, that New England Forestry Foundation, Inc., a Massachusetts nonprofit corporation (the "Owner"), is the owner of certain parcel of land containing 52 acres, more or less, on Old Dunstable Road, Groton (the "Property"), which Property is a portion of the premises described in a deed recorded with the Middlesex South District Registry of Deeds in Book 11625, Page 556. The Owner, in consideration of the sum of Three Hundred Seventy Thousand Dollars (\$370,000.00) (the "Award") and \$XXXX to reimburse the Owner for certain expenses, to be paid by the Town of Groton (the "Town"), hereby acknowledges such consideration to be full compensation for all damages sustained by the Owner on account of an eminent domain taking to be made by the Town, by and through its Board of Selectmen and/or the Conservation Commission, of the fee interest in the Property and an appurtenant access easement (together, the "Taken Premises") as shown on a plan entitled "_____, " dated _____, 2010, prepared by _____, which plan is on file with the Groton Town Clerk and to be recorded in the Middlesex South District Registry of Deeds, and, for itself and its successors and assigns, pursuant to G.L. c.79, § 39, hereby waives, releases and forever discharges the Town, its successors and assigns, from all debt, demands, actions, reckonings, bonds, covenants, contracts, agreements, promises, damages, liabilities, and any and all other claims of every kind, nature and description whatsoever, both in Law and Equity, from or in consequences of said taking, consents to said taking, waives all rights to appraisal and damages for said taking but for the Award, and further waives all relocation benefits under G.L. c. 79A.

EXECUTED UNDER SEAL this ____ day of _____, 2010.

New England Forestry Foundation, Inc.

Name: _____

By: Timothy A. Ingraham, President

Name: _____

By: Richard F. Perkins, Treasurer



