

Stewardship Plan

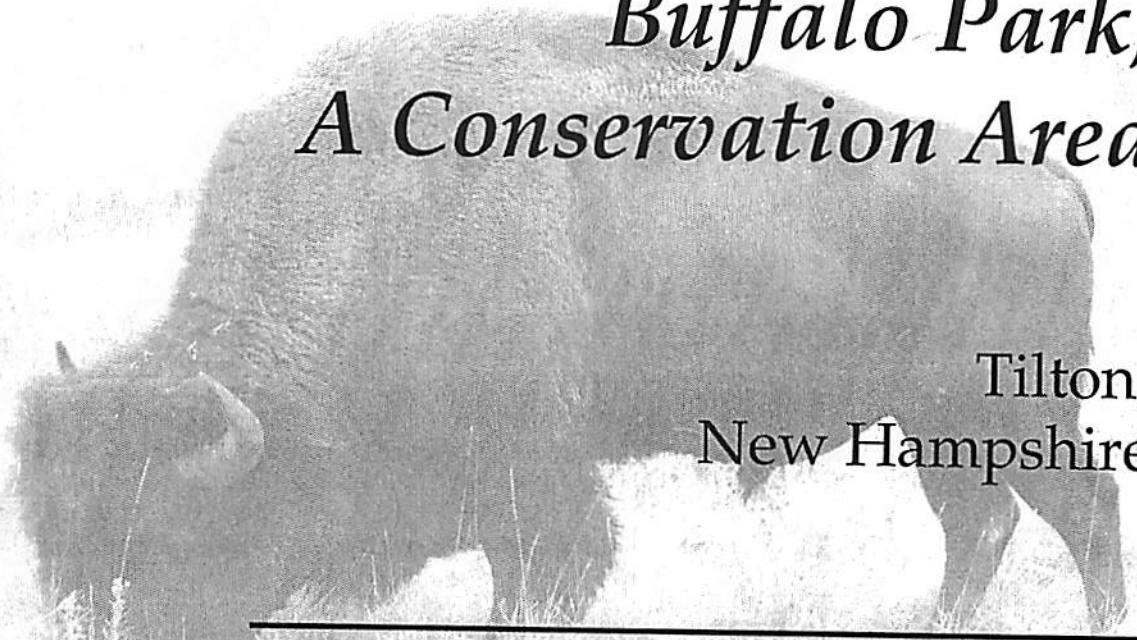
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Rachel M. Normandin
REGISTRY OF DEEDS
BELKNAP COUNTY
Registrar

Buffalo Park, A Conservation Area



Tilton,
New Hampshire

Prepared for: Town of Tilton
257 Main Street
Tilton, New Hampshire
(603) 286-4425

Prepared by **VHB**/Vanasse Hangen Brustlin, Inc.
Kilton Road, Six Bedford Farms, Suite 607
Bedford, New Hampshire
(603) 644 0888

Revised May 27, 2005

BK2181PG0565

Stewardship Plan Buffalo Park, Tilton, NH

1.0 Introduction

This stewardship plan was developed by Vanasse Hangen Brustlin, Inc. (VHB) to fulfill the New Hampshire Department of Environmental Services (NHDES) requirements for a written management plan for all properties proposed as mitigation for wetland impacts identified on a wetland dredge and fill application. The subject parcel, referred to locally as Buffalo Park, is being offered as compensatory mitigation (*i.e.*, preservation) for the retail development project proposed by Konover Development Corporation along NH 11 in the Town of Tilton.

Buffalo Park is a 55 +/- acre tract located in Tilton, New Hampshire (Figure 1) and is found on Tax Map R-17, Lot 20. A Baseline Documentation Report was prepared by VHB for the property in December 2004.¹ That report provides a description of the existing conditions on the parcel including soils, vegetation and wildlife. In addition, a discussion of the suitability of the parcel as a conservation area for the Town of Tilton is provided. This latter discussion includes an analysis of the functions and values of the proposed conservation parcel, including the ratio of upland and wetland.

This Stewardship Plan is intended to allow for adaptive management of the parcel, based upon the premise that managed natural systems are complex and unpredictable and that the needs of the community may evolve with time. No action may be taken which contravenes the Declaration of Restriction and Covenants (the "Declaration"), as finally recorded at the Belknap County Registry of Deeds. And, the Declaration shall control where the language of this plan or future revisions conflict with the Declaration. However, within this constraint, this Stewardship Plan may be adjusted from time to time by the Tilton Conservation Commission or its successor as new and better information

¹ Buffalo Park Proposed Conservation Assessment, Baseline Documentation Report. December 2004. Prepared for the Town of Tilton, New Hampshire by Vanasse Hangen Brustlin, Inc.

emerges about the ecosystem within the conservation area or where dictated by the best interests of the community.

In keeping with the adaptive nature of this management plan, the Tilton Conservation Commission will review and amend this plan as necessary no less frequently than every five years.

2.0 General Site Description of Parcel

Buffalo Park is an irregularly shaped parcel located south of Colby Road, east of Winter Street, and west of School Street. High Street Extension and a right-of-way (ROW) at the end of Highland Avenue, both provide access into the property along its southern boundary. A synopsis of the baseline documentation report (VHB 2004) is presented below as background to the stewardship plan presented later in this report.

Natural Communities

The majority of the property is presently covered by a mature, mixed-northern hardwood - softwood forest. Other communities include: eastern white pine forest in nearly pure stands, mixed northern hardwood forest, mixed softwood forest, and forested wetland. Two perennial streams, Packer Brook and an unnamed tributary to the Winnepesaukee River, flow across the property in a northeast to southwesterly direction. A third stream just west of the parcel flows in a similar direction. Table 1 provides a summary of the acreage and percent coverage for the various community cover types on the parcel. Figure 2 provides a map of these cover types on the parcel.

Table 1 - Cover Type Acreages and Percent

Cover Type	Acreage (+/-)	Percent
Eastern White Pine Forest	15.0	26.5
Northern Hardwood Forest	8.5	15.0
Mixed Softwood Forest	21.2	37.5
Mixed Hardwood-Softwood Forest	5.6	9.9
Palustrine Forested Wetland	5.6	9.9
Stream	0.7	1.2
Total	56.6	100.0

The parcel's forest cover is all second growth, having matured on abandoned pasture. The white pines on the northwestern side of the property appear to be 60 to 75 years old and probably represent the youngest stand of trees on the parcel. The vast majority of trees on the remainder of the parcel are older, suggesting that when it was used in more modern times for raising buffalo, much of it was already re-forested. It is probably of some significance that the

subspecies of bison (*Bison bison*), which once roamed prehistoric New England, was a woodland native.

Floodplain wetlands are associated with each of the two streams on the property, while large areas of upland are located between these lowland valleys. Additional forested wetlands occur along the north-central portion of the property, with drainage either to the southwest or southeast, connecting ultimately with the stream systems just mentioned that run through the western and eastern portions of the property.

A list of plant species observed during the field reconnaissance conducted on November 11, 2004 was provided in the Baseline Documentation Report (see Table 1 in VHB 2004). Lists of wildlife species, both expected to be found on the site and those actually observed or their sign, was included (see Table 2 in the VHB baseline Documentation Report 2004).

Trail System

A fairly extensive trail system exists on the property. The trails apparently receive a high level of use since they are well-defined paths with little vegetative encroachment. Evidence of historical human use includes small trash piles, and a stonewall and wire fence traversing the entire property boundary, the latter features indicative of its use for raising buffalos in the 19th century. The woven wire fence is in a dilapidated condition, but once stood approximately 6-feet high with an additional two feet of barbed wire on top. It is easy to imagine that such a fence was used to contain the buffalo that the former owners of the property once raised.

Surrounding Land Use

Land use surrounding Buffalo Park is primarily residential (urban) development to the south; agriculture to the west; a mix of recently-cleared land, commercial and residential development, and undisturbed forest to the north; and rural-residential and agricultural use to the east.

3.0 Establishment of a Management Philosophy

There are a variety of stewardship philosophies, some with very opposite or contradictory goals that could be followed to "manage" Buffalo Park in perpetuity. The selected philosophy or stewardship plan has to first take into account the original purpose for establishing the conservation area – *i.e.*, to compensate for the wetland impacts associated with the proposed development in another part of the town. Use of the parcel as a form of compensatory mitigation for these impacts requires that the land preserved, specifically the uplands, provide future protection of the wetlands that exist today on the property. The permanent protection of these wetlands and their surrounding

buffer is intended to compensate for the lost functions and values in the impacted wetlands.

The second consideration must necessarily take into account what is best for the resources on the parcel. The current condition and value of the habitats on the site, the presence of a rare, threatened or endangered species, the occurrence of an exemplary natural community type, or any number of other ecological, historical, or geological features have been taken into account in determining a long-term management plan.

The third consideration must take into account the desires of the stakeholders, in this case the citizens of Tilton, since the parcel will be publicly owned. By definition, wetland "values" (in contrast to "functions") are related to the *public* benefits provided by a wetland (e.g., recreation, flood protection, groundwater recharge, education and scientific value, etc.). The dredge and fill application for the retail development project indicates that the principal functions and values provided by the four wetlands impacted by the project were groundwater recharge/dischage and sediment/toxicant retention. The wetland with the greatest impact also provided floodflow alteration and wildlife habitat.

4.0 Selected Management Philosophy

Based on the above described considerations, including discussions to date with town officials, VHB recommends a stewardship plan whose goal is to ensure the preservation of the "old growth" that currently exists on the property. The density and age of trees comprising the forest communities represent a condition that is becoming increasingly rare in the southern half of New Hampshire. The vegetation communities on the parcel have been virtually untouched for over 60 years with many areas undisturbed for much longer since it can be presumed that raising buffalo (a woodland species) was compatible with the presence of a significant portion of the property being wooded.

The greatest value of the natural communities on the Buffalo Park property is the maturity and healthy condition of the forest stands along with the presence of two high quality perennial streams. An old-growth management philosophy will ensure that the equilibrium nature of the forest communities continues into the future. The present condition of the communities on the site provides an opportunity for educational use and even scientific research. The alternative strategy would be to actively manage the property for the highest diversity of wildlife species by creating the highest diversity and interspersed of habitat types. The chosen plan as discussed in this report is essentially a passive management of the natural communities, but with an active oversight and protection from human despoliation.

Consistent with this philosophy, "use limitations" are specifically spelled out in the *Declaration of Conservation Covenants and Restrictions* (see Appendix A for copy). That document also provides a list of "allowed activities." The language of the document was jointly worked out by attorneys for the Konover Development Corporation, the Town of Tilton, and the Tilton Conservation Commission. The detailed plan, which is described below, was developed in accordance with these limitations and allowances.

5.0 Initial Measures to Establish the Conservation Area

The following tasks will be performed to assist in conservation area planning and before formally opening the conservation area to the public:

1. **Corner Bounds** - using the boundary survey that has been completed, permanent bounds or markers will be installed by a licensed surveyor which identify all corners of the property. This step is necessary to avoid misunderstandings with adjoining property owners as well as to provide the Conservation Commission and others with a quick reference in the field to the actual limits of the property.
2. **Marker Signs** - to indicate the location of and restrictions on the conservation area shall be posted no further than every 150 feet along the boundary of the conservation area by October 1, 2005.
3. **Base Map** - a survey plan or map of the parcel will be prepared to scale that shows the corner bounds, distances, and any other features that were originally picked up during the boundary survey. This map will be created in an electronic format and then converted to a current Geographic Information System (GIS) platform for use as the official base map for the conservation area. This map will facilitate planning and will permit the addition of supplementary information, *e.g.*, cover type delineations, USGS topographic contours, aerial photography, etc.
4. **Trail Network** - a Global Positioning System (GPS) instrument, in combination with aerial photographs, will be used to map the existing trail system so that it can be added as a "layer" to the conservation area's GIS base map and be used to help create a "conservation area brochure" which will have a trails map for public use.

6.0 Enhancements for Public Use

Several specific measures will be undertaken to enhance public use of the property:

1. **Entrance sign(s)** – an official sign or signs identifying Buffalo Park as public land and being open to the public will be erected at the current access point at the end of High Street Extension. This access point will be maintained in order to serve pedestrians walking from nearby neighborhoods or from downtown Tilton. If additional points of access to the conservation area are established, similar signs will be constructed at each entrance.

The entrance sign(s) will be of wood or a recycled material that mimics wood and which is aesthetically pleasing. Enhancements to the sign, such as incorporation of a wooden roof or placement within a kiosk or similar structure, will be at the discretion of the Conservation Commission. The entrance sign(s) will *not* be illuminated.

The entrance sign(s) will contain at least the following information:

- Name of the conservation area – “Buffalo Park, A Conservation Area”
- Date of establishment as a public conservation area (March 28, 2005)
- The name of the entity that provided funding for the conservation area, i.e., *Konover Development Corporation*
- Hours of operation - i.e., closes at dusk without prior permission from the Conservation Commission. This will cover unusual circumstances involving scientific or educational use that can occur only after dark, e.g., breeding amphibian surveys, owl censuses, etc.
- Prohibitions including no motorized recreational vehicles;² no dumping; fires; alcohol; unleashed pets; plant collecting; or water withdrawals.
- Request that items carried into the conservation area be carried out (trash receptacles not provided).

The placement of small auxiliary signs that identify interesting or important natural, historical, or cultural features will be allowed within the conservation area. The form, content, size, placement and other characteristics will be determined at the discretion of the Conservation Commission. No other signs will be erected in the conservation area without the written permission of the conservation commission.

A temporary sign may be placed during hunting season, to alert the general public and advise caution.

2. **Main Entrance and Parking** - a small parking area will be created on conservation area property at the end of High Street Extension. As indicated earlier, this entrance will serve not only walkers from the residential and

² Only vehicles that have received authorization of the Conservation Commission may operate within the park and only for the purposes of maintenance or in cases of an emergency.

business areas of the town, but also those individuals who require a motor vehicle to access the conservation area. This entrance is within walking distance of the elementary, middle, and high schools. The Conservation Commission will work with the Public Works Director to explore the possibility of utilizing a portion of the Town's existing right-of-way at the end of the High Street Extension to provide additional area for the parking lot so as to minimize the amount of land that must be taken from the conservation area parcel itself. No more than one-eighth acre (5,445 square feet) of the conservation area's land can be used for this parking lot which will *not* be paved.³

3. **Additional Entrances and Parking** - opportunities for additional conservation area entrances, including a parking lot, will be explored by the Conservation Commission in conjunction with other town departments with property owners that abut Buffalo Park, including the Tilton School. Current access to the property from the west, aside from the High Street Extension entrance, requires crossing private property. No more than ½ acre of conservation area land may be used for parking lots and entrances in total as per the "Declaration of Covenants, Section #3 – Allowed Activities, paragraph C," negotiations will be conducted with adjacent property owners in order to gain access as well as to construct a parking lot that will accommodate at least one school bus. Purchase or easements with these neighboring property owners may be pursued. The parking lot and any portion of the entrance driveway physically located on the original conservation area property will *not* be paved.

7.0 Conservation Area Monitoring and Maintenance

The following maintenance measures will be followed to ensure that the long-term purpose of the conservation area can be fulfilled:

1. All trails will be walked at least once every 3 months by a representative of the Conservation Commission or their delegate to determine whether maintenance, such as the removal of down trees or repair of washouts, is necessary. The Conservation Commission will coordinate scheduled maintenance and necessary corrective actions. Trail maintenance procedures will follow the guidelines found in *Best Management Practices for Erosion Control During Trail Maintenance and Construction* published by the Division of Parks and Recreation, NH Department of Resources and Economic Development (1994, rev. 2004). At least twice per year, property inspection will be documented in writing (on a standardized form to be developed for

³ The *Declaration of Covenants and Restrictions* (draft) stipulates that the total area of parking lots within the park can not exceed one-half acre (21,780 square feet). It also stipulates that they be "gravel parking lots."

such purposes) by the Conservation Commission and retained in Commission files.

2. Fire suppression within the conservation area will be the responsibility of the Tilton-Northfield Fire Department.
3. Illegal dumping or disposal of household or industrial materials in the conservation area will be investigated by the Conservation Commission in conjunction with the Tilton Police Department. If not of a hazardous nature, its removal will be coordinated by the Conservation Commission with the Public Works Department. The Town of Tilton will contract with a licensed disposal firm for the removal and remediation of hazardous materials if necessary.
4. Snow removal in the parking lots at the conservation area's entrances will be the responsibility of the Public Works Department and will be scheduled after every storm to ensure year-round use of the conservation area.

EXECUTED on June 1, 2005.

TOWN OF TILTON
By and through its
CONSERVATION COMMISSION

By: Charles E. Mitchell
Chair

By: Robert E. Hardy
Vice Chair

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**APPENDIX A - DECLARATION OF CONSERVATION
COVENANTS AND RESTRICTIONS FOR
BUFFALO PARK**

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For registry use:
Recording Fee: 72.60
Return to:
Sulloway & Hollis, P.L.L.C.
Attn: James O. Barney, Esq.
P.O. Box 1256
Concord, NH 03302

**DECLARATION OF
CONSERVATION COVENANTS AND RESTRICTIONS**

This Declaration of Conservation Covenants and Restrictions ("Declaration") is hereby entered into as of the ____ day of _____, 2005, by the TOWN OF TILTON, ACTING BY AND THROUGH ITS CONSERVATION COMMISSION, with a mailing address of 257 Main Street, Tilton, NH 03276 (together with its successors and assigns, the "Declarant"), with the approval of its Board of Selectmen, pursuant to New Hampshire RSA chapter 36-A.

RECITALS

1. Declarant has acquired for conservation purposes a certain parcel of undeveloped land known as Buffalo Park (the "Conservation Area"), more particularly described on Exhibit A attached hereto.

2. The acquisition of the Conservation Area was funded by Carnoustie Centre, LLC, a New Hampshire limited liability company (together with its successors and assigns, "Carnoustie"), on condition that the Conservation Area be submitted to this Declaration and thus satisfy certain mitigation requirements imposed by the New Hampshire Department of Environmental Services (together with any successors with the same jurisdiction over state wetlands, "DES") and other governmental agencies as a condition of their approving a commercial development on land located in Tilton and owned and to be owned by Carnoustie and/or its affiliates, more particularly described on Exhibit B attached hereto (the "Benefited Property"), which approvals are evidenced in part by DES Wetlands and Non-Site Specific Permit 2004-01981 (as it may be amended, the "DES Permit").

3. The DES Permit required, among other things, the preparation of a certain boundary survey plan of the Conservation Area, entitled, "Buffalo Park, A Conservation Area, Plan of Land, Map R-17, Lot 20 in Tilton, New Hampshire," dated March 25, 2005, revised June 1, 2005, by Vanasse Hangen Brustlin, Inc., and a certain stewardship plan for the Conservation Area, entitled, "Stewardship Plan - Buffalo Park, A Conservation Area," dated May 27, 2005, by Vanasse Hangen Brustlin, Inc., adopted by the Tilton Conservation Commission (the "Stewardship Plan"), both as recorded herewith.

NOW, THEREFORE, Declarant hereby submits the Conservation Area to this Declaration, and declares that the Conservation Area shall henceforth be subject to and governed by the following covenants and restrictions in perpetuity, for the benefit of the residents of the Town of Tilton and the owners of the Benefited Property (together with their heirs, successors and assigns, the "Benefited Owners").

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1. CONSERVATION PURPOSES

This Declaration is made pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes:

- A. The protection of the natural habitat within the easement property; and
- B. To preserve and protect in perpetuity the natural vegetation, soils, hydrology, natural habitat and the scenic and aesthetic character of the Conservation Area so that the Conservation Area retains its natural qualities and functions; and
- C. To prevent any future development, construction, or use that will significantly impair or interfere with the conservation values of the Conservation Area while allowing the activities specified under Section 3; and
- D. The preservation and conservation of wetlands vegetation, soils, hydrology and/or habitat as documented in the report dated December 2004, entitled, "Baseline Documentation Report - Buffalo Park Proposed Conservation Easement Assessment, Tilton, New Hampshire" (the "Report"), which Report is on file at the office of the Town Clerk of Declarant and is incorporated herein in full.

2. USE LIMITATIONS

- A. The Conservation Area shall be maintained in perpetuity in an undeveloped and natural condition without there being conducted thereon any activities except as described below, and provided that such uses shall not degrade the conservation purposes of this Declaration. No use shall be made of the Conservation Area, and no activity shall be permitted thereon, which is inconsistent with the intent of this Declaration, that being the perpetual protection and preservation of the Conservation Area, as more particularly described in Section 1 herein.
- B. The Conservation Area shall not be subdivided.
- C. No structure or improvement, including without limitation pavement, shall be constructed in the Conservation Area; provided that such structures and improvements as bridges and culverts may be constructed in the Conservation Area after obtaining the required NHDES permits only to the extent they are necessary in the accomplishment of the forestry, conservation, or other allowed uses of the Conservation Area and are not materially detrimental to the purposes of this Declaration.
- D. No removal of vegetative undergrowth, cutting of trees, excavating, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
 - i. Are commonly necessary in the accomplishment of the forestry, conservation, habitat management, or other uses of the Conservation Area specifically allowed under Section 3 of this Declaration; and
 - ii. Do not harm state or federally recognized rare, threatened, or endangered species, such determination of harm to be based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species; and
 - iii. Do not significantly impact wetland vegetation, soils, hydrology or habitat; and

iv. Are not detrimental to the purposes of this Declaration.

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

E. No outdoor signs shall be displayed on the Conservation Area except as desirable or necessary in the accomplishment of the forestry, conservation, or other allowed uses of the Conservation Area, and provided such signs are not detrimental to the purposes of this Declaration. No sign shall exceed 25 square feet in size and no sign shall be artificially illuminated.

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

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

H. There shall be no domestic animals allowed in the Conservation Area except for dogs on leashes and under control, provided any excrement is removed from trails or open areas by the owner or person in control of said dogs.

I. There shall be no motorized vehicles of any kind allowed in the Conservation Area, except as expressly provided herein or as reasonably required to conduct the specific activities expressly allowed in this section and in Section 3 below.

J. There shall be no roads constructed or maintained in the Conservation Area, except as may be reasonably required to conduct the specific activities expressly allowed in this section and in Section 3 below, or for access to the parking lot(s) allowed in Section 3.

K. No fire or open flame shall be allowed anywhere in the Conservation Area.

L. No other activities shall be allowed in the Conservation Area except as expressly allowed in this section or in Section 3 below.

3. ALLOWED ACTIVITIES

Declarant may in its discretion allow the following activities in the Conservation Area, provided that they are not conducted in a manner that is detrimental to the purposes of this Declaration.

A. Maintenance of the existing trail system, and construction and maintenance of new trails.

B. Use of trails for walking, running, skiing, snowshoeing, educational, or similar activities, or for operation of bicycles, other nonmotorized vehicles, or motorized wheelchairs.

C. Construction and maintenance of one or more gravel parking lots of aggregate area not exceeding one-half acre, in each case adjacent to the boundary of the Conservation Area, and of gravel access roads to such parking area(s) from public ways outside the Conservation

Area. Such parking lots and roads may be used only by service vehicles and private passenger vehicles, pickup trucks, school buses and cycles or scooters. Within these areas, permanent or temporary toilet facilities may be constructed.

D. Forestry practices, including selective cutting, only to maintain and increase the health of the forests (but not to the detriment of other natural features), with strict adherence to Best Management Practices and under the supervision of a licensed forester.

E. Construction, maintenance and use of one or more picnic areas, with tables and other appurtenant equipment.

F. Hunting and fishing.

G. Activities in pursuance of the conservation purposes specified in Section 1 above.

H. Any other activities that may be required by the DES Permit.

Declarant may in its discretion allow, allow with limitations or restrictions, or prohibit entirely any of the above-described activities, provided that any activities required by the DES Permit must be allowed.

4. BENEFITS, BURDENS, AND ACCESS

A. The burden of this Declaration shall run with the Conservation Area and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Declaration shall be appurtenant to the Benefited Property.

B. DES and the Benefited Owners shall have access to the Conservation Area and all of its parts, on 48 hours' prior notice to Declarant, for such inspection as may be necessary to determine compliance with and to enforce this Declaration pursuant to Section 5 below.

C. Members of the general public shall have access to the Conservation Area for the activities specified in Sections 3(B), (C), (E), and (F) above, to the extent allowed by Declarant and subject to any restrictions imposed by Declarant.

5. ENFORCEMENT AND LEGAL REMEDIES

A. Declarant, in consideration of the contribution of the Conservation Area to it by Carnoustie, has undertaken and hereby covenants to enforce the terms of this Declaration.

B. When a breach of this Declaration, or conduct by anyone inconsistent with this Declaration, comes to the attention of DES or the Benefited Owners, either may (but shall have no obligation to) notify the Declarant in writing of such breach or conduct, delivered in hand or by certified mail, return receipt requested.

C. The Declarant shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Declarant shall promptly notify DES or the Benefited Owners, as applicable, of its actions taken under this section.

D. If the Declarant fails to take such proper action under the preceding paragraph, DES or the Benefited Owners may (but shall have no obligation to) undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Declarant's name or to

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terminate such conduct. The cost thereof, including, but not limited to, reasonable expenses, expert fees, court costs, and legal fees, shall be paid by the Declarant.

E. Nothing contained in this Declaration shall be construed to entitle DES or the Benefited Owners to bring any action against the Declarant for any injury to or change in the Conservation Area resulting from causes beyond the Declarant's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, and earth movement, or from any prudent action taken by the Declarant under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Area resulting from such causes.

F. The Declarant, DES, and the Benefited Owners reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Declaration.

G. No delay or omission by any party in the exercise of any right or remedy upon any breach by Declarant shall impair any rights or remedies or be construed as a waiver.

H. Activities in contravention of this Declaration shall be construed as violations of RSA chapter 482-A, and the then Commissioner of DES shall have standing to seek mandamus or such other relief against Declarant as may be necessary (including remediation and fines) in the event Declarant has not, in the Commissioner's opinion, taken steps necessary under this section to adequately preserve and protect the conservation purposes of this Declaration.

I. Notwithstanding anything to the contrary in this Declaration, the Benefited Owners shall have the right to take action to enforce this Declaration only if and to the extent that such action is required to preserve the effectiveness of the DES Permit.

6. COVENANTS TO "RUN WITH THE LAND"

A. The terms and conditions of this Declaration shall run with the Conservation Area and with the Benefited Property in perpetuity, and shall be enforceable against the Declarant or any other person or entity holding any interest in the Conservation Area.

B. Declarant shall not convey the Conservation Area or any portion thereof without the consent of DES and the Benefited Owners, which consent shall not be unreasonably withheld.

7. NOTICES

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

8. SEVERABILITY

If any provision of this Declaration, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Declaration or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

9. CONDEMNATION

If all or part of the Conservation Area is taken in exercise of eminent domain by public authority, the Declarant shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

10. CONSERVATION EASEMENT FUND

Konover Development Corporation shall provide to the Town of Tilton, the sum of seven thousand five hundred dollars (\$7500) to be held in a separate fund (Conservation Easement Fund) and to be used for the purpose of monitoring and enforcing the conditions of the Declaration of Covenants and the Stewardship Plan which are hereby granted. The monies may only be spent upon order of the Tilton Conservation Commission.

11. AMENDMENT

This Declaration may be amended only by written agreement executed and acknowledged by Declarant, DES, and the Benefited Owners, and recorded in the Belknap County Registry of Deeds.

EXECUTED as of the date first shown above.

TOWN OF TILTON
By and through its
CONSERVATION COMMISSION

By: _____
Chair

By: _____
Vice Chair

STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

The foregoing instrument was acknowledged before me on the ____ day of _____, 2005, by _____, Chair of the Tilton Conservation Commission, on behalf of the Commission, acting on behalf of the Town of Tilton.

Notary Public/Justice of the Peace
My commission expires: _____

BK 2181 PG 0580

STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

The foregoing instrument was acknowledged before me on the ____ day of _____, 2005, by _____, Vice Chair of the Tilton Conservation Commission, on behalf of the Commission, acting on behalf of the Town of Tilton.

Notary Public/Justice of the Peace
My commission expires:_____

APPROVAL

Pursuant to RSA chapter 36-A, the Board of Selectmen of the Town of Tilton hereby approves the above Declaration, and to the extent necessary joins in it as Declarant.

EXECUTED on _____, 2005.

TOWN OF TILTON
By and through its
BOARD OF SELECTMEN

By: _____
Richard Manseau, Chair

By: _____
Katherine Dawson

By: _____
Robert Brown

By: _____
David Wadleigh

By: _____
Steven J. O'Leary

STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

The foregoing instrument was acknowledged before me on the ____ day of _____, 2005, by Richard Manseau, Katherine Dawson, Robert Brown, David Wadleigh, and Steven J. O'Leary, as members of the Tilton Board of Selectmen, acting on behalf of the Town of Tilton.

Notary Public/Justice of the Peace
My commission expires:_____

BK 2181 PG 0581

ACCEPTANCE

Pursuant to RSA 477:47, Carnoustie hereby accepts the benefit conferred by the above Declaration.

EXECUTED on _____, 2005.

CARNOUSTIE CENTRE, LLC

By: _____
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me on the ____ day of _____, 2005, by _____ of Carnoustie Centre, LLC, a New Hampshire limited liability company, on behalf of the company.

Notary Public/Justice of the Peace
My commission expires: _____

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EXHIBIT A

Legal Description of the Conservation Area

Parcel Description - Map R-17, Lot 20

A certain parcel of land located east of Winter Street, south of Colby Road and west of School Street in the Town of Tilton, in the County of Belknap and the State of New Hampshire, shown on a certain plan entitled, "Buffalo Park, A Conservation Area, Plan of Land, Map R-17, Lot 20 in Tilton, New Hampshire," dated March 25, 2005, revised June 1, 2005, by Vanasse Hangen Brustlin, Inc., recorded herewith, and more particularly bounded and described as follows:

Beginning at a point at the southeast corner of land now or formerly of Charles and Vicki Marshall-Hussman and on the northerly line of land now or formerly of Evelyn Fuller and being the southwest corner of the parcel hereinafter described; thence

- N 23° 41' 21" W a distance of one hundred forty three and thirty two hundredths feet (143.32') to a point, the last course by land now or formerly of Charles and Vicki Marshall-Hussman; thence
- N 24° 14' 07" W a distance of three hundred sixty seven and sixty two hundredths feet (367.62') to a point, the last course by land now or formerly of Scott and Lynne Long; thence
- N 70° 49' 57" E a distance of one hundred seventy nine and no hundredths feet (179.00') to a point; thence
- N 21° 10' 26" W a distance of seven hundred seventeen and forty one hundredths feet (717.41') to a point, the last (2) courses by land now or formerly of Peter and Cynthia Wikoff; thence
- N 63° 43' 09" E a distance of forty seven and ninety two hundredths feet (47.92') to a point; thence
- N 66° 42' 05" E a distance of thirty eight and ninety hundredths feet (38.90') to a point; thence
- N 70° 30' 59" E a distance of fifty three and twenty hundredths feet (53.20') to a point; thence
- N 68° 56' 06" E a distance of two hundred thirty three and seventy seven hundredths feet (233.77') to a point, the last (4) courses by land now or formerly of the State of New Hampshire Veterans Administration Soldiers Home; thence
- N 69° 21' 21" E a distance of three hundred forty two and forty nine hundredths feet (342.49') to a point, the last course by land now or formerly of Patrick and Roxanne Laughy; thence
- N 69° 36' 33" E a distance of three hundred seventy nine and six hundredths feet (379.06') to a point; thence
- N 19° 37' 35" W a distance of ninety two and sixty eight hundredths feet (92.68') to a point; thence
- N 19° 23' 42" W a distance of two hundred forty one and twenty four hundredths feet (241.24') to a point; thence
- N 65° 07' 30" E a distance of two hundred three and seventy one hundredths feet (203.71') to a point; thence
- N 72° 02' 14" E a distance of one hundred nineteen and eighteen hundredths feet (119.18') to a point; thence
- N 89° 40' 04" E a distance of twenty four and ninety three hundredths feet (24.93') to a point; thence

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S 79° 46' 54" E a distance of one hundred thirty four and seventeen hundredths feet (134.17') to a point, the last (7) courses by land now or formerly of MAJ Realty Inc.; thence

S 75° 33' 38" E a distance of two hundred thirty nine and fifteen hundredths feet (239.15') to a point, the last course by land now or formerly of MAJ Realty Inc. and land now or formerly of Albert and Laura Diamond; thence

S 66° 11' 50" E a distance of fifty seven and seventy eight hundredths feet (57.78') to a point; thence

S 75° 48' 11" E a distance of fifty eight and eighty five hundredths feet (58.85') to a point; thence

S 75° 24' 35" E a distance of one hundred twenty seven and fifty four hundredths feet (127.54') to a point, the last (3) courses by land now or formerly of Albert and Laura Diamond; thence

S 14° 58' 00" E a distance of one hundred ninety one and sixty hundredths feet (191.60') to a point; thence

S 12° 42' 46" E a distance of one hundred sixty eight and fifty four hundredths feet (168.54') to a point, the last (2) courses by land now or formerly of Calvary Independent Baptist Church of Tilton; thence

S 15° 33' 04" E a distance of one hundred eighty nine and forty two hundredths feet (189.42') to a point, the last course by land now or formerly of Calvary Independent Baptist Church of Tilton and land now or formerly of Stephen and Diana Thurston; thence

S 12° 26' 54" E a distance of two hundred twenty eight and thirty five hundredths feet (228.35') to a point, the last course by land now or formerly of Stephen and Diana Thurston and land now or formerly of Tilton School; thence

S 13° 02' 31" E a distance of two hundred sixty three and forty two hundredths feet (263.42') to a point, the last course by land now or formerly of Tilton School; thence

S 03° 12' 34" E a distance of fifty eight and ninety three hundredths feet (58.93') to a point; thence

S 04° 42' 54" E a distance of seventy seven and ninety one hundredths feet (77.91') to a point, the last (2) courses by land now or formerly of the Town of Tilton; thence

N 80° 49' 43" W a distance of two hundred forty three and fifteen hundredths feet (243.15') to a point; thence

S 01° 14' 28" W a distance of ninety two and no hundredths feet (92.00') to a point, the last (2) courses by land now or formerly of Robert and June Tilton; thence

S 88° 54' 08" W a distance of one hundred four and ninety seven hundredths feet (104.97') to a point, the last course by land now or formerly of Eric and Amy Usinger; thence

N 08° 22' 36" E a distance of one hundred twenty and no hundredths feet (120.00') to a point; thence

S 87° 27' 02" W a distance of one hundred twenty and no hundredths feet (120.00') to a point, the last (2) courses by land now or formerly of Larry and Sharon Prince; thence

N 00° 23' 40" W a distance of one hundred seventy one and forty six hundredths feet (171.46') to a point; thence

N 80° 59' 20" W a distance of one hundred three and sixty two hundredths feet (103.62') to a point, the last (2) courses by land now or formerly of the Estate of Hazel Lawrence; thence

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N 80° 06' 52" W a distance of three hundred seven and thirty six hundredths feet (307.36') to a point; thence
 S 20° 39' 47" E a distance of one hundred twenty two and seventy eight hundredths feet (122.78') to a point, the last (2) courses by land now or formerly of Thomas and Constance Pucci; thence
 S 19° 28' 23" E a distance of twenty four and seventy five hundredths feet (24.75') to a point, the last course by Highland Avenue; thence
 S 17° 53' 02" E a distance of one hundred forty nine and ninety nine hundredths feet (149.99') to a point, the last course by land now or formerly of Thomas and Constance Pucci; thence
 S 20° 47' 15" E a distance of one hundred seventy seven and ninety eight hundredths feet (177.98') to a point, the last course by land now or formerly of Hans Von Brockdorff and Sigrid Von Brockdorff; thence
 S 39° 15' 23" W a distance of three hundred eighteen and five hundredths feet (318.05') to a point, the last course by land now or formerly of Frank and Kathleen Sqambati; thence
 S 71° 57' 46" W a distance of ninety and eleven hundredths feet (90.11') to a point, the last course by land now or formerly of Alfred and Rose Robert; thence
 S 69° 45' 08" W a distance of three hundred two and three hundredths feet (302.03') to a point, the last course by land now or formerly of Alfred and Rose Robert, by High Street Extension and by land now or formerly of Alfred and Rose Robert; thence
 S 69° 22' 17" W a distance of two hundred thirty six and ninety eight hundredths feet (236.98') to a point, the last course by land now or formerly of Alfred and Rose Robert and land now or formerly of Evelyn Fuller; thence
 S 69° 53' 31" W a distance of three hundred twenty one and forty five hundredths feet (321.45') to the point of beginning, the last course by land now or formerly of Evelyn Fuller.

The above described parcel of land contains 54.0 acres in the Town of Tilton, New Hampshire.

Meaning and intending to describe the same property conveyed by Warranty Deed from Gary M. Hamm to Town of Tilton, dated March 28, 2005, recorded in the Belknap County Registry of Deeds at Book 2154, Page 509.

EXHIBIT B

Legal Description of the Benefited Properties

Five parcels of land located north of East Main Street and east of Grant Street in the Town of Tilton, in the County of Belknap and the State of New Hampshire, shown as Map R-24, Lots 1-1, 1, and 2, and Map U-4, Lots 36 and 36-1, on a certain plan entitled, "Map U-4, Lot 36, Map R-24, Lots 1, 2, 2B & 2C, Subdivision Plan of Land in Tilton, New Hampshire," dated September 28, 2004, revised June 7, 2005, by Vanasse Hangen Brustlin, Inc., recorded in the Belknap County Registry of Deeds at Drawer L52, Plan 51, more particularly bounded and described as follows:

Parcel Description - Map R-24, Lot 1-1

A certain parcel of land located north of East Main Street and east of Grant Street in the Town of Tilton, in the County of Belknap and the State of New Hampshire bounded and described as follows:

Beginning at a point on the north side of East Main Street about one hundred ninety nine feet (199') northeast of land now or formerly of Michael D. Rutherford and being the southerly corner of the parcel hereinafter described; thence

- N 40° 20' 08" W a distance of two hundred sixteen and fifty eight hundredths feet (216.58') to a point; thence
- N 06° 04' 34" W a distance of three hundred and no hundredths feet (300.00') to a point; thence
- N 67° 07' 50" E a distance of three hundred thirty six and thirty two hundredths feet (336.32') to a point; thence
- S 08° 45' 28" W a distance of one hundred ninety and no hundredths feet (190.00') to a point; thence
- S 17° 09' 12" E a distance of seventy two and sixty five hundredths feet (72.65') to a point; thence
- S 40° 39' 28" E a distance of one hundred ninety and one hundredths feet (190.01') to a point, the last (6) courses by land now or formerly of Carnoustie Centre LLC; thence
- S 51° 18' 59" W a distance of one hundred thirty nine and one hundredths feet (139.01') to a point; thence
- S 54° 00' 06" W a distance of one hundred eighty and thirteen hundredths feet (180.13') to the point of beginning, the last (2) courses by East Main Street.

The above described parcel of land contains 3.32 acres in the Town of Tilton, New Hampshire.

Parcel Description - Map R-24, Lot 1

A certain parcel of land located north of East Main Street and east of Grant Street in the Town of Tilton, in the County of Belknap and the State of New Hampshire bounded and described as follows:

Beginning at a point at the northwest corner of land now or formerly of George and Katherine Ryan at land now or formerly Rodgers Development Co. and being the northeast corner of the parcel hereinafter described; thence

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S 02° 36' 39" E a distance of six hundred seventy and eighty nine hundredths feet (670.89') to a point, the last course by land now or formerly of George and Katherine Ryan and land now or formerly of George and Katherine Ryan and Dan Ryan; thence

N 89° 29' 43" W a distance of four hundred and no hundredths feet (400.00') to a point; thence

N 61° 38' 17" W a distance of ninety eight and two hundredths feet (98.02') to a point, the last (2) courses by land now or formerly of Carnoustie Centre LLC; thence

N 89° 29' 43" W a distance of four hundred and no hundredths feet (400.00') to a point, the last course by land now or formerly of Carnoustie Centre LLC and by land now or formerly of Paul J. Gaudet Sr.; thence

N 01° 22' 30" E a distance of five hundred six and eighty six hundredths feet (506.86') to a point, the last course by land now or formerly of Richard J. Morway; thence

S 87° 17' 48" E a distance of three hundred fifteen and sixty five hundredths feet (315.65') to a point; thence

N 03° 21' 34" W a distance of seventy seven and forty eight hundredths feet (77.48') to a point, the last (2) courses by land now or formerly of Bernard Filion; thence

N 84° 54' 53" E a distance of five hundred thirty four and eighty five hundredths feet (534.85') to the point of beginning, the last course by land now or formerly of Rodgers Development Co.

The above described parcel of land contains 11.62 acres in the Town of Tilton, New Hampshire.

Parcel Description - Map R-24, Lot 2

A certain parcel of land located north of East Main Street and east of Grant Street in the Town of Tilton, in the County of Belknap and the State of New Hampshire bounded and described as follows:

Beginning at a point on the northerly side of East Main Street at the southerly corner of land now or formerly of Thomas and Philip Matzke and being the southeast corner of the parcel hereinafter described; thence

S 47° 55' 06" W a distance of three hundred eighty five and six hundredths feet (385.06') to a point, the last course by East Main Street; thence

N 40° 39' 28" W a distance of two hundred two and no hundredths feet (202.00') to a point; thence

N 10° 39' 55" W a distance of one hundred and ninety hundredths feet (100.90') to a point; thence

N 08° 45' 28" E a distance of one hundred twenty five and no hundredths feet (125.00') to a point, the last (3) courses by land now or formerly of Carnoustie Centre LLC; thence

N 67° 07' 50" E a distance of two hundred thirty five and forty seven hundredths feet (235.47') to a point, the last course by land now or formerly of Carnoustie Centre LLC, land now or formerly of George and Katherine Ryan and Dan Ryan, and land now or formerly of Summa Humma Realty-Tilton LLC; thence

N 00° 38' 58" W a distance of fifty nine and nine hundredths feet (59.09') to a point; thence

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N 76° 56' 42" E a distance of one hundred six and eighty four hundredths feet (106.84') to a point, the last (2) courses by land now or formerly of Summa Humma Realty-Tilton LLC; thence
 S 18° 17' 03" E a distance of three hundred eight and sixteen hundredths feet (308.16') to the point of beginning, the last course by land now or formerly of Summa Humma Realty-Tilton LLC and by land now or formerly of Thomas and Philip Matzke.

The above described parcel of land contains 3.25 acres in the Town of Tilton, New Hampshire.

Parcel Description - Map U-4, Lot 36-1

A certain parcel of land located north of East Main Street and east of Grant Street in the Town of Tilton, in the County of Belknap and the State of New Hampshire bounded and described as follows:

Beginning at a point on the northerly side of East Main Street at the intersection with the east side of Grant Street and being the southwest corner of the parcel hereinafter described; thence

N 03° 08' 55" W a distance of one hundred eighty five and sixty nine hundredths feet (185.69') to a point, the last course by Grant Street; thence
 N 86° 32' 35" E a distance of one hundred sixty and no hundredths feet (160.00') to a point, the last course by land now or formerly of Terry and Virginia Desousa; thence
 N 03° 08' 55" W a distance of four hundred sixty four and twenty four hundredths feet (464.24') to a point, the last course by land now or formerly of Terry and Virginia Desousa, land now or formerly of Pranom Khamdaranikone and Viengsamay Vixaysak and land now or formerly of Felicitas Houghton; thence
 N 85° 52' 28" E a distance of two hundred thirty two and thirty six hundredths feet (232.36') to a point, the last course by land now or formerly of David and Tina McCarthy, land now or formerly of Paul J. Gaudet Sr., and land now or formerly of Carnoustie Centre LLC; thence
 S 06° 04' 34" E a distance of three hundred and no hundredths feet (300.00') to a point; thence
 S 40° 20' 08" E a distance of two hundred sixteen and fifty eight hundredths feet (216.58') to a point, the last (2) courses by land now or formerly of Carnoustie Centre LLC; thence
 S 54° 00' 06" W a distance of one hundred ninety nine and thirty four hundredths feet (199.34') to a point, the last course by East Main Street; thence
 N 15° 02' 15" W a distance of one hundred thirty eight and ninety seven hundredths feet (138.97') to a point; thence
 S 80° 57' 45" W a distance of fifty and no hundredths feet (50.00') to a point; thence
 S 01° 39' 40" E a distance of sixty and no hundredths feet (60.00') to a point; thence
 S 09° 51' 21" E a distance of one hundred three and twenty three hundredths feet (103.23') to a point, the last (4) courses by land now or formerly of Michael D. Rutherford; thence

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Southwesterly and curving to the right along the arc of a curve having a radius of five hundred sixty nine and forty four hundredths feet (569.44'), a length of one hundred seventy four and eighty one hundredths feet (174.81'), a chord bearing of S 75° 00' 20" W and a chord distance of one hundred seventy four and thirteen hundredths feet (174.13') to a point; thence
 S 83° 48' 00" W a distance of one hundred thirty two and ninety nine hundredths feet (132.99') to the point of beginning, the last (2) courses by East Main Street.

The above described parcel of land contains 4.26 acres in the Town of Tilton, New Hampshire.

Parcel Description - Map U-4, Lot 36 - Lowe's Lease

A certain parcel of land located north of East Main Street and east of Grant Street in the Town of Tilton, in the County of Belknap and the State of New Hampshire bounded and described as follows:

Beginning at a point on the northerly side of East Main Street, about five hundred eighteen feet (518') northeasterly of land now or formerly of Michael D. Rutherford, and being the south corner of the parcel hereinafter described; thence

N 40° 39' 28" W a distance of one hundred ninety and one hundredths feet (190.01') to a point; thence
 N 17° 09' 12" W a distance of seventy two and sixty five hundredths feet (72.65') to a point; thence
 N 08° 45' 28" E a distance of one hundred ninety and no hundredths feet (190.00') to a point; thence
 S 67° 07' 50" W a distance of three hundred thirty six and thirty two hundredths feet (336.32') to a point, the last (4) courses by land now or formerly of Carnoustie Centre LLC; thence
 S 85° 52' 28" W a distance of two hundred sixteen and forty nine hundredths feet (216.49') to a point, the last course by land now or formerly of Carnoustie Centre LLC and land now or formerly of Paul J. Gaudet, Sr.; thence
 N 01° 54' 27" W a distance of two hundred thirteen and fifty four hundredths feet (213.54') to a point, the last course by land now or formerly of David and Tina McCarthy; thence
 S 86° 41' 04" W a distance of three hundred five and sixteen hundredths feet (305.16') to a point, the last course by land now or formerly of David and Tina McCarthy and land now or formerly of John W. and Laura Maynard; thence
 N 04° 09' 24" E a distance of two hundred ninety five and sixty two hundredths feet (295.62') to a point; thence
 N 02° 54' 46" E a distance of four hundred fifty nine and four hundredths feet (459.04') to a point; thence
 N 01° 22' 30" E a distance of thirty one and thirty one hundredths feet (31.31') to a point, the last (3) courses by land now or formerly of Richard J. Morway, Sr.; thence
 S 89° 29' 43" E a distance of four hundred and no hundredths feet (400.00') to a point, the last course by land now or formerly of Paul J. Gaudet, Sr. and land now or formerly of Carnoustie Centre LLC; thence

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- S 61°38'17" E a distance of ninety eight and two hundredths feet (98.02') to a point; thence
- S 89°29'43" E a distance of four hundred and no hundredths feet (400.00') to a point, the last (2) courses by land now or formerly of Carnoustie Centre LLC; thence
- S 02°36'39" E a distance of one hundred ninety seven and forty nine hundredths feet (197.49') to a point; thence
- S 02°28'10" E a distance of one hundred fifty nine and twenty two hundredths feet (159.22') to a point; thence
- S 02°27'19" E a distance of three hundred seventy one and thirty five hundredths feet (371.35') to a point, the last (3) courses by land now or formerly of George and Katherine Ryan and Dan Ryan; thence
- S 67°07'50" W a distance of sixty six and twenty hundredths feet (66.20') to a point; thence
- S 08°45'28" W a distance of one hundred twenty five and no hundredths feet (125.00') to a point; thence
- S 10°39'55" E a distance of one hundred and ninety hundredths feet (100.90') to a point; thence
- S 40°39'28" E a distance of two hundred two and no hundredths feet (202.00') to a point, the last (4) courses by land now or formerly of Carnoustie Centre LLC; thence
- S 47°55'06" W a distance of eleven and seventy seven hundredths feet (11.77') to a point; thence
- N 21°07'24" W a distance of nine and eighty seven hundredths feet (9.87') to a point; thence
- S 51°18'59" W a distance of eighty six and fifty nine hundredths feet (86.59') to the point of beginning, the last (3) courses by East Main Street.

The above described parcel of land contains 18.64 acres in the Town of Tilton, New Hampshire.

Meaning and intending to describe the same property as conveyed to Carnoustie Centre, LLC, by deeds of Lawrence A. Shapiro dated August 14, 2003, recorded in the Belknap County Registry of Deeds at Book 1938, Pages 633 and 636, and by deed of Paul J. Gaudet, Sr., dated June 3, 2005, recorded in the said Registry at Book 2179, Page 723.

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