

**Final
Environmental Assessment**

**John Hay
National Wildlife Refuge
Proposed Exchange**

**U.S. Fish and Wildlife Service
Northeast Region 5
300 Gateway Center Drive
Hadley, Massachusetts 01035**

**Finding of No Significant Impact (FONSI)
for the
Proposed Land Exchange
John Hay National Wildlife Refuge**

Summary

This notice announces the environmental findings of the U.S. Fish and Wildlife Service (Service) concerning the proposed land exchange at the John Hay National Wildlife Refuge (Refuge). The exchange calls for The Fells, the friends group at the Refuge, to obtain title to approximately 83.72 acres (+/-) of Refuge property to include the buildings, gardens, parking lot, and access road. A deed restriction held by the New Hampshire Historic Preservation Officer would ensure that the historic characteristics that made the facilities eligible for the National Registry would be conserved by future owners. In exchange, the Service would acquire a 727 acre(+/-) tract of land that has an equal or greater appraised price with higher wildlife values for addition to the Lake Umbagog National Wildlife Refuge headquartered in Errol, New Hampshire. Because the 727-acre tract appraises for more than the \$390,000 value of the Refuge land, funds from the Migratory Bird Conservation Fund or the Land and Water Conservation Fund could be used to make up the difference to purchase the property for the Lake Umbagog Refuge. New Hampshire Audubon would act as an intermediary holding entity to facilitate the transactions.

This exchange is being proposed to fulfill the original wishes of the Hay family of preserving the historic integrity of the estate while still meeting their desire for a “migratory bird and wildlife reservation” managed as a part of the National Wildlife Refuge System. Under the selected alternative (Alternative 2) The Fells would have the latitude necessary to generate sufficient and sustainable funding for the conservation and restoration of the buildings and gardens via fund raisers and grants, rather than depending on federal appropriations and one-time contributions. It also could better serve the National Wildlife Refuge System by adding important habitat to an existing refuge and retain that portion of the John Hay Refuge where wildlife-dependent, priority public uses such as wildlife observation and photography, fishing, environmental education and interpretation could take place on hiking trails and on the shore of Lake Sunapee.

The Service has prepared an Environmental Assessment (EA) evaluating the proposed action and a set of reasonable alternatives. Based on the analysis in the EA, the Service has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an Environmental Impact Statement (EIS) is not required and the Service is issuing this FONSI for the Proposed Action. The Proposed Action is not the type of action that normally requires preparation of an EIS and is not without precedent.

Public Availability

Final Environmental Assessment – Finding of No Significant Impact

A notice of FONSI availability will be mailed directly to interested parties and the FONSI will be posted on the Refuge website.

Proposed Action

The Proposed Action initiates an exchange of land between the Service and The Fells with Audubon acting as an intermediary. The Fells would obtain title to approximately 83.72 acres (+/-) of Refuge property to include the buildings, gardens, parking lot, and access road. A deed restriction held by the New Hampshire Division of Historical Resources would ensure that the historic characteristics that made the facilities eligible for the National Registry would be conserved by future owners. In exchange, the Service would acquire a 727 acre(+/-) tract of land that has an equal or greater appraised price with higher wildlife values for addition to the Lake Umbagog National Wildlife Refuge headquartered in Errol, New Hampshire. Because the 727-acre tract appraises for more than the \$390,000 value of the Refuge land, funds from the Migratory Bird Conservation Fund or the Land and Water Conservation Fund could be used to make up the difference to purchase the property for the Lake Umbagog Refuge. The property being considered by the Service for acquisition has already been approved for purchase and has been evaluated in compliance with the National Environmental Policy Act of 1969, as amended. The Service would retain title to the southern half of the Refuge comprising approximately 79.61 acres (+/-).

Alternatives

Four alternatives to the Proposed Action were identified and evaluated. Three of these alternatives were considered then eliminated from detailed analysis. These included sale of the John Hay National Wildlife Refuge to Fells. This alternative was dropped because it would not fulfill the wishes of the Alice Hay who donated the property, in part, as a sanctuary for wildlife, and because outright sale would require specific Congressional authorization. The second alternative considered was sale of the property containing the estate and infrastructure. This too would require Congressional action. The third alternative eliminated from detailed analysis was adding Service staff with base funding to the Refuge. This was not considered further because the National Wildlife Refuge System, including the Northeast Region, is experiencing budget shortfalls that are necessitating staff reductions. Adding a new position would be counter to budget realities. The No Action Alternative would continue current administration and management. The Fells would run the day to day operations under an existing Memorandum of Understanding that would be brought up to date. Maintenance and restoration of the estate would depend primarily on fundraising by The Fells and special Congressional appropriations. Experience has shown that not all the potential fundraising activities meet the tests of appropriateness and compatibility, required on all National Wildlife Refuges.

Significance of Potential Impacts of the Proposed Action

To determine whether the Proposed Action or the alternatives have the potential to cause significant environmental effects, the potential impact of two actionable alternatives on human and natural resources was evaluated. This impact analysis is found in Chapter 3 of the EA and is summarized for the Proposed Action below.

Trust Resources

There would be little difference from the existing situation. There are no known federally threatened or endangered species that use the Refuge. Migratory bird habitat would be little changed under the Proposed Action, as the best habitat would still be federally owned and managed by the Refuge. A Habitat Management Plan will be completed following completion of the Refuge’s Comprehensive Conservation Plan that will guide management for a fifteen-year period. Because most of the property retained as the Refuge is in the viewshed of the estate, vegetative management would be conservative.

The effects on trust resources would be minimal.

Facility Maintenance and Restoration

The Fells would hold title to the property that contains the buildings and some of the roads. They would not have to secure authorization from the Service to make needed repairs or commence restoration, but would still be subject to the requirements of the New Hampshire State Preservation Officer for the buildings and facilities on the National Register of Historic Places.

There should be a beneficial effect on facility maintenance and restoration once The Fells obtains fee title.

The Fells Activities

The Fells would not be subject to federal policy pertaining to public use on national wildlife refuges in their activities on the 83.72 acres (+/-) to be exchanged. Their range of activities would still be governed by their commitment to history, horticulture, and the environment. However, they could engage in activities that meet their mission, but are not considered appropriate and compatible on a National Wildlife Refuge.

Overall, impacts to The Fells activities would be reduced on property containing the John Hay Estate.

Local Economy

There may be more revenues available for restoration and maintenance which could benefit the local economy. However, the effect on the overall economy of the area would be minimal.

Public Use Opportunities

Refuge visitors could continue to engage in wildlife observation and photography, environmental education and interpretation, and passive recreation such as hiking from dawn to dusk throughout the year on the property retained as the John Hay National Wildlife Refuge. Access management, including open hours, fees, and allowed activities, on the northern 83.72 acres (+/-) which includes most of the buildings and roads would fall under the jurisdiction of The Fells. This group has a long history of managing public use and this would not be expected to change substantially following the land exchange.

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Access to both properties would be from a common parking lot near the gate house shared by The Fells and the Refuge.

Changes in public uses would be minimal under the Proposed Alternative.

Refuge Property Disposal and Acquisition

Property disposal would be via an exchange for land to be added to the Lake Umbagog Refuge. The property received would have to be at least the same appraised value and contain higher quality wildlife habitat. An equalization payment would be made should the value of the land received by the Service be higher than the exchanged Hay Estate. The Service is authorized to pursue exchanges of Refuge property if the land acquired is at least equal in appraised value and has higher value for wildlife.

The effects of the exchange would be minimal and potentially beneficial to wildlife resources.

Determination: Based on the information in the EA as summarized here, the Service determines that the Proposed Action is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, 42 U.S.C. 4321 et seq. Therefore, an EIS will not be prepared and the Service is issuing this FONSI for the Proposed Action.

Marvin Moriarty
Regional Director
Northeast Region

Date

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Chapter 1: Purpose and Need for Action

A. Background

The United States Fish and Wildlife Service (Service) is the primary federal agency responsible for conserving, protecting, and enhancing the Nation's fish and wildlife resources. The Service shares this responsibility with other federal, state, local, and private entities; however, the Service has specific trustee responsibilities defined in laws and treaties passed or ratified by the Congress that include migratory birds; threatened and endangered species; certain fish and marine mammals.

The John Hay National Wildlife Refuge (Refuge) located in Newbury, New Hampshire on the eastern shore of Lake Sunapee was donated to the Service on December 11, 1972 by Alice Hay. Two deeds separated the estate into separate life-use reservations. The first deed was for a 143 acre parcel including the main house, which contained a life-use reservation for Mrs. Hay. The second deed for a 20.5 acre parcel included a lakeshore cottage, boat house and dock, and provided a life-use reservation on that tract for Mr. Hay's children, John Hay and Adele Hay Fath. The Service agreed not to post the property until the termination of the respective life-use reservations. Mrs. Hay's life-use estate ended upon her death in 1987. Her children turned their life-use over to the Service in 1999.

It was recognized from the beginning that this Refuge did not fit the typical model of a National Wildlife Refuge. In fact, the Service Director's letter accepting the donation noted that the property was "not to be considered in the traditional sense as a National Wildlife Refuge" and that its best use was as a "wildlife-oriented public recreation and student environmental field study area." Approximately half (83.72 acres) of the 163.33 acre Refuge contains the estate house, gate house, carriage house, and formal gardens, all of which were listed on the National Register of Historic Places in 1999.

The mismatch of the nation's premier wildlife management agency being responsible for an historic estate over the past 36 years has been evident. The Service has limited resources and expertise available to conserve and rehabilitate historic structures. The buildings need to be maintained and the Service has not had sufficient resources to stem the normal damages caused by age and decay. The Fells, the friends group at the John Hay National Wildlife Refuge, also has an interest in conserving the estate, but its ability to generate revenues from the property is limited by federal and national wildlife refuge policies.

The 1972 deed by which the Service acquired the property mandated that the property be "...open to the public,..." but the deed did not specify terms, hours of operation, etc. Administratively, the Refuge has been an unstaffed satellite station of the Great Bay National Wildlife Refuge and more recently, the Silvio O. Conte National Fish and Wildlife Refuge without permanent or temporary staff to facilitate, manage, monitor, or evaluate public uses. The Fells has provided visitor use services at the Refuge since 1997 under a Memorandum of Understanding with the Service. The Fells maintains gardens,

grounds, trails, and buildings, provides on-site tours of the Main House and gardens, and offers an array of educational programs in history, horticulture and the environment.

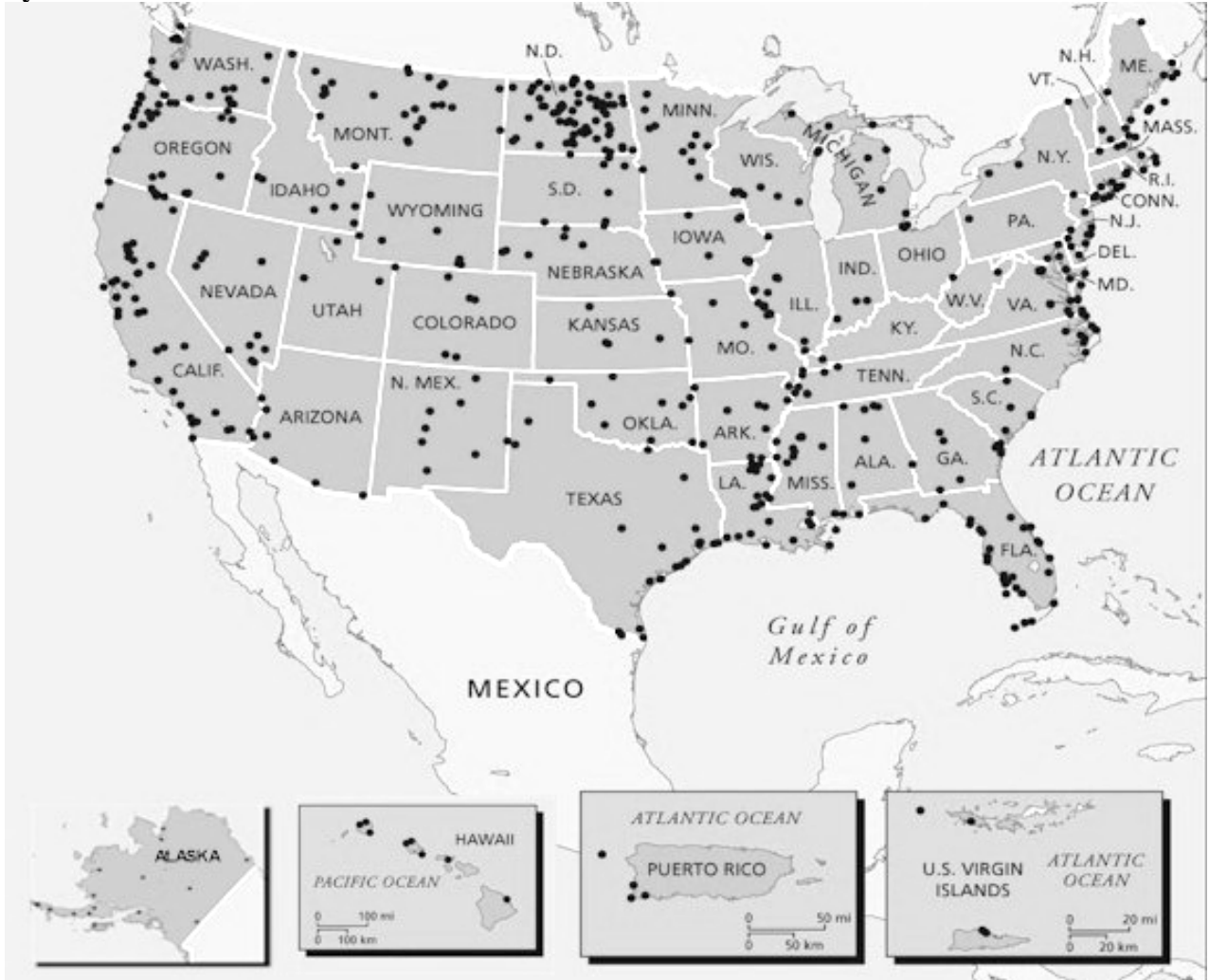
In particular, The Fells, whose primary mission focuses on history, horticulture, and the environment, would like to supplement revenues with suitable fundraising events that may not be appropriate or compatible at a national wildlife refuge. Solicitation of contributions using the estate facilities are subject to federal regulation 5 CFR § 2635.808, which precludes fundraising activities in facilities or property administered or leased by the Government, unless permitted by law. In the past, non-wildlife related activities including a variety of social gatherings, another potential source of income, have not been found to comply with Refuge Use Policies governing Appropriateness (603 FW 1) and Compatibility (603 FW 2).

B. National Wildlife Refuge System

1. National Wildlife Refuge System - The Service operates 547 national wildlife refuges that include about 100 million acres (Figure 1-1). The Refuge System represents the largest investment in land specifically managed for plants, fish, and wildlife in the world. The 80 percent of these lands are located in Alaska.

The first national wildlife refuge was established on March 14, 1903 when Pelican Island Refuge was authorized by President Theodore Roosevelt. A hundred years in the making, the Refuge System is now a network of exceptionally high quality habitats that benefits plants, fish, and wildlife and also provides a variety of unparalleled opportunities for outdoor experiences for all Americans. Land that is invested in the Refuge System enhances and helps maintain the quality of both the natural and human environment. National wildlife refuges are special places where the Service and its partners restore, protect, and manage habitat for America's fish and wildlife resources. Today there is at least one refuge in each of the 50 states and within a one-hour drive of every major metropolitan area.

Figure 1-1: National Wildlife Refuge System



National Wildlife Refuge System – The Mission

“The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations.”

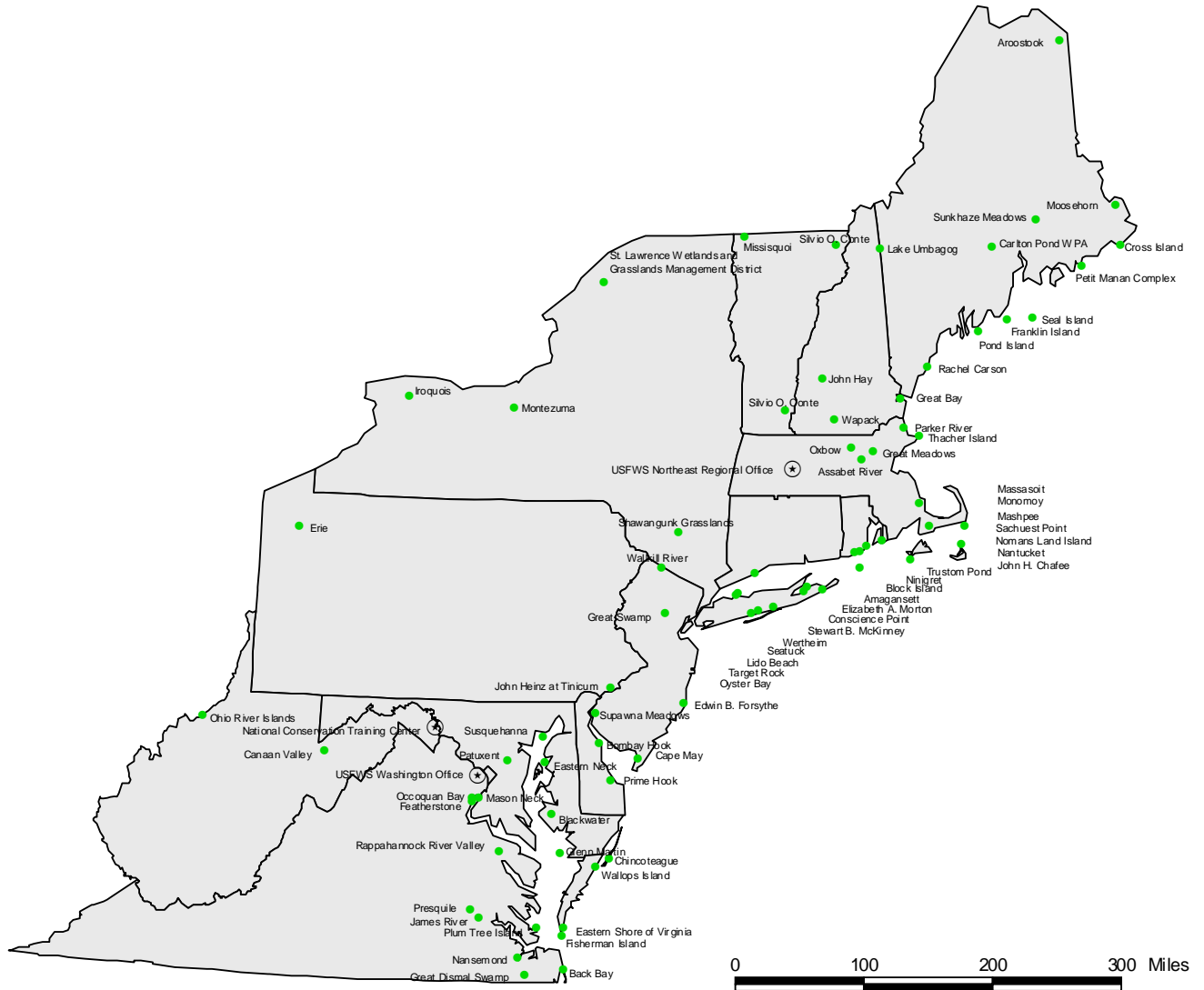
The National Wildlife Refuge System (System) occupies a unique niche among the federal land management agencies. Rather than having purposes based on scenic or historic values, or on the concepts of multiple use in both recreational or economic terms, refuges focus on wildlife, and most often, those species held in trust for all Americans.

Refuges collectively provide homes for a diverse array of wildlife including about 700 species of birds, 220 mammals, 250 reptile and amphibians, 200 fish, and 250 threatened

and endangered species. Each year millions of migrating birds use refuges as stepping stones to rest and feed as they migrate thousands of miles during the fall and spring migration. National wildlife refuges are far more than havens for native plants and animals. In fact, more than 40 million visitors per year are welcome on 98 percent of the refuges where they are encouraged to participate in a variety of public use activities designated by the National Wildlife Refuge System Improvement Act in 1997 as priority public uses such as hunting, fishing, wildlife observation and photography, interpretation, and environmental education.

2. Northeast Region – Region 5 of the Service encompasses thirteen states from Maine to Virginia (Figure 1-2). More than 66 million people, about 25 percent of our Nation’s population, live in this area. There are about 70 refuges in the Northeast Region that range in size from 3.8 acres to 109,709 acres. While the Region accounts for 14 percent of the 547 refuges in the System, these refuges include less than one half of one percent of the 100 million acres. Region 5 refuges support approximately 16 percent of the annual compatible public use on national wildlife refuges. These unique characteristics in Region 5 create tremendous challenges and opportunities for managers to showcase refuges while providing for compatible public use of nationally significant fish and wildlife habitat in a way that does not negatively impact fish and wildlife populations or refuge habitats.

Figure 1-2: Northeast Region



3. John Hay National Wildlife Refuge - John Hay (1838-1905) was an Illinois-born attorney who achieved prominence as a personal secretary for President Abraham Lincoln. He later served as Ambassador to Great Britain for President William McKinley and as Secretary of State for both McKinley and Theodore Roosevelt. John Hay also was a noted author who co-wrote the 10-volume treatise *Abraham Lincoln: A History*.

From 1891 until his death in 1905, John Hay summered in a cottage he built on the eastern shore of Lake Sunapee. He named the estate “The Fells” after the Scottish word for rocky upland pasture. After his death, his son Clarence and daughter-in-law Alice transformed the property into an American estate and working farm. It served three generations of the Hay family as a summer residence.

Alice Hay inherited the estate from her husband, Clarence in 1969. Mrs. Hay worked to preserve and protect the estate from development and investigated various organizations with the intent of donating the property to ensure future protection. In 1971, at the suggestion of Charles Webster of the Horticultural Society of New York, she contacted Northeast Regional Director Richard Griffith regarding donation of the property to the U.S. Fish and Wildlife Service. Following inspection of the property, it was recommended for inclusion in the National Wildlife Refuge System for its potential as a national center for wildlife-oriented education and recreation under authority of the Migratory Bird Conservation Act (45 Stat. 1222). The state enabling legislation was the New Hampshire Revised Statutes Annotated 1955, title IX, Chapter 121, Section 1:1-1.8. In 1972 the Service's Land Acquisition Advisory Committee recommended the approval and acceptance of the donation.

Mrs. Hay presented two deeds to Nathaniel Reed, Assistant Secretary of the Interior for Fish, Wildlife and Parks, on December 19, 1972. These deeds called for the property to be used to establish a national wildlife refuge, “...as a migratory bird and wildlife reservation to be known as the John Hay National Wildlife Refuge...” The deeds separated the estate into two life-use reservations. The first was a 143 acre parcel including the main house, which contained a life-use reservation for Mrs. Hay. The second deed for a 20.5 acre parcel included a lakeshore cottage, boat house and dock and provided a life-use reservation on that tract for Clarence and Alice Hay's children, John Hay and Adele Hay Fath.

Mrs. Hay passed away March 19, 1987. Her life-use on 143 acres of the estate terminated at that time, initiating management by the Service. During the next few years many meetings and discussions took place to determine the best approach to manage the buildings and property.

The Service began its ownership tenure by contracting with the estate's caretakers to continue maintenance of the grounds and facilities for one year. During the next 19 years the Service worked with a number of public and private entities to manage the property and facilities. Highlights include:

1989

- A volunteer advisory committee was formed.
- A Special Use Permit was issued to the Society for the Protection of New Hampshire Forests (Society) to conduct public programs at the Refuge.

1990

- The Service contracted with the National Park Service for a Historic Structures Report. The report concluded that several buildings were in need of repair, and later that year Senator Warren Rudman secured a \$491,000 appropriation for restoration.

1991

- The Service and the Society signed a Memorandum of Understanding (MOU) delineating educational uses at the Refuge.

1992

- The John Hay Commission was created by Governor Judd Gregg to promote protection of the historic facilities, engage in fund-raising activities for The Fells, accept contributions on behalf of the state, and cooperate with the Refuge and other partners.
- Volunteers formed Historic Landscape, Historic Preservation, and Education committees to assist at the Refuge.

1993

- New Hampshire State Parks (State Parks) signed a MOU with the Service to operate the Refuge.
- State Parks signed a MOU with the Society to deliver educational programs.
- Lake Sunapee Protective Association and the Society contributed \$24,000 to renovate the gate house into a headquarters building.
- The Historic Landscape committee submitted the “Cultural Landscape Policies and Philosophies” report to the Service, State Parks, and John Hay Commission. The report was designed to guide work on the grounds and gardens.

1994

- State Parks completed work on the main house restrooms and installed a new roof.

1995

- The National Garden Conservancy (Garden Conservancy) adopted the gardens as a species restoration project and signed a MOU with State Parks.

1996

- The Fells were formed as a non-profit organization dedicated to the continuance of on-site education, short- and long-term programming objectives, and oversight of daily operations.
- State Parks relinquished responsibility at the Refuge.

1997

- The Fells, the Refuge friends group, signed an MOU with the Service that authorized them to manage 62 acres, including routine maintenance of all buildings, grounds, and other facilities, and provide public education programs.

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- The Fells signed additional MOUs with the Society, Lake Sunapee Protective Association, and the Garden Conservancy for management and programs.

1998

- John Hay informed the Service that he and Adele wanted to relinquish their 20 acre life estate.

1999

- The estate buildings, grounds, and gardens were listed in the National Register of Historic Places.
- A Station Management Plan was completed and approved for the Refuge. The plan included five management objectives.
 1. Protect and manage the Refuge forest habitat and wildlife populations.
 2. Protect and manage historical resources.
 3. Work with cooperators to protect resources and to develop public use programs.
 4. Protect human health and safety.
 5. Develop public use programs.
- Senator Judd Gregg secured a \$1.0 million appropriation to remediate moisture damage to the main house, gate house, and carriage house. This work was completed in 2001. Unfortunately, the carriage house collapsed early in 2001, obviating the need for restoration.

2001

- The Fells implemented a vista restoration project based on the “Management Strategy for Views, Vistas, and Woodland Edges at The Fells, Newbury, New Hampshire,” prepared by Garden Conservancy Fellow, Marion Murray.

2002

- Senator Judd Gregg secured a \$150,000 appropriation to restore the collapsed carriage house.

4. The Fells - Volunteers from this refuge friends group have been instrumental in keeping the Refuge open to the public since the Service acquired the property. When State Parks relinquished their role, The Fells were formed. Under a MOU signed in 1997, they assumed responsibility to manage 62 acres that includes the gate house, main house, nursery, gardens, lawns, and roads. They also oversaw public visitation, interpretation, education, fund raising, and staffing. The John Hay Commission remained active serving The Fells in an advisory, fund-raising, and support capacity.

Since their inception in 1997, The Fells have expanded educational programs, raised funds to support their efforts, expanded membership to over 800, and enlarged their staff to seven. They also initiated a summer intern program to help during the busy summer seasons.

Over the years the group has raised over \$1.0 million from private donors for restoration. Annually, they hold four to six major events. Their fundraising efforts bring in about \$225,000 from donations and revenues. Friends' investments in the Refuge include:

- Conversion of the garage into a conference room for educational programs;
- Painting the gate house to halt deterioration;
- Improvement of the parking area;
- Clearing vegetation from historic vistas at the main house;
- Renovation of the courtyard for outdoor educational programs and plant sales;
- Purchase of a lawn tractor to maintain the grounds;
- Reconstruction of the barn;
- Installation of a dehumidifier system in the main house;
- Substantial improvements to the gardens;
- Hiring a staff consisting of: an executive director, landscape manager, rock garden specialist, nursery director, membership/outreach director, and bookkeeper.

Although The Fells and staff have been successful in generating funds to support the daily activities, substantial investments are still needed to bring the aging facilities up to acceptable standards: period furniture is needed for the main house; the cottage is not fully usable; an expanded parking lot with two ingress/egress points is necessary to address safety concerns; along with many other identified corrective measures have been identified.

C. Purpose and Need for Action - The purpose and need for this action is to fulfill the original wishes of the Hay family of preserving the historic integrity of the estate while still meeting their desire for a “migratory bird and wildlife reservation” managed as a part of the National Wildlife Refuge System.

The proposed federal action consists of an exchange of approximately 83.72 acres located on the northern half of the estate, including all buildings, formal gardens, and other infrastructure for 727 acres of land of equal or greater economic value and greater wildlife values, that will be incorporated into the Lake Umbagog National Wildlife Refuge in Errol, New Hampshire. The land under consideration for addition to the National Wildlife Refuge System is high quality wildlife habitat approved for purchase and in compliance with requirements of the National Environmental Policy Act of 1969, as amended.

New Hampshire Audubon (Audubon) would act as an intermediary in the transaction by acquiring and holding the prospective refuge property until the exchange can be

consummated. An equalization payment would be made if the property acquired by the Service is of lesser value than the Hay Refuge property,

The refuge property with easements being considered for exchange out of the System has an appraised and approved value of about \$390,000. The remaining 79.61 acres of relatively undeveloped property would remain as the John Hay National Wildlife Refuge.

This transaction could give The Fells the latitude necessary to generate sufficient and sustainable funding for the conservation and restoration of the buildings and gardens via fund raisers and grants, rather than depending on federal appropriations and one-time contributions. It also could better serve the National Wildlife Refuge System by adding important habitat to an existing refuge and retain that portion of the John Hay Refuge where wildlife-dependent, priority public uses such as wildlife observation and photography, fishing, environmental education and interpretation could take place on hiking trails and on the shore of Lake Sunapee.

1. Public Involvement - The Service presented a conceptual plan for a land exchange to the Newbury, New Hampshire Select Board on May 15, 2006. The board was receptive to learning more details about the proposal and agreed that a public meeting was in order. A public notice advising the public of the concept was published in local newspapers following that meeting. A public open house with 24 participants was held in Newbury, New Hampshire the evening of June 28, 2006. Notices of this meeting were publicized in the Argus Champion, a local weekly paper and the Concord Monitor, a newspaper of wide circulation in southern and central New Hampshire. Elected officials and landowners that abut Refuge property were notified via mail.

2. Decisions Needed and Schedule - The Regional Director will use this environmental assessment to make two decisions. The first will be to choose an alternative for implementation. The second, required by the National Environmental Policy Act of 1969, will be to determine whether the selected alternative has a significant impact on the quality of the human environment. An affirmative decision on the second question will require the Service to prepare an Environmental Impact Statement. A final determination will not be made sooner than thirty days from issuance of this document.

Comments should be addressed to:

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3. Issues and Concerns - Several issues and concerns related to the proposed exchange have surfaced during both the internal and public scoping processes.

- **Trust Resources** - The northern half of the Refuge is primarily a historic site; whereas, the southern half is essentially undeveloped wildlife habitat. The property identified for exchange into the Refuge is approved for acquisition based on wildlife values and capability to contribute toward Refuge Objectives.
- **Facility Maintenance and Restoration** - The buildings, grounds, and other infrastructure need to be maintained and functional to meet the intentions of the Hay family, the expectations of the public, and the goals of the National Register of Historic Places. All the buildings need restoration work.
- **Friends Group Activities** - The Fells' primary interests are the history of The Fells and the estate infrastructure. The Fells would like more independence in operating the facilities, generating and retaining revenues, setting entrance fees, and accountability.
- **Local Economy** - The annual Revenue Sharing payment made by the Service to the Town of Newbury will be reduced based on the 2005 appraisal which lowered the value of the property from \$3,715,600 to \$532,000 based on acceptance of the property on the National Register of Historic Places. Exchanging 83.72 acres out of the System will further lower the revenue sharing payments. There also would be changes in public use of the facilities and revenue generation by The Fells, which could have an effect on the local economy.
- **Public Use Opportunities** – Most public use is centered on the historic facilities with little connection to the Refuge or the System. An exchange might allow the Refuge to focus more attention on priority public uses, if not encumbered by the ongoing maintenance and restoration needs of the estate.
- **Refuge Property Disposal** – It is a Service policy to consider land for exchange that is of equal or greater monetary value and higher wildlife value. An equalization payment would be made by the Service should the land acquired be of greater monetary value than that disposed of by the Service.

D. Compliance with Federal Laws and Policy – The authority for this proposal is the National Wildlife Administration Act of 1966, (16 USC 668d(a) (3)), which authorizes the Secretary of Interior to acquire lands or interests therein by exchange for acquired lands or public lands under his/her jurisdiction that he/she finds suitable for disposition. The Service also would comply with the following laws and regulations prior to implementation.

- **Endangered Species Act of 1973, as amended** – A Section 7 consultation, pursuant to the Endangered Species Act is required to ensure the project would not affect the continued existence of any endangered or threatened species in the areas considered for exchange or destroy or adversely modify critical habitats.

- **National Historic Preservation Act of 1966, as amended** – Section 106 of the act requires Federal agencies to consider the effects of their undertaking on properties meeting the criteria for the National Register of Historic Places. The John Hay estate, including the gardens, is listed in the National Register of Historic Places.
- **Resource Conservation and Recovery Act of 1976 (RCRA)** - RCRA established a system for managing non-hazardous and hazardous solid wastes in an environmentally sound manner. Specifically, it provides for the management of hazardous wastes from the point of origin to the point of final disposal (i.e., "cradle to grave"). RCRA also promotes resource recovery and waste minimization. The mandates of RCRA will be assessed and complied with in any federal land transaction at the Refuge.
- **Executive Order 11988 of 1976 (Floodplain Management)** – This order directs federal agencies to avoid development in the floodplain unless it is the only practical alternative; reduce hazards and risks associated with floods; minimize the impact of floods on human safety, health, and welfare; and, restore and preserve the natural and beneficial values of the floodplain.
- **Executive Order 11990 of 1977 (Protection of Wetlands)** – Order 11990 directs federal agencies to minimize the destruction, loss, or degradation of wetlands; and preserve and enhance the natural and beneficial values of wetlands when a practicable option exists.
- **Archaeological Resources Protection Act of 1979** – Under this act, all archeological sites more than 100 years old (not just sites meeting the criteria for National Register) on federal land are to be protected and archeological investigations on federal land are conducted in the public interest by qualified persons.
- **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (94 Stat. 2767 et seq.), as amended** – The original act is better known as Superfund. In 1986, the Superfund Amendment and Reauthorization Act added a new section to clarify that federal facilities are subject to the same cleanup requirements and liability standards as non-governmental entities (42 U.S.C. 9612).
- **Refuge Revenue Sharing Act (16 U.S.C. 715s; 49 Stat. 383), as amended.** Section 401 of the Act of June 15, 1935, established the procedure for making certain payments to counties from revenues derived from the sale of products from refuges located in the county. Counties where the Service has purchased land will receive the greater of: 75 cents per acre; three-fourths of one percent of the appraised value of the land; or 25 percent of the net receipts of revenue produced from the land. Currently, the Service makes an annual revenue sharing payment to the Town of Newbury.

- **Migratory Bird Conservation Act of 1929 (16 U.S.C. 715-715r), as amended.** The Act establishes a Migratory Bird Conservation Commission to approve areas recommended by the Secretary of the Interior for acquisition with Migratory Bird Conservation Funds. The John Hay National Wildlife Refuge was acquired through donation under the authority of this act.
- **National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended.** This Act, (derived from sections 4 and 5 of Public Law 89-669 of October 15, 1966) constitutes an "Organic Act" for the National Wildlife Refuge System by providing guidelines and directives for administration and management of all areas in the system including wildlife refuges. Public Law 94-215, approved February 17, 1976, clarified that acquired lands or interests therein can be exchanged for acquired or public lands.

Chapter 2: Alternatives

A. Introduction

The National Environmental Policy Act requires that a range of reasonable alternatives be considered. The reasonable range of alternatives was derived from the Service's experience at the Refuge during the past 35 years, input from partners, cooperators, elected officials, and the public during the scoping process. In addition to the alternatives that were thoroughly analyzed, three more were eliminated from further consideration.

B. Alternatives Eliminated from Further Consideration

The three alternatives eliminated from detailed evaluation are described below.

1. Sale of the John Hay National Wildlife Refuge - The Refuge was incorporated into the National Wildlife Refuge System in 1972 fulfilling the wishes of Alice Hay. Under the deed, the estate will be held by the United States and its successors "...*exclusively for public use as an inviolate sanctuary for migratory birds, as a migratory bird and wildlife reservation to be known as the John Hay National Wildlife Refuge, and for other conservation purposes consistent therewith.*" Sale of the entire John Hay National Wildlife Refuge would be counter to the desires of Mrs. Hay and the Service is uniquely qualified to manage the specific trust resources identified in the deed, and associated compatible, wildlife-dependent public uses.

In addition, a 1976 amendment to the National Wildlife Refuge System Administration Act of 1966 commonly referred to as the "Game Range Act," directs that all areas in the National Wildlife Refuge System on or after January 1, 1975, "shall be administered by the Secretary through the United States Fish and Wildlife Service" and cannot be transferred or disposed of unless otherwise directed by Acts of Congress. Exceptions are provided for areas administered as part of the System pursuant to cooperative agreements and for transfer or disposal and exchange of acquired lands. Outright sale of the property would be contrary to this law in the absence of a Congressional mandate.

2. Sale of Property Containing the Estate Infrastructure - Under this alternative the Service would retain the majority of the property with higher wildlife values; however, it still would not meet the requirements of the Game Range Act without specific Congressional direction.

3. Add Refuge Staff and Funding - An Visitor Services Specialist would be stationed at the Refuge as specified in the minimum staffing level plan. The station would receive annual operation and maintenance funds through the Service's budget allocation process. The on-site Service employee would be responsible for overseeing the daily activities of The Fells, provide guidance and direction on environmental education, gift shop sales, activities, and events. Supervision would be the responsibility of Silvio O. Conte National Fish and Wildlife Refuge, headquartered in Sunderland, Massachusetts. This alternative is not realistic during these lean budgetary times. The Northeast Region leadership is currently implementing a workforce plan that will downsize refuge staff numbers in the Region by approximately 20 percent due to flat or declining budgets. The

Silvio O. Conte Refuge was targeted to lose three of 15 positions. Assigning a new staff person to the Refuge during a period when overall positions will decline is not reasonably feasible. Station operation funds are similarly limited in the Northeast Region. Unfortunately, the deteriorating condition of the estate buildings and gardens requires prompt action and capital to restore their condition or else they may not be salvageable. Adding operation funds to the Refuge would reduce funds available for other refuges resulting in elimination of other higher priority projects benefiting plants, fish, wildlife, and people elsewhere in the thirteen state Region.

C. Alternatives Including the Preferred Action

1. No Action Alternative (Status Quo) - Under this scenario the situation at the Refuge would remain the same. The existing Memorandum of Understanding with The Fells would need to be revised and brought up to date. The roles and responsibilities under Service ownership would need to be clarified, particularly as pertains to the estate buildings and gardens. The Fells would continue to be responsible for general maintenance of all buildings and gardens. Maintenance and improvements needed to conserve and restore the buildings and gardens would be retained in the Service's deferred maintenance backlog, with annual funding dependent on the priorities in the regional five-year action plan. An evaluation commissioned by The Fells in 1997 estimated at least \$708,000 was required to resolve, chronic problems including paint failure, drainage, electrical, plumbing, interior, and exterior deterioration. This figure is nearly a decade old and it is reasonable to assume the expenses would be substantially more today. Service funding to rehabilitate the estate would necessarily divert money from deferred maintenance activities on other refuges which typically would be spent on assets that directly or indirectly benefit the wildlife-related resources or activities (e.g. water control structures, refuge visitor contact stations, roads, trails).

The Fells would be authorized to conduct educational activities and operate the existing book store and gift shop. Their ability to raise funds, host non-wildlife related events and activities would be governed by Service laws, regulations, and policies and could be curtailed in an effort to ensure improved compliance with these mandates.

2. Exchange the Estate Infrastructure (Proposed Action) - This alternative initiates an exchange of land between the Service and The Fells with Audubon acting as an intermediary. The Fells would obtain title to approximately 83.72 acres (+/-) of Refuge property to include the buildings, gardens, parking lot, and access road (Figure 2-1). A deed restriction held by the New Hampshire Division of Historical Resources would ensure that the historic characteristics that made the facilities eligible for the National Registry would be conserved by future owners. In exchange, the Service would acquire a 727 acre(+/-) tract of land that has an equal or greater appraised price with higher wildlife values for addition to the Lake Umbagog National Wildlife Refuge headquartered in Errol, New Hampshire (Figure 2-2). Because the 727-acre tract appraises for more than the \$390,000 value of the Refuge land, funds from the Migratory Bird Conservation Fund or the Land and Water Conservation Fund could be used to make up the difference to purchase the property for the Lake Umbagog Refuge. The property

being considered by the Service for acquisition has already been approved for purchase and has been evaluated in compliance with the National Environmental Policy Act of 1969, as amended. The Service would retain title to the southern half of the Refuge comprising approximately 79.61 acres (+/-).

As new owners of the Hay estate infrastructure, The Fells would assume responsibility for maintenance and restoration costs consistent with the historic preservation easement (Appendix A), but also would have more flexibility in fund raising, especially on the estate grounds. The Service would continue to manage the 79.61 acres (+/-) located south of the house as the John Hay National Wildlife Refuge. This portion of the estate has the better wildlife habitats and opportunities for wildlife-dependent public uses.

Figure 2-1: Proposed Exchange - John Hay Refuge (Outgoing).

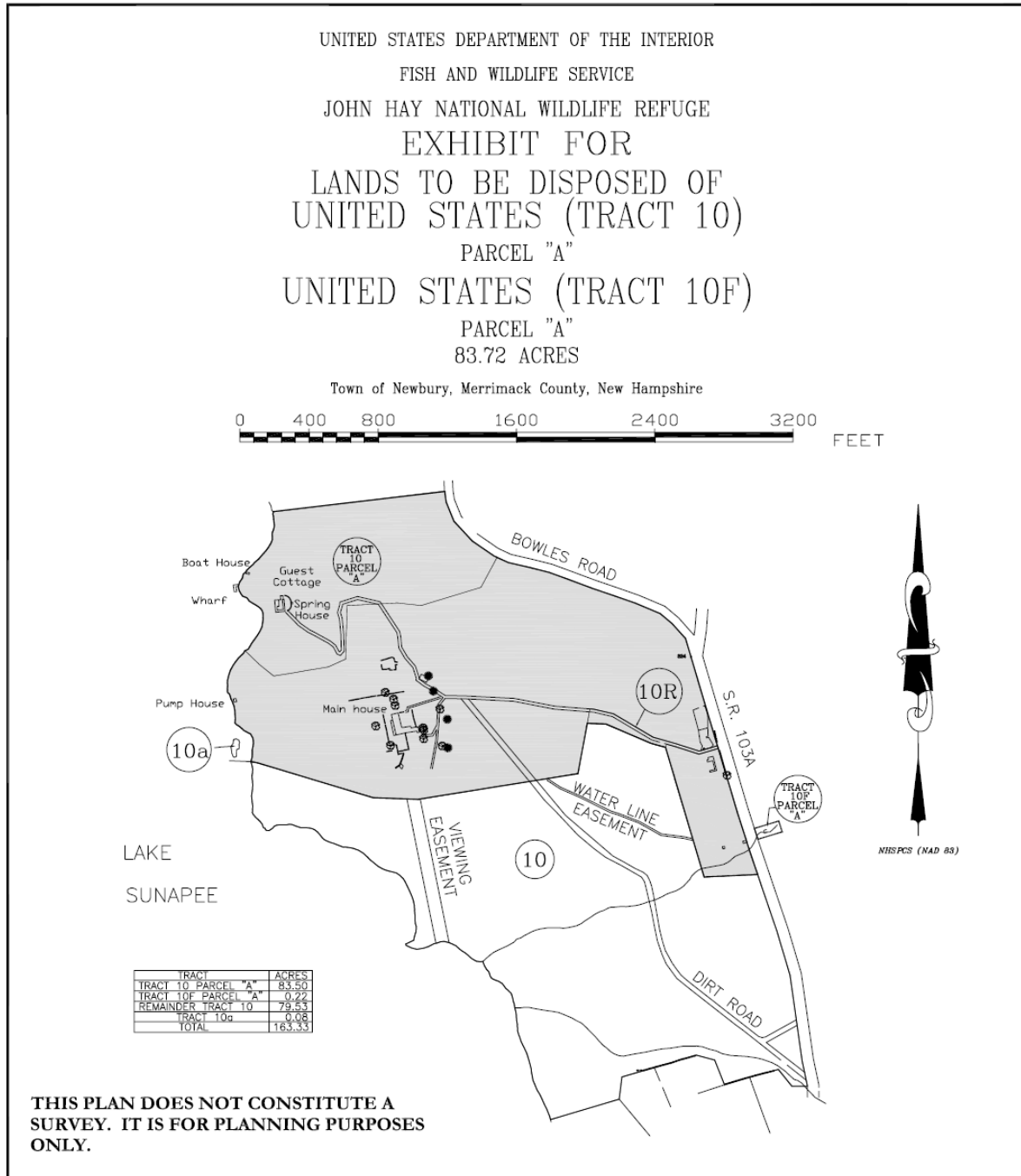


Figure 2.2: Proposed Exchange - Lake Umbagog Refuge (Incoming)

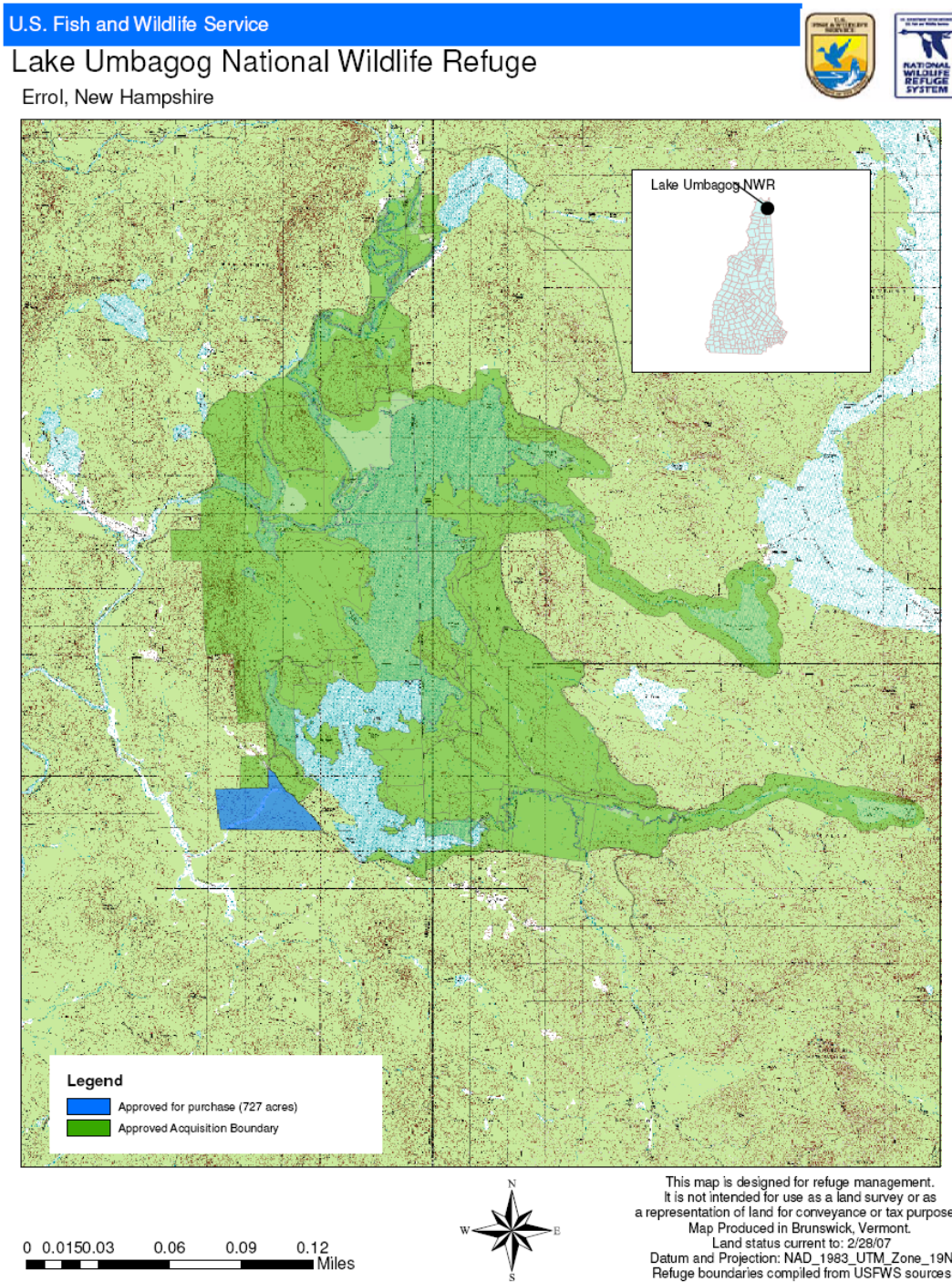


Table 2-1: Issue-based comparison of the alternatives.

Issue	Alternative 1	Alternative 2
Trust Resources	The Service is responsible for conserving federal trust resources, primarily migratory birds and their habitats, on the entire 163.33 acre (+/-) Refuge consistent with the deed restrictions and applicable laws governing the administration of National Wildlife Refuges. No change from the current situation would be anticipated beyond what is prescribed in the law.	The Service would retain management responsibility on the 79.61 acre (+/-) southern portion of the estate. This area is least affected by the estate. The Fells could own the 83.72 acre (+/-) estate acquired through the exchange and the land would still be subject to the deed restriction. “...as an inviolate sanctuary for migratory birds.”
Facility Maintenance and Restoration	Work on the buildings and other infrastructure would be achieved through the Service’s normal budgetary process using deferred maintenance or construction funds. The Fells could continue to contribute funds to the building preservation and educational programming as revenues permit.	<p>The Service would be responsible for the limited infrastructure on the retained 79.61 acres (+/-) including the John Hay Ecology Trail. These lands would continue to be administered as a part of the National Wildlife Refuge System.</p> <p>The Fells could assume responsibility for 83.72 acres (+/-) which includes the main house, gate house, gardens, and cottage, all located on the northern portion of the Refuge. The existing limitations on fundraising due to its status as a Refuge would be eliminated which could improve the ability of The Fells to assemble additional financial resources for maintenance and educational purposes.</p>

<p>The Fells Activities</p>	<p>All of the fundraising activities on the Refuge would be subject to the federal laws, regulations, and Service policies which restrict may limit the amount of funds that may be raised and made available for maintenance and educational purposes.</p>	<p>Activities on the 83.72 acres (+/-) property acquired by The Fells would not have to meet federal regulations governing fundraising and Service appropriateness and compatibility standards; thus weddings, private celebrations, and other revenue generating activities that are not wildlife-related uses could be hosted on the estate. Events or outings sponsored by The Fells on the 79.61 acres (+/-) retained by the Service as a part of the John Hay Refuge would still have to meet the applicable laws, regulations, and policy requirements.</p>
<p>Local Economy</p>	<p>In 2006, the Refuge Revenue Sharing Payment for the 163.5 acre (+/-) Refuge was based on the 1999 appraised value of \$3,715,600. This value was reduced to \$532,000 by a 2005 appraisal which extinguished 85 percent of the equity based on the development restrictions of the National Register of Historic Places designation.</p> <p>The Service’s payment in 2006, under the old appraisal, was \$12,971. It is estimated that the full entitlement payment based on the current appraisal would be approximately \$3,990 in 2007.</p>	<p>The Refuge Revenue Sharing Payment on the 79.61 acres (+/-) of relatively undeveloped land retained by the Service would be approximately \$1,305.</p> <p>The Fells could host more revenue-generating activities on the estate for maintenance activities and educational programming. An increase in expenditures by The Fells would contribute to the local economy. Expected visitation and revenues would increase because The Fells could host a wider variety of events.</p>

	<p>Federal maintenance and restoration funding has typically come from Congressional earmarks. These funds tend to be one-year funds that are not renewed, so money infused into the local economy has been beneficial, but sporadic. Visitation and fees generated by The Fells could remain stable.</p>	
<p>Public Uses</p>	<p>Public uses would continue to include wildlife observation and photography, environmental education and interpretation, and other activities appropriate and compatible with the mission of the System and purposes of the Refuge.</p>	<p>Public uses on the 79.61 acres (+/-) of Refuge land retained by the Service would be the same as Alternative 1. The Fells would manage public uses on the exchanged property (+/- 83.72 acres) and not be subject to the Service’s appropriateness and compatibility policies. The 727 acres (+/-) proposed for acquisition at the Lake Umbagog Refuge would comply with all laws, regulations, and policies governing the administration of National Wildlife Refuge.</p>
<p>Refuge Property Disposal</p>	<p>No land exchange would be considered or offered.</p>	<p>Refuge land would be exchanged for property that is of equal or greater monetary value and higher wildlife value. An equalization payment would be made by the Service should the land acquired be of greater monetary value than that disposed of by the Service.</p>

Chapter 3: Affected Environment

A. Introduction

This chapter describes the existing natural and human environment at the John Hay National Wildlife Refuge that potentially could be affected by the proposed federal action. The information serves as the baseline for comparing the consequences of implementing the alternatives compared in Chapter 4: Environmental Consequences.

B. Physical Environment

This section presents information about the climate, geology, hydrology, soils, and land use at the Refuge and in the local vicinity.

1. Location - The Refuge is located in the Town of Newbury, Merrimack County, New Hampshire along the eastern shore of Lake Sunapee (Figure 3.1). Lake Sunapee is the fifth largest lake in the state at 4,090 acres. An outlet on the western shore forms the headwaters of the Sugar River which is a tributary of the Connecticut River.

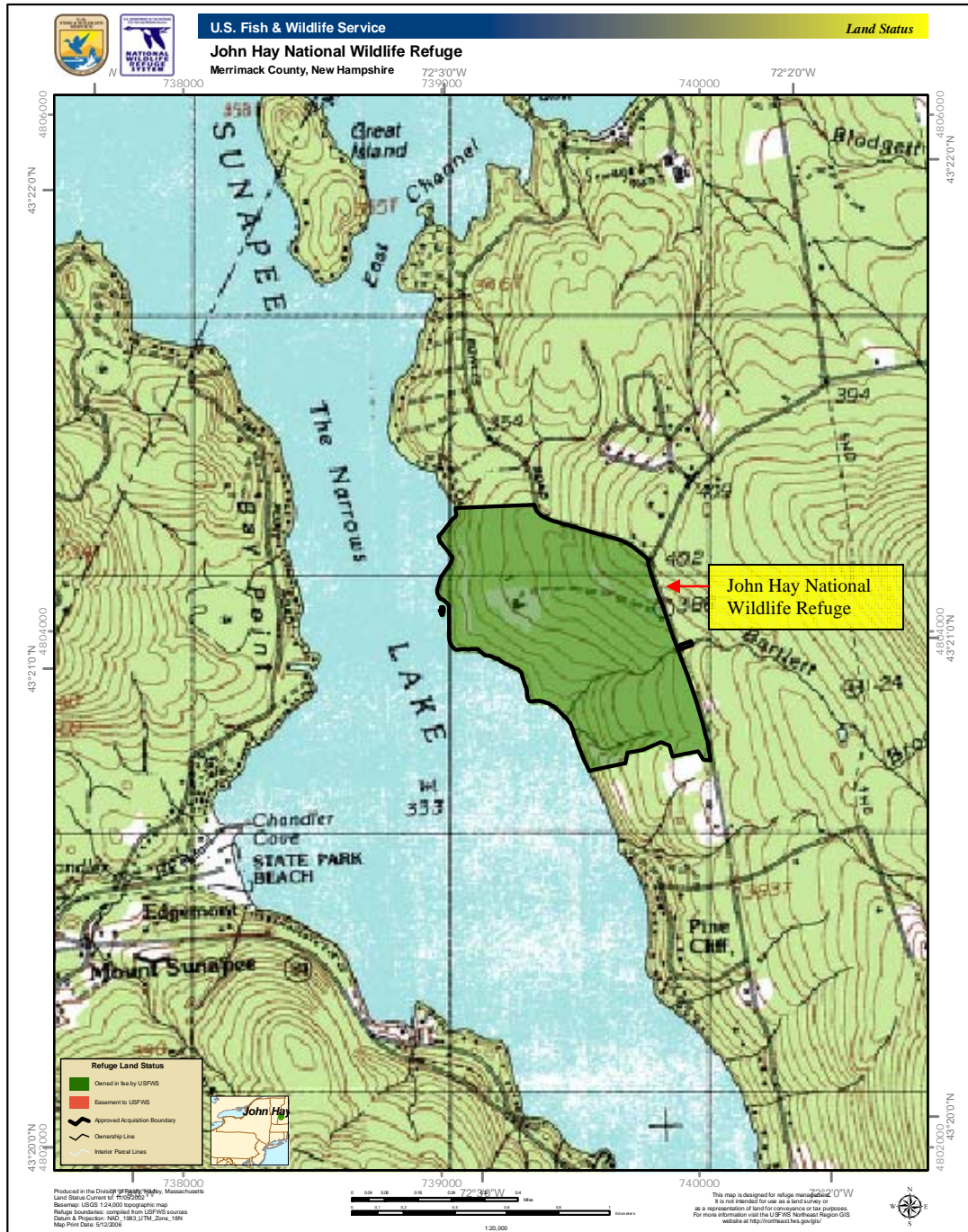
2. Climate - New Hampshire has a moist continental, mid-latitude climate with warm to cool summers and cold winters. Daily and seasonal temperatures can vary widely, depending on proximity to the ocean, mountains, lakes, or rivers. Winter is typically cold with average temperatures ranging around 19 degrees Fahrenheit. The cold temperatures and humidity bring heavy, water-laden snow to all parts of the state. Nearby Mount Sunapee Ski Area receives an average of 100 inches of snow. Average summer temperatures are around 68 degrees Fahrenheit.

3. Geology - The Refuge lies in the Sunapee Uplands subsection which is characterized by isolated hills and peaks of hard, resistant rock (mostly granite) commonly referred to as monadnocks (Sperduto and Nichols 2004). Numerous small lakes and narrow valley streams are scattered throughout the area.

4. Topography and Hydrology - John Hay Refuge lies on the lower slopes of Sunset Hill, one of several hills rising east of Lake Sunapee. This lake and the surrounding hills form the headwaters of the Sugar River which emanates from the western shore of the lake in the Town of Sunapee. The Sugar River flows west along Route 103, eventually draining into the Connecticut River west of Claremont.

5. Soils - Soils at the Refuge and in the uplands of this region are typically shallow and stony, hence the name “The Fells.” These soils generally supported forest management, but were not suitable for most agricultural enterprises. Farming was primarily limited to river floodplains and other sites where soils are well-textured and fertile.

Figure 3-1: John Hay Refuge - Vicinity Map



6. Land Use - Lake Sunapee and the Mount Sunapee Resort draw vacationers and outdoor recreationists to the area year-round. Historically, farming and forest management were keys to the economic base, but these have given way to recreation and service industries. There is a trend toward more land being developed for yearlong and seasonal housing with a concomitant loss of more traditional land uses. The proximity to the Concord/Manchester population center places high recreational demands on the Lake Sunapee area. The Refuge contributes to the local outdoor recreation opportunities by offering visitors a chance to participate in wildlife observation and photography, environmental education and interpretation.

7. Minerals and Energy Resources - There are no developed energy resources, nor any known potential sources at the Refuge. There are no active mines or excavations on site; although, there may be some small gravel deposits.

8. Visual Resources - One of the reasons John Hay selected this property, along the shores of Lake Sunapee, was the scenic views of the lake and nearby Mount Sunapee. Although many of the historic fields that once surrounded the property have reforested since the early 1900s, a scenic vista of the lake from the mansion has been retained by periodic cutting to retard tree and shrub growth. This is an important aspect of the mansion because John Hay selected the location, at least partially based on the spectacular views.

9. Wilderness - The central features of the Refuge are the mansion, other buildings and infrastructure, gardens, and terraced lawns located on the northern half of the property which do not represent wilderness characteristics. The southern half of the Refuge contains a well house, a section of access road, and managed scenic corridors. The 163.33 acre (+/-) Refuge does not contain attributes worthy of a wilderness study area.

10. Water Resources - Refuge water resources include a domestic well for the estate, the small stream that runs through the rock garden, and Bartlett Brook which flows down the estate hillside into Lake Sunapee. Beech Brook has been stocked with salmon fry annually since at least 1990. Approximately one mile of the western boundary abuts Lake Sunapee, which is a public lake managed by the State of New Hampshire.

11. Wild and Scenic Rivers - The only naturally flowing drainage on the Refuge is Bartlett Brook, a small stream that does not warrant consideration as a Wild and Scenic River.

12. Noise - Noise at the Refuge is generally limited to vehicular traffic on State Route 103A which forms the eastern boundary, and recreational boaters on Lake Sunapee during the summer which forms the western boundary of the Refuge.

C. Biological Resources - Biological resources include plants, animals, and their interactive ecological processes.

1. Habitats - The Refuge is composed of uplands classified as transition hardwood-conifer forests (Sperduto and Nichols 2004). The northern hardwood forest formation is generally characterized by species with distributions corresponding to the eastern deciduous forest, although more northern species are often present, which is the case at the John Hay Refuge. Appendix B lists the 109 plant species that have been identified on the Refuge. Characteristic trees include American beech (*Fagus grandifolia*), yellow birch (*Betula alleghaniensis*), sugar maple (*Acer saccharum*), and hemlock (*Tsuga canadensis*). Red oak (*Quercus rubra*) and white pine (*Pinus strobes*) are present in the hardwood-conifer ecotone. A small stand of black gum (*Nyssa sylvatica*) on the lake shore is at the northern limits of its range. In contrast, the red spruce (*Picea rubens*) found here approaches its southern most extension. There are pocket of hemlock and spruce over 200 years old.

2. Birds - The mix of transitional forest, early succession, fields, and proximity to Lake Sunapee result in a good variety of bird life. Breeding bird surveys on the Refuge and adjacent conservation land owned by the Society for the Protection of New Hampshire Forests and Audubon Society of New Hampshire have confirmed 77 species, including fifteen warblers (Appendix C). Of the total suite of birds found here, the wood thrush, chestnut-sided warbler, black-throated blue warbler, blackburnian warbler, and Canada warbler are identified as Priority Bird Populations for Physiographic Area 27 – Northern New England by Partners in Flight.

3. Mammals - Mammals typical of upland woods and fields are found on the property: white-tailed deer, black bear, mink weasel, raccoon, fox, otter muskrat, fisher, hare, gray and red squirrels, porcupines, striped chipmunk, and numerous species of mice, voles, and shrews. Although not confirmed, bobcats probably wander onto the Refuge.

4. Amphibians and Reptiles - No detailed surveys have been completed, but wood frogs and spotted salamanders reside on the Refuge.

5. Threatened and Endangered Species - No federally listed species reside on the Refuge.

D. Cultural and Archaeological Resources - The Refuge is nationally important as the summer home of John Hay during the time he was ambassador to Great Britain and Secretary of State (1891-1905) and is the only remaining residence associated with Mr. Hay's adult life. The property also has local prominence as an excellent and virtually unaltered example of an early twentieth century summer estate. In recognition of its importance, the estate and gardens were listed on the National Register of Historic Places in 1999.

1. Buildings - Three original buildings remain on the property. The barn was rebuilt after the original was destroyed during a storm a several years ago. A boat house on the shore of Lake Sunapee was lost to a storm and fire in 2000. Other structures include three small buildings for the domestic water supply: pump house, filter house, and reservoir house.

The main house is a Dutch colonial, two-story, wood frame building approximately 7,200 square feet in size. There are 15 rooms, five bathrooms, hardwood flooring, electrical and phone services, several fireplaces, and an oil furnace. Numerous renovations and repairs have been completed over the years. Both wiring and plumbing are in good working order. Potable water is pumped from a well on the property. Indoor public restrooms were added to the original house and are still functional. A septic system handles sewage and waste water.

A one and a half story Cape Cod style summer cottage built in 1914 is located in the northern portion of the Refuge near the lake shore. The cottage has 1,562 square feet of original living space and a 308 square foot addition. There are four rooms and a bathroom, four fireplaces, electricity, plumbing, telephone service, and a septic tank.

There is a second Cape Cod house at the Refuge entrance built in 1925. Commonly referred to as the Caretaker's house or Gatehouse, it has five original rooms and an environmental education classroom added in 2001 for a total of 912 square feet. Water comes from a domestic well and the facility has a septic system. Utilities include electricity, phone, and heat.

Figure 3-2: Estate Mansion and Perennial Garden.



2. Grounds and Gardens - Landscaping around the main house includes several gardens, terraced lawns, stone walls, and a viewing corridor down to the lake. The importance of the landscaping has been recognized by the Natural Registry of Historic Places. The north side of the house is bounded by the Old Garden, which is a walled

garden with three individual outdoor rooms. Just west and south of the house are the Perennial Border and Rose Terrace, highlighted by a large stone wall with a statue and water fountain.

The Alpine or Rock Garden, constructed by Clarence Hay around 1929, lies below the house, south of the Rose Terrace. The rocks, alpine and rock garden plants give one an impression of a rocky New Hampshire hillside. A stream flows the length of the garden; at its center is a lily pond. Paths meander throughout the garden, one of which extends down to the lake.

The entrance road leading from the Gate House to the main house ends at the pebble court, which serves as the formal entrance. A small garden boarder lies along the northern edge of the court. Other improvements include an old tennis court to the west and a nursery to the south of the main house. There is a small fruit orchard north of the house.

Figure 3-3: Formal Rock Garden



Figure 3-4: Terraced Lawn.



E. Social and Economic Resources

Lake Sunapee and the Mount Sunapee ski resort make Newbury a destination for outdoor recreationists. John Hay’s selection of The Fells for the family vacation retreat foreshadowed the recreational importance of this area a century later. The Refuge contributes to outdoor recreation by providing opportunities for wildlife observation and photography, environmental education, and outreach.

1. Town of Newbury - The town covers 35.8 square miles of land and 2.3 square miles of water, and includes five villages (Blodgett Landing, Edgemont, Mount Sunapee, Pine Cliff, South Newbury, and Box Corner). Newbury is governed by a Select Board, has a full-time police department, and a part-time fire department. Elected boards and commissions include planning, zoning, library, cemetery, and trust funds.

The population has increased substantially since the 1990 census, rising twice as much as Merrimack County and the state (Table 3.1).

Table 3.1. Census Data - Population Changes (1990 – 2004)

Municipality	1990	2004	Percent Change
Newbury	1,351	1,888	40
Merrimack County	120,618	145,542	21
New Hampshire	1,109,252	1,309,940*	18

* Based on 2005 census data.

2. Economy - The Newbury economy is service oriented, catering in large part to those coming to the area for outdoor recreation. Table 3.2 shows that most of the workforce is engaged in the service industry. That number has increased substantially, both in terms of employees and wages, from 1994 to 2004. In contrast, the town supports a minimal number of industrial jobs, which have declined in the past decade. The government workforce also increased, but less so than service industries. The largest employers are Mount Sunapee Resort (150+ employees or 14 percent of the workforce), Mount Sunapee Best Western (25 or 2 percent), and Baker Hill Golf Club (20+ or 2 percent), all of which are service oriented. These data confirm the importance of tourism and recreation to the local economy. In fact, service wages make up 81 percent of the total town wage base.

Table 3.2: Census Data - Employment by Sector. (U.S. Census Bureau website)

Employment Sector	Number of Employees 1994	Number of Employees in 2004	Percent Change	Total Annual Salary 1994*	Total Annual Salary 2004*	Percent Change
Goods Producing Industries	23	21	(8)	\$577,668	\$774,228	34
Service Providing Industries	158	461	191	\$2,440,152	\$7,766,928	218
Government (Local, State, Federal)	25	37	48	\$526,500	\$1,027,416	95
Unemployed	24	23	(4)			

*Calculated from average weekly data of workforce numbers and wages.

3. Tax Revenue Base - Public ownership of the Refuge has had an effect on the local property tax base because the Service does not pay a traditional property tax. In lieu of this, an annual Revenue Sharing Payment, authorized by the Refuge Revenue Sharing Act of 1935, as amended, has been made to Newbury since the Refuge was established.

Nationally, the Service has made Revenue Sharing Payments to towns with Refuges since 1935. Funding, derived from revenues earned on refuges for the sale of refuge products and privileges, are collected and pooled across the country, then disbursed on a uniform basis to local taxing authorities where National Wildlife Refuge land is located. There are three formulas used to calculate the payment to the local taxing authority:

- a. Seventy-five cents per acre;
- b. Twenty-five percent of the annual net receipts; or
- c. Three-fourths of one percent of market value.

Payments to Newbury, New Hampshire are based on the last of these methods. The 2006 Refuge Revenue Sharing Payment to Newbury was \$12,971 or 46.5 percent of full

entitlement due to shortfalls in refuge-generated receipts and supplementary Congressional appropriations.

These payments are intended to help offset property tax losses in communities due to land acquisition and property ownership by the Service. For revenue sharing purposes, property values are based on the real estate appraisal for the first five years following a land transaction. Refuge properties are reappraised on a five-year schedule to keep payments current with the fair market value.

4. Existing Public Uses - Congress identified six priority public uses that should be given enhanced consideration on national wildlife refuges: wildlife observation and photography, environmental education and interpretation, hunting, and fishing. The first four of these are available to visitors at the Refuge and can take place anywhere on the Refuge. Hunting and fishing are not allowed. Wildlife viewing and photography tend to be concentrated along the John Hay Ecology Trail and on the shore of Lake Sunapee. The trail contains some interpretive signs however, most interpretation is offered through organized classes. Environmental education is associated with the classroom at the Gatehouse, although outdoor classes take advantage of the wide variety of plants in the gardens and the interesting forest features. The majority of people visiting the Refuge are there to see the estate and learn more about John Hay. The Fells help meet these demands by providing public programs and workshops on historical, architectural, and landscaping aspects of the Hay Estate.

F. Proposed for Acquisition

A short description of the resource conditions of the property being considered for acquisition as a part of the proposed exchange follows. The land is located within the Lake Umbagog National Wildlife Refuge approved acquisition boundary. Land acquired for a refuge through an exchange must have equal or greater economic value and greater wildlife values and therefore, the natural resource attributes are germane to John Hay Refuge exchange under consideration. The equity in the Hay Estate considered for exchange is \$390,000, which would not fully cover the cost of the Upper Mollidgewock Brook parcel. The rest of the prospective Lake Umbagog parcel would be acquired, simultaneous to the exchange proposed in Alternative 2, using money from the Migratory Bird Conservation Fund or Land and Water Conservation Fund accounts.

The Mollidgewock Brook area has been identified as a conservation priority by the State of New Hampshire, and represents a large and diverse wetland complex draining into the Androscoggin River. Portions of the Mollidgewock drainage include large boreal bogs with northern white cedar, black spruce, and larch. Bird Conservation Region 14 priority landbird species known to occur in the drainage include: American woodcock, boreal chickadee, black-throated green warbler, black-throated blue warbler, blackburnian warbler, ruffed grouse, spruce grouse, Canada warbler, and yellow-bellied sapsucker, among others. Ospreys are also known to nest here. Priority landbird species detected in upper Mollidgewock Brook include: palm warblers, Nashville warblers, chestnut-sided warblers, and yellow-bellied flycatchers.

Conservation of the headwaters, as well as an upland buffer around the headwaters, would help protect the water quality and integrity of the entire Mollidgewock Brook system.

Upper Mollidgewock Brook is characterized by flat to rolling topography with hills of up to 1400 feet in elevation. The entire area was previously logged and about 40 percent of the uplands are currently in deciduous forest, with 40 percent in mixed woods and 20 percent in conifers. An analysis of site capability carried out for the Lake Umbagog Draft Comprehensive Conservation Plan (Draft Plan) found that conifer forests are the potential for the Upper Mollidgewock Brook area. Under the goals and objectives of the Draft Plan, uplands that are currently in mixed woods, but whose potential vegetation is coniferous, will be managed to favor softwoods, in order to enhance habitat for species that require a softwood component, such as blackburnian warblers.

Approximately 36 percent of the parcel (260 acres) falls within an area designated as a potential woodcock and Canada warbler management zone under the Draft Plan. Woodcock management zones were selected based on superior habitat characteristics for woodcock, including: riparian areas with a shrub component, proximity to aspen-birch, hardwood, or mixed wood uplands, large patch size, and appropriate soil characteristics. Approximately 10 percent of the parcel consists of riparian and other shrub-scrub, emergent, and forested wetlands. In addition to woodcock, these wetlands provide excellent habitat for waterfowl, (including American black duck, common goldeneye and wood duck, and beaver. Although few biological surveys have been carried out in the area, the parcel is located less than a mile from an area known to support spring salamanders (*Gyrinophilus porphyriticus*), a state species of special conservation concern.

Chapter 4: Environmental Consequences

A. Introduction

This chapter compares and contrasts the alternatives based on the issues identified in Chapter 2. There are some issues (e.g. endangered and threatened species) that were not identified during public scoping, but must be considered to meet procedural requirements.

B. Effects Addressed Separately

The following issues are discussed separately because the environmental effects would not be influenced by either alternative.

1. Threatened and Endangered Species

Neither alternative will have an impact (positive or negative) on federally threatened or endangered species.

2. Environmental Justice

Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” was signed by President Bill Clinton on February 11, 1994, to focus federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities. The Order directed federal agencies to develop environmental justice strategies to aid in identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. The Order is also intended to promote nondiscrimination in federal programs substantially affecting human health and the environment, and to provide minority and low-income community access to public information and participation in matters relating to human health or the environment. This assessment has not identified any adverse or beneficial effects for either alternative unique to minority or low-income populations in the affected area. None of the alternatives will disproportionately place any adverse environmental, economic, social, or health impacts on minority or low-income populations.

3. Public Safety - Both alternatives would have minimal to negligible effects on human health and safety.

4. New Hampshire Rev. Stat. Ann. Chapter 121 – In the event Migratory Bird Conservation Funds are used to purchase land as a part of this proposal or any other land acquisition proposal, state support is required prior to entering into a contract to purchase. The approval is normally secured on a case by case basis once an agreement to terms and price are reached, but prior to entering into a contract

5. Revenue Sharing and Related Fiscal Impacts – The differences in revenue sharing between the alternatives are discussed separately for ease of understanding. The federal government and by extension, the Service, is not required to pay property taxes. However, the Service has a program specifically authorized by the Refuge Revenue

Sharing Act of 1935, as amended, under which revenues earned on refuges for the sale of refuge products and privileges are collected, pooled from across the country, and then disbursed on a uniform basis to local taxing authorities where National Wildlife Refuge land is located. These payments are intended to help offset property tax losses in communities due to land acquisition and property ownership by the Service.

The annual payment to the local taxing authority is calculated one of three ways. The method used to determine the payment is the one that results in the largest annual payment and it is based on: Seventy-five cents an acre; twenty-five percent of the annual net receipts; or three-fourths of one percent of market value which is updated every five years to reflect appreciation or depreciation in property values. The three-fourths of one percent of market value is the method that applies to payments made to the Town of Newbury for the Refuge.

The appraised value of the Hay Refuge declined dramatically when the estate buildings, grounds, and gardens were listed on the National Register of Historic Places in 1999, because registration limited owner development options. The 1999 appraisal, completed before the historic registration, was based on the highest use of dividing the property up into relatively large (approximately 10-15 acres) estate lots. Using that logic the property appraised at a value of \$3,715,600. However, the next appraisal completed in 2005, which accounted for listing the buildings and gardens on the National Register, could not use the 1999 estate lot scenario. New deed restrictions, zoning, and state shore land regulations specifically preclude subdivision into smaller units and use or development of the property for permanent or seasonal residences. Instead of estate property, the highest and best use is now considered to be wildlife habitat and active and passive recreation such as hiking, cross-country skiing, and the like. The 2005 appraised value for the entire Refuge was \$532,000, which means that the historic registration encumbrances on highest and best use reduced the value approximately \$3,183,600. Should the Service divide the Refuge, as proposed in Alternative 2, the value of the property acquired by The Fells would be \$390,000 and the land retained by the Service would be \$174,000.

The 2006 revenue sharing payment was the last to be based on the 1999 appraisal. Due to shortfalls in refuge-generated receipts and supplementary Congressional appropriations, the Refuge Revenue Sharing Payment in 2006 to the Town of Newbury was \$12,971 or 46.5 percent of full entitlement. Full entitlement would have resulted in a revenue sharing payment of \$27,894 to the town.

Payments for the two alternatives based on the 2005 appraised value are displayed in (Table 4-1), assuming full entitlement (3/4 of one percent of appraised value) and that actually appropriated in 2006. The revenue sharing payment if the entire Refuge was retained in Service ownership would be \$3,990. In comparison, under Alternative 2 where the Service would retain the southern half of the Refuge, payment to the town would be \$1,305. Regardless of which alternative is selected, the revenue sharing payments will be substantially reduced beginning in 2007 because the 2005 appraisal accounted for the historic easement that extinguished 85 percent of the equity based on the development restrictions of the National Register of Historic Places designation.

Table 4-1: Comparison of Revenue Sharing Payments by Alternative.

Alternative	Full Entitlement	Payment Based on 2006 Appropriation (46.5%)
1 (appraised value \$390,000)	\$2,925	\$1,855
2 (appraised value \$174,000)	\$1,305	\$607

The property to be acquired at Lake Umbagog National Wildlife Refuge has a higher appraisal value than the \$390,000 in equity at John Hay Refuge that would be exchanged out of Service ownership under Alternative 2. Errol, New Hampshire would annually receive a revenue sharing payment based on the total appraised value for the land acquired.

C. Alternative 1 – No Action (Status Quo)

1. Trust Resources – The John Hay Refuge was donated to the Service, in part, to establish a “...migratory bird and wildlife reservation...” The Refuge provides habitat for approximately 77 species of migratory birds during the breeding and wintering seasons and as stopover habitat during spring and fall migration. No additional Service trust resources are known from the Refuge or the immediate vicinity. Current habitat management is limited to mechanically treating trees and shrubs that obscure the view in a long, narrow scenic corridor comprising approximately 1.6 acres south of the main house to Lake Sunapee and mowing the lawns. The former has the effect of maintaining a small swath of early succession forest in otherwise mature stands, providing habitat for wildlife such as white-tailed deer and chestnut-sided warblers. Forest stands and the lawns would remain compositionally and structurally similar to the current condition for the foreseeable future.

2. Facility Maintenance and Restoration - The buildings, grounds, and other infrastructure need to be maintained and functional to meet the intentions of the Hay family, the expectations of the public, and the goals of the National Register of Historic Places. All the buildings, except the gate house, need restoration work and the gardens and landscaping require constant attention during the growing season. Under this alternative, The Fells would continue to be responsible for ongoing upkeep of the buildings and grounds. Securing funds for the restoration work would continue to be problematic. Service deferred maintenance funds are limited and needs at the Refuge would compete with projects from other stations in the Northeast Region, most of which are closer in line to the Mission of the National Wildlife Refuge System. In all likelihood, sufficient resources to bring the buildings up to standard would need to come from private or other sources.

3. The Fells Activities – The Fells want the authority to raise funds on the grounds of the estate to better engage prospective contributors. Under this alternative solicitation of

contributions using the estate facilities would be subject to 5 CFR § 2635.808, which precludes fundraising activities in facilities or property administered or leased by the Government, unless permitted by law. Non-wildlife related activities such as weddings and social gatherings, another source of income, that have been requested in the past would have to comply with Refuge Use Policies governing Appropriateness (603 FW 1) and Compatibility (603 FW 2). These types of uses have not been permitted in the past and, in keeping with the above policies, would not likely be allowed in the future. Retaining the estate grounds and facilities in the Refuge will continue to affect the ability of the group to generate income through fundraising on the grounds and by leasing facilities for social events. Income for The Fells would not be expected to change substantially from what it is today under this alternative.

4. Local Economy - No substantial changes in the number or types of programs offered by The Fells or number of visitors are anticipated. Consequently, their income and ability to contribute to the local economy would remain essentially unchanged.

5. Public Use Opportunities – Four priority public uses are available on the Refuge: wildlife observation and photography, environmental education and interpretation. In addition, The Fells offer educational programs about the estate and nature, and tours of the facilities and grounds under a fee system. Public use of the Refuge would not substantially change under this alternative. Access to the grounds and trails, exclusive of the buildings, would continue to be available from dawn to dusk.

6. Refuge Property Disposal – Alternative 1 does not propose any changes to the federal holdings at the Hay Refuge; therefore, property disposal would not be relevant to this alternative.

7. Proposed for Acquisition – Under the No Action Alternative, the Refuge would retain ownership of the 83.72 acres (+/-) containing the Hay estate infrastructure and there would be no land exchange involving important habitat within the Lake Umbagog Refuge boundary. The Service would likely use other funding sources as available to complete the acquisition of the Umbagog Parcel, which could limit land acquisition elsewhere in the Region.

D. Alternative 2 - Exchange 83.72 Acres (Preferred Alternative)

1. Trust Resources – The composition of trust resources on the John Hay Refuge would vary little between the two alternatives. Migratory birds would still inhabit suitable habitats across the entire property with no discernable changes anticipated in the short term (20 years). The Service will complete a 15-year Comprehensive Conservation Plan and Habitat Management Plan for the remaining 79.61 acres (+/-). These plans will guide habitat management and influence migratory bird use through actions to achieve selected objectives such as forest thinning, early succession stimulation, meadow conservation, etc. As in Alternative 1, the scenic corridor would be managed to retain views of Lake Sunapee from the main house, effectively creating about 1.6 acres of early succession.

Habitat on the property exchanged to The Fells would still be subject to the deed restrictions which were intended to benefit wildlife. However, snags (dead or dying trees essential for cavity nesting birds such as woodpeckers) visible to the public or near infrastructure probably would be removed to retain the scenic quality and reduce safety risks. In contrast, snags would be retained on the Refuge property unless they posed a safety hazard to visitors. The Fells do not have a habitat management plan for the property to be acquired at this time. It is difficult to predict how the property's habitats would be managed, but it is safe to assume that the existing forest land base would remain essentially unchanged because it is the scenic context of the estate and the recorded deed restrictions that will run with the land. Although long-term, there might be subtle differences in forest composition and structure between the properties (e.g. more snags and early succession on the Refuge) it is not expected to be substantial.

The Upper Mollidgewock Brook Parcel located within the Lake Umbagog Refuge acquisition area would be managed as an integral component of the Lake Umbagog northern forest wetland complex. The Mollidgewock Brook area has been identified as a conservation priority by the State of New Hampshire, and represents a large and diverse wetland complex draining into the Androscoggin River. Portions of the Mollidgewock drainage include large boreal bogs with northern white cedar, black spruce, and larch. As a part of the conservation estate, progress toward a priority conservation action for the State of New Hampshire will be accomplished and the Service will be poised to make important contributions toward Lake Umbagog Refuge goals and objectives.

Facility Maintenance and Restoration – Like Alternative 1, The Fells would be responsible for maintenance and restoration of the estate's infrastructure. The difference between the two alternatives is that the group would hold title to the property that contains the buildings and some of the roads. They would not have to secure authorization from the Service to make needed repairs or commence restoration, but would still be subject to the requirements of the New Hampshire State Preservation Officer for the buildings and facilities on the National Register of Historic Places. Although the Service would be available to consult on improvements, if requested, The Fells would have primary responsibility for restoration from planning through execution.

The Fells Activities – The Fells would not be subject to federal policy pertaining to public use on national wildlife refuges in their activities on the 83.72 acres (+/-) to be exchanged. This means they could host fundraising events and educational activities to generate income. They feel that these policies constrain their ability to generate revenues needed to conserve the estate, and this alternative would remove that barrier. It is anticipated that their income would increase, although the amount is unknown, under this alternative. This would allow The Fells to initiate needed restoration work on the estate.

Local Economy - As previously mentioned, The Fells would be able to host a broader array of programs and events, if not subject to the Service's policies. Depending on demand this could increase their income, some of which could fund needed restoration. Increased revenues should allow the group to initiate restoration activities in a shorter

time frame than at present, resulting in additional contributions to the local economy through the hiring of local contractors.

Public Use Opportunities – Under Alternative 2 the Refuge would retain ownership of the southern half of the property. Refuge visitors could continue to engage in wildlife observation and photography, environmental education and interpretation, and passive recreation such as hiking from dawn to dusk throughout the year. Access management, including open hours, fees, and allowed activities, on the northern 83.72 acres (+/-) which includes most of the buildings and roads would fall under the jurisdiction of The Fells group. Refuge property would be well signed to ensure a clear distinction between the two ownerships. Access to both properties would be from a common parking lot near the gate house shared by The Fells and the Refuge.

Refuge Property Disposal – As previously discussed, property disposal would be via an exchange for land to be added to the Lake Umbagog Refuge. The property received would have to be at least the same appraised value and contain higher quality wildlife habitat. An equalization payment would be made should the value of the land received by the Service be higher than the exchanged Hay Estate, if The Fells were to purchase the entire tract. However, as previously discussed, funds from the Migratory Bird Conservation Fund or the Land and Water Conservation Fund would be combined with the \$390,000 John Hay equity to acquire the 727 acre (+/-) Upper Mollidgewock Brook Parcel for the Lake Umbagog Refuge. The prospective Refuge land has already been identified and approved by the Service for acquisition in compliance with National Environmental Policy Act requirements.

Proposed for Acquisition – Alternative 2 would exchange 83.72 acres of the Hay Estate for an equal monetary interest in the parcel acquired by the Service for the Lake Umbagog Refuge. The 727-acre (+/-) Lake Umbagog parcel has a higher appraised value than the Hay Estate, which means that the equity in the Hay Estate would be supplemented by another funding source to consummate the transaction.

Chapter 5: Consultation and Coordination

A. Consultation – Refuge staff met with the Newbury, New Hampshire Select Board on May 15, 2006 to introduce them to the concept of a land exchange to the Friends of John Hay National Wildlife Refuge. This was followed by a public meeting in Newbury on June 28, 2006. Approximately 24 people attended the meeting which was designed to explain why an exchange was being contemplated, what it might consist of, and how the change in ownership could affect the public.

B. Coordination – The open house and its purpose was announced through letters sent to each of the abutting property owners and elected officials, and in news releases published in Argus Champion, the local weekly paper, and the Concord Monitor, a regional paper with wide circulation in the southern half of New Hampshire.

1. Public Input – Initial scoping commenced on June 28, 2006 with an open house in the Newbury, New Hampshire Town Hall. Most comments received during this meeting were related to the process of an exchange and public uses on the Refuge following an exchange. Information from this meeting helped frame the analysis in the Draft Environmental Assessment (Draft EA).

The Draft EA was made available for public review from August 22, 2007 through September 21, 2007. On August 20, 2007, copies of the Draft EA were sent and made available at the Newbury Town Hall, the Newbury Public Library, the John Hay National Wildlife Refuge, the Silvio O. Conte National Fish and Wildlife Refuge (Refuge) Headquarters in Sunderland, Massachusetts, and on the Refuge website. A notice of availability was published in the Concord Monitor and the Argus Champion newspapers during the week of August 27, 2007. Two people requested and received bound copies.

A second public meeting was held in the Town Hall on September 6, 2007 to introduce the Draft EA and solicit feedback from the public. This meeting was advertised in the Concord Monitor, at the Newbury Town Hall, and at the John Hay National Wildlife Refuge. Twenty-six people were in attendance.

2. Issues and Concerns – Below is a summary of issues brought up during the June 28, 2006 public meeting and internal scoping. These were thoroughly analyzed in the Environmental Assessment.

Public Access – How much of the property and facilities would be open to the public? Is handicapped accessibility required on Refuge property?

Viewing Easement – Will the viewing easement between the main house and Lake Sunapee be retained? Who will be responsible for maintaining it?

Land Acquisition and Disposal – How does the Service choose land for acquisition? Does the Service own other land in New Hampshire south of the Hay Refuge in the Connecticut River Watershed? Why would the Friends have to buy land that was

donated to the Service by Alice Hay? Does the Service know Alice Hay's desires for the estate?

Public Uses – Are all public uses considered? Do existing uses get grandfathered in when property is acquired?

Refuge Planning – What is the Service's vision for the Refuge?

3. Correspondence – Two emails that helped shape the issues and concerns were received following the June 28, 2006 public meeting.

The Refuge received 37 letters or emails during the public comment period following release of the Draft EA. Unqualified support for the proposed land exchange (Alternative 2) was nearly unanimous. The Fells found four instances in the Draft EA that needed clarification/correction. These corrections were made in the Final Environmental Assessment.

Another commenter had questions about the exchange process.

Question: Was a long-term lease considered?

Response: A long-term lease would be functionally similar to the current situation where The Fells operates under a Memorandum of Understanding with the Service. Activities offered by the group would still have to meet the intent of the appropriateness and compatibility regulations, effectively restricting their ability to generate the funds necessary to restore and maintain the Hay Estate.

Question: Why is it necessary to break up the Refuge and require The Fells to purchase land for an exchange?

Response: The Draft EA analyzed and explained the rationale for an exchange which was the preferred alternative because it would allow the Service to retain the best wildlife habitat at the Refuge and acquire additional high quality habitat at the Lake Umbagog National Wildlife Refuge. In addition, transfer of the estate infrastructure to The Fells is desirable because this group is dedicated to its preservation and historical interpretation and has shown the capacity to generate the necessary resources.

Question: Do other national wildlife refuges have historic buildings?

Answer: Yes, other refuges do include historic buildings and infrastructure, and where the Service is the primary entity responsible for historic preservation there is continual tension between funding wildlife-related needs and maintenance/repair of the historic structures.

This commenter also had several questions relating to the transaction from the standpoint of The Fells and their intentions for public use following acquisition. The letter was forwarded to Karen Zurheide, Executive Director of The Fells for their consideration.

4. Comprehensive Conservation Plan – The Service is scheduled to initiate work on the John Hay National Wildlife Refuge comprehensive conservation plan in the near future regardless of the land exchange considered in this environmental assessment. The process will include close coordination with area residents, local and state officials, The Friends of John Hay National Wildlife Refuge, elected leaders at all levels, and members of the public. Once completed, the plan will guide the operation, management, and use of land at the Hay Refuge that is owned and managed by the Service for a period of 15 years. This plan will be periodically reviewed and updated in an open, public process to keep it current and responsive to the needs of plants, fish, wildlife, and people.

Appendix 1: John Hay National Wildlife Refuge Bird List

This list represents birds documented on Refuge property or known to use similar habitats on adjacent land owned by the Society for the Protection of New Hampshire Forests (Society). Information sources include John Hay NWR breeding bird surveys from 2001, 2000, and 1995; breeding bird surveys on Society property; and incidental observations by Refuge and Society staff. Atlantic Northern Forest Joint Venture Highest Priority (¹) and High Priority (²) species are noted in the list. This is not meant to be a comprehensive list.

Black-capped chickadee	Yellow-bellied sapsucker ²	Common grackle
White-breasted nuthatch	Eastern Phoebe	Northern oriole
Brown creeper	Yellow-bellied flycatcher	Hairy woodpecker
House wren	Eastern wood pewee ²	Downy woodpecker
Ruby-crowned kinglet	Great crested flycatcher	Eastern kingbird
Wood thrush ¹	Blue-gray gnatcatcher	Purple finch ²
American robin	Tree swallow	Red crossbill
Eastern bluebird	Blue jay	American goldfinch
Veery ²	Common raven	
Gray catbird	American crow	
Brown thrasher	Winter wren	
American pipit	Golden-crowned kinglet	
Cedar waxwing	Hermit thrush	
European starling	Solitary vireo	
Red-eyed vireo	Magnolia warbler	
Yellow-throated vireo	Black-throated blue warbler ²	
Warbling vireo	Yellow-rumped warbler	
Blue-winged warbler	Black-throated green warbler	
Nashville warbler	Blackburnian warbler	
Wood duck	Pine warbler	
Mallard	Black-and-white warbler	
Turkey vulture	American redstart ²	
Red-tailed hawk	Ovenbird	
Broad-winged hawk	Common yellowthroat	
Wild turkey	Canada warbler ¹	
Ruffed grouse	Chestnut-sided warbler ²	
American woodcock ¹	Scarlet tanager	
Mourning Dove	Rose-breasted grosbeak	
Northern Saw-whet owl	Northern cardinal	
Belted kingfisher	Chipping sparrow	
Evening grosbeak	Song sparrow	
Northern flicker	White-throated sparrow	
Pileated woodpecker	Dark-eyed junco	
	Red-winged blackbird	
	Brown-headed cowbird	

Appendix 2: Plants of John Hay National Wildlife Refuge

The plant list is a compilation of information from many sources, including Service personnel, The Fells, Society for the Protection of New Hampshire Forests, and volunteers.

Tree Species

<i>Abies balsamea</i>	Balsam fir
<i>Acer pensylvanicum</i>	Striped maple
<i>Acer Rubrum</i>	Red maple
<i>Acer Saccharum</i>	Sugar maple
<i>Acer spicatum</i>	Mountain maple
<i>Amelanchier arborea</i>	Woolly shadbush
<i>Amelanchier laevis</i>	Smooth shadbush
<i>Betula alleghaniensis</i>	Yellow birch
<i>Betula lenta</i>	Black birch
<i>Betula papyrifera</i>	Paper birch
<i>Castanea dentata</i>	American chestnut
<i>Fagus grandifolia</i>	American beech
<i>Fraxinus americana</i>	American ash
<i>Nyssa sylvatica</i>	Black gum
<i>Picea rubens</i>	Red spruce
<i>Pinus resinosa</i>	Red pine
<i>Pinus strobus</i>	White pine
<i>Populus grandidentata</i>	Big-toothed aspen
<i>Populus tremuloides</i>	Quaking aspen
<i>Quercus rubra</i>	Northern red oak
<i>Salix sp.</i>	Willow species
<i>Tilia americana</i>	Basswood
<i>Tsuga canadensis</i>	Hemlock

Shrub Species

<i>Alnus incana</i>	Speckled alder
<i>Berberis thunbergii</i>	Japanese barberry
<i>Berberis vulgaris</i>	Common barberry
<i>Cornus rugosa</i>	Round-leaved dogwood
<i>Cornus sericea</i>	Silky Dogwood
<i>Cornus cornuta</i>	Beaked hazelnut
<i>Diervilla lonicera</i>	Bush honeysuckle
<i>Gaultheria hispidula</i>	Creeping snowberry
<i>Gaultheria procumbens</i>	Wintergreen
<i>Gaylussacia baccata</i>	Black huckleberry
<i>Hamamelis virginiana</i>	Witch hazel
<i>Ilex verticillata</i>	Winterberry holly
<i>Kalmia angustifolia</i>	Sheep laurel

Appendix 2 (continued)

<i>Lyonia ligustrina</i>	Maleberry
<i>Mitchella repens</i>	Partridge berry
<i>Myrica gale</i>	Sweet gale
<i>Rhododendron prionophyllum</i>	Early azalea
<i>Ribes glandulosum</i>	Skunk currant
<i>Rubus occidentalis</i>	Black raspberry
<i>Spiraea alba</i>	Meadow-sweet
<i>Spiraea tomentosa</i>	Steeplebush
<i>Taxus canadensis</i>	Canada yew
<i>Toxicodendron radicans</i>	Poison ivy
<i>Vaccinium angustifolium</i>	Lower lowbush blueberry
<i>Vaccinium corymbosum</i>	Highbush blueberry
<i>Vaccinium Myrtilloides</i>	Velvet-leaf blueberry
<i>Viburnum acerifolium</i>	Maple-leaved viburnum
<i>Viburnum cassinoides</i>	Northern wild raisin
<i>Viburnum lantanoides</i>	Hobblebush

Herbaceous Species

<i>Actaea sp.</i>	Baneberry sp.
<i>Amphicarpaea bracteata</i>	Hog peanut
<i>Apocynum androsaemifolium</i>	Spreading dogbane
<i>Aralia nudicaulis</i>	Wild sasparilla
<i>Arisaema triphyllum</i>	Jack-in-the-pulpit
<i>Aster acuminatus</i>	Acuminate aster
<i>Aster divaricatus</i>	White wood aster
<i>Aster macrophyllus</i>	Large-leaved aster
<i>Aster pilosus</i>	Pilose aster
<i>Athyrium filix-femina</i>	Lady fern
<i>Bidens connata</i>	Lobed beggar's ticks
<i>Bizania trilobata</i>	Moss sp.
<i>Circaea alpina</i>	Small enchanter's
<i>Clintonia borealis</i>	Wood lily
<i>Coptis trifolia</i>	Goldthread
<i>Cypripedium acaule</i>	Pink ladyslipper
<i>Dryopteris carthusiana</i>	Spinulose woodfern
<i>Dryopteris intermedia</i>	Evergreen woodfern
<i>Galium trifidum</i>	Small marsh bedstraw
<i>Gymnocarpium dryopteris</i>	Common oak fern
<i>Habenaria hyperborea</i>	Northern green orchid
<i>Hieracium aurantiacum</i>	Orange hawkweed
<i>Hydrocotyle americana</i>	Pennywort
<i>Impatiens capensis</i>	Orange jewelweed
<i>Maianthemum canadense</i>	Canada mayflower

Final Environmental Assessment – Appendices

Appendix 2 (continued)

<i>Medeola virginiana</i>	Wild cucumber
<i>Monotropa hypopithys</i>	Pinsap
<i>Monotropa uniflora</i>	Indian pipes
<i>Myosotis laxa</i>	Wild forget-me-not
<i>Myosotis scorpioides</i>	Common forget-me-not
<i>Onoclea sensibilis</i>	Sensitive fern
<i>Osmunda cinnamomea</i>	Cinnamon fern
<i>Osmunda claytoniana</i>	Interrupted fern
<i>Osmunda regalis</i>	Royal fern
<i>Oxalis stricta</i>	Common yellow wood sorrel
<i>Panax trifolius</i>	Dwarf ginseng
<i>Pleurozium sp.</i>	Moss sp.
<i>Polygonatum pubescens</i>	Small Solomon's Seal
<i>Polypodium virginianum</i>	Virginia polypody
<i>Polystichum acrostichoides</i>	Christmas fern
<i>Prenanthes altissima</i>	Common rattlesnake root
<i>Prenanthes trifoliolata</i>	Gall-of-the-earth
<i>pteridium aquilinum</i>	Bracken
<i>Scutellaria lateriflora</i>	Mad-dog skullcap
<i>Solidago bicolor</i>	Silver-rod
<i>Thalictrum pubescens</i>	Tall meadow-rue
<i>Thelypteris noveboracensis</i>	New York fern
<i>Thelypteris palustris</i>	Marsh fern
<i>Thelypteris simulata</i>	Massachusetts fern
<i>Trientalis borealis</i>	Starflower
<i>Trillium undulatum</i>	Painted trillium
<i>Uvularia sessilifolia</i>	Common bellwort
<i>Vaccinium Myrtilloides</i>	Common water-horehound
<i>Viburnum acerifolium</i>	Swamp candles
<i>Viola selkirkii</i>	Selkirk's violet
<i>Viola sp.</i>	North blue
<i>Viola sp.</i>	North white

Appendix 3: Historic Preservation Easement

HISTORIC PRESERVATION EASEMENT

THIS PRESERVATION AND CONSERVATION EASEMENT DEED

(“Easement”), made this ____ day of _____, 2005 by and between the _____ (Grantor) and the New Hampshire Division of Historical Resources (Grantee).

WHEREAS, Grantor is owner in fee simple of certain real property located in the Town of Newbury, County of Merrimack, State of New Hampshire, more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter "the Property"), said Property being part of the John Hay National Wildlife Refuge, including but not limited to the following structures: a 13,037 square foot, Colonial Revival style, family summer residence (“main house”) constructed from 1891 through 1915; a so called Gate Lodge (or “gatehouse”), which is a cape-style dwelling constructed 1930 – 1931; a Colonial Revival-style summer dwelling known as the Lakeshore Cottage (“cottage”), built in 1914; a filter house and reservoir house constructed circa 1914; a partially collapsed pump house constructed circa 1938; ; and a garage (or “barn”) reconstructed in 2000 (hereinafter, “on occasion collectively referred to as the Buildings”);

WHEREAS, the Property also includes a formally-landscaped Old Garden, Rose Terrace, Alpine Garden and Perennial Border, (hereinafter "the Gardens") and landscaping including the plantings, terraces, lawns, mature trees, courts, the site of a tennis court, and the stone walls;

WHEREAS, the Property has significant undeveloped open space, including fields, forests, and the stone walls that contribute to the setting, context, and the public's view and enjoyment of the Property and the Buildings;

WHEREAS, the Property is subject to a perpetual restrictive covenant in the December 11, 1972 deed from Alice Appleton Hay to the United States of America, found in Merrimack County Registry of Deeds at Book 1156, Page 345, stating as follows:

“To have and to hold the said remainder and the rents, issues and profits thereof upon the death of the Grantor in and for all and singular the above granted property, together with the appurtenances, and unto the Grantee its successors and assigns forever exclusively for public use as an inviolate sanctuary for migratory birds, as a migratory bird and wildlife reservation to be known as the John Hay National Wildlife Refuge, and for other conservation purposes consistent therewith.”

WHEREAS, previous owners of this Property, including the United States of America and several generations of the Hay family, sought to protect wildlife and birds, and to promote ecological, environmental, horticultural, and historic preservation education for the public benefit and enjoyment of their Property;

WHEREAS, Grantee is authorized to accept preservation and conservation easements to protect property significant in national, state and local history and culture under the provisions of New Hampshire Revised Statutes Annotated (RSA) 477:45-47 (hereinafter "the Act");

WHEREAS, Grantee is a New Hampshire state agency whose primary purposes include the preservation and conservation of sites, buildings, structures, districts, and objects of historical, archaeological, architectural and cultural significance and is a qualifying recipient of qualified conservation contributions under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter "the Code");

WHEREAS, the Property stands as a significant example of Colonial Revival summer house architecture in New Hampshire, illustrates aesthetics of design and setting in architecture and landscaping, and also possesses integrity of materials, location, feeling, association, and workmanship;

WHEREAS, the Property is also significant for its historical associations with the life and political career of John Hay and with the summer home movement in New Hampshire;

WHEREAS, because of its architectural, historic, and cultural significance the Property was listed in the National Register of Historic Places ("Register") on November 2, 2000 and is a certified historic structure on a historically important land area under Section 170(h)(4)(B) of the Code;

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter "conservation and preservation values") and significance of the Property, and have the common purpose of conserving and preserving the aforesaid conservation and preservation values and significance of the Property;

WHEREAS, Grantee is familiar with the Property, Buildings and Gardens from past visits and technical assistance provided to owners since 1987;

WHEREAS, the Property's appearance and condition at the time of transfer is documented in a set of reports, drawings, and photographs which baseline documentation (hereinafter "Baseline Documentation") both parties agree provides background information on the Property and Buildings, and an accurate representation of the Property as of the effective date of this grant for purposes of the Grantors maintenance obligations in paragraph 2.1 incorporated herein by reference;

Renovations to the John Hay Estate, Newbury New Hampshire,
Comprehensive Assessment Report, The Hillier Group, 11/8/99

As-Built Drawings submitted by the Hillier Group 7/2002

National Register of Historic Places Nomination Form, 9/1/99, including black and white photographs taken in 1998.

Current black and white photographs of the Property, Buildings and Gardens, taken without the cover of snow or dense foliage and keyed to a sketch map of the Property.

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Property and its architectural, historic, and cultural features for the benefit of the people of the Town of Newbury, of Merrimack County, of the State of New Hampshire, and of the United States of America;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation and conservation easement (hereinafter, the "Easement") in gross in perpetuity on the Property pursuant to the Act.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and pursuant to Section 170(h) of the Code and New Hampshire RSA §§ 477:45-47 (the Act), the Grantor does hereby voluntarily grant and convey unto the Grantee a preservation and conservation easement in gross in perpetuity over the Property situate in the Town of Newbury and more particularly described in Exhibit A which is attached hereto and recorded herewith.

PURPOSE

1. Purpose. It is the Purpose of this Easement to assure that the architectural, historic, cultural, and associated open space features of the Property will be retained and maintained in at least their current condition for conservation and preservation purposes, to prevent any use or change of the Property that will significantly impair or interfere with the Property's conservation and preservation values, and to assure compliance by Grantor with the restrictive covenants quoted on page 1.

GRANTOR'S COVENANTS

2.1 Grantor: Covenants to Maintain. Grantor shall maintain and preserve the Property, Buildings and Gardens in at least the same structural condition and state of repair as that existing on the date of this easement. Grantor's obligation to maintain shall also require that the Property's landscaping be maintained in good appearance with substantially similar plantings, vegetation, and natural screening to that existing on the effective date of this Easement. The existing lawn areas shall be maintained as lawns, regularly mown. The existing meadows and open fields shall be maintained as meadows and open fields, regularly brush-hogged to prevent the growth of woody vegetation where none currently grows. Subject to the casualty provisions of paragraphs 6, 7 and 8, maintenance activities will be in accordance with the Secretary of the Interior's

Standards for the Treatment of Historic Properties, With Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings [36 CFR 68], as these may be amended from time to time (hereinafter the "Secretary's Standards").

2.2 Signs and Plaques. Grantor agrees that Grantee may provide and maintain signs or plaques on the Property, which shall not exceed thirty six inches by thirty six inches in size, giving notice of the significance of the Property, the existence of this Easement, locations of exits, entrances, parking lots and other information for the benefit of the public.

GRANTOR'S RIGHT TO USE THE PROPERTY

3.1 Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this paragraph.

(a) the Buildings shall not be demolished, removed, or razed except as provided in paragraphs 6, 7 and 8;

(b) Grantor shall not violate applicable local, federal or State of New Hampshire statutes or laws;

(c) no satellite receiving dishes (small rooftop dishes excluded), camping accommodations, or mobile homes, shall be erected or placed on the Property hereafter except for temporary structures required for the maintenance or rehabilitation of the Property, such as construction trailers;

(d) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;

(e) the Property shall not be divided or subdivided into smaller parcels or legal interests, whether through legal or de facto subdivision, including division through the creation of condominiums, site leases, or other means;

(f) no above-ground utility transmission lines, except those reasonably necessary for the existing Buildings, may be created on the Property, subject to utility easements already recorded;

(g) Grantor shall not impair the conservation or preservation values of the Property or act inconsistent with the Purpose of this Easement.

GRANTOR'S CONDITIONAL RIGHTS

3.2 Conditional Rights Requiring Approval by Grantee. Without the prior express written approval of the Grantee, Grantor shall not undertake any of the following actions:

(a) increase or decrease the height of, make additions to, change the exterior construction materials or colors of, or move, improve, alter, reconstruct, or change the elevations (including fenestration) and roofs of the Buildings;

(b) change the floor plans of the Buildings;

(c) erect any permanent external signs or external advertisements except: (i) a sign stating solely the address and identity of the Property; and (ii) a temporary sign to advertise special events, educational programs, or other permitted activities, (iii) signs and plaques as permitted in 2.2;

(d) make permanent substantial topographical changes, such as, by example, excavation for the construction of roads and recreational facilities;

(e) cut down or otherwise remove live trees located within existing lawn areas, or cut down or otherwise remove live trees located outside the existing lawn areas, meadows and open fields for the purpose of conducting commercial timber production [except for occasional harvesting of timber in accordance with a qualified plan presented to Grantee for approval];

(f) change the use of the Property from its current use as an historic site to another use unless Grantee demonstrates that the proposed use: (i) does not impair the significant conservation and preservation values of the Property; and (ii) does not conflict with the Purpose of the Easement;

(g) erect new buildings or structures upon the Property, provided said new buildings or structures are (1) consistent with the historical and architectural character of the Property, (2) located and designed in scale with other buildings and landscape features, and (3) approved by Grantee as outlined herein; and

(h) construct a new and/or expanded parking lot.

3.3 Review of Grantor's Requests for Approval. Grantor shall submit to Grantee for Grantee's approval of those conditional rights set out at paragraph 3.2 information (including plans, specifications, and designs where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Grantor shall not undertake any such activity until approved by Grantee. Grantee reserves the right to consult with governmental agencies, nonprofit preservation and conservation organizations, and/or other advisors deemed appropriate by the Grantee, concerning the appropriateness of any activity proposed under this easement. Grantor shall make no change or take any action subject to the approval of Grantee unless expressly authorized in writing by an authorized representative of Grantee. Grantee shall designate an authorized Grantee agent for discussion of Grantor's submission within 30 days and render a written decision on Grantor's submission within 90 days, approving or denying the request, or asking for more specific information on the proposal. Any denial of Grantor's submission can be appealed by Grantor, using the arbitration procedure outlined in paragraph 7. Absence of a written decision by the Grantee may be deemed an approval by Grantee.

GRANTOR'S RESERVED RIGHTS

3.4. Grantor's Reserved Rights Not Requiring Further Approval by Grantee. Subject to the provisions of paragraphs 2.1, 3.1 and 3.2, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Easement and by Grantee without further approval by Grantee:

(a) the right to engage in all those acts and uses that: (i) are not prohibited by paragraph 3.1 or covered by 3.2 and 3.3; (ii) do not impair the conservation and preservation values of the Property; and (iii) are consistent with the Purpose of this Easement;

(b) pursuant to the provisions of paragraph 2.1, the right to maintain and repair the Buildings strictly according to the Secretary's Standards. As used in this subparagraph, the right to maintain and repair shall mean the use by Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Buildings. The right to maintain and repair as used in this subparagraph shall not include the right to make changes in appearance, materials, colors, and workmanship from that existing prior to the maintenance and repair without the prior approval of Grantee in accordance with the provisions of paragraphs 3.2 and 3.3; (c) the right to use and enjoy the Property's Buildings and Gardens, including but not limited to the maintenance, repair, and restoration of existing fences; the right to maintain existing driveways, roads, and paths with the use of same or similar surface materials; the right to maintain existing utility lines, gardening and building walkways, steps, and garden fences; the right to cut, remove, and clear grass or other vegetation and to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Easement;

(d) the right to conduct at or on the Property educational, nonprofit, fund raising and all other activities and events that are consistent with this Easement and its Purpose.

4. Standards for Review. In exercising any authority created by the Easement, to inspect the Property or the interior of the Buildings; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Buildings following casualty damage, Grantee shall apply the Secretary's Standards.

5. Public Access. Grantor shall make the grounds of the Property [and the interior of the main house] accessible to the public at reasonable day time hours. At other times deemed reasonable by Grantor persons affiliated with educational organizations, professional architectural associations, and historical societies shall be admitted to study the entire Property.

CASUALTY DAMAGE OR DESTRUCTION; ISURANCE

6. Casualty Damage or Destruction. In the event that the Buildings or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Buildings and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval.

Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a 36 CFR 61-qualified historic architect or an engineer who are acceptable to Grantor and Grantee, which report shall include the following:

(a) an assessment of the nature and extent of the damage;

(b) a determination of the economic and/or structural feasibility of the repair or restoration of the Buildings and/or reconstruction of damaged or destroyed portions of the Buildings; and

(c) a report of such repair/restoration/reconstruction work necessary to return the Buildings as close as possible to the condition existing at the date hereof, and the cost thereof.

7. Review after Casualty Damage or Destruction. If, after reviewing the report provided in paragraph 6 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee agree that the Purpose of the Easement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Buildings in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee' s/lender' s claims under paragraph 8, Grantor and Grantee are unable to agree that the Purpose of the Easement will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the State of New Hampshire's arbitration statute then in effect. The sole matter to be considered and determined pursuant to the arbitration shall be whether restoration/reconstruction of the Property is impractical or impossible, or whether the Purpose of the Easement would not be served by restoration/reconstruction following casualty loss. The matter shall be settled in accordance with the state arbitration statute and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrators and attorneys' fees, which shall be determined by the arbitrator(s) and any court of competent jurisdiction that may be called upon to enforce or review the award.

8. Insurance. Grantor shall, to the extent of available coverage and affordable premiums therefor, keep the Property insured by an insurance company rated "A 1" or better by Best's for the approximate replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition and

building ordinance coverage, in form and amount sufficient to replace fully the damaged Property and Buildings without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request therefore, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

**INDEMNIFICATION;
TAXES**

9. Indemnification. Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, trustees, directors, officers and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury or other damage occurring on or about the Property, unless such injury or damage is caused by Grantee or any agent, trustee, director, officer, employee, or independent contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien. Provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

10. Taxes. Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof, in which case the obligations hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. Grantee may make such payment according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by Grantee shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

ADMINISTRATION AND ENFORCEMENT

11. Written Notice. Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods: by overnight courier postage prepaid, or hand delivery; if to Grantor, then at _____ and if to Grantee, then to New Hampshire Division of Historical Resources, 19 Pillsbury Street—2nd Floor, Concord, New Hampshire 03301-3570. Each party may change its address set forth herein by a notice to such effect to the other party.

12. Evidence of Compliance. Upon request by Grantor, Grantee shall promptly furnish Grantor with a certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of this Easement, or that otherwise describes the status of this Easement to the extent of Grantee's knowledge thereof.

13. Inspection. With appropriate prior notice to Grantor, Representatives of Grantee shall be permitted at all reasonable times to inspect the Property including the interior of the Residence and/or Buildings/Ancillary Structures.

14. Grantee's Remedies. Grantee may, following reasonable written notice to Grantor, institute suits to enjoin any violation of the terms of this easement by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property and Buildings to the condition and appearance that existed prior to the violation complained of. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder.

In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Easement, including but not limited to all reasonable court costs, and attorney, architectural, engineering, and expert witness fees.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

15. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

16. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Easement to potential new owners prior to sale closing.

17. Liens. Any lien on the Property created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien, except that no lien created pursuant to this Easement shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

**BINDING EFFECT;
ASSIGNMENT**

18. Runs with the Land. Except as provided in paragraphs 7 and 22, the obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Easement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property.

19. Assignment. Grantee may convey, assign, or transfer this Easement to a unit of federal, state, or local government or to a similar local, state, or national organization that is a "qualified organization" under Section 170(h) of the Internal Revenue Code whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural, wildlife or architectural resources, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Easement was granted will continue to be carried out.

20. Recording and Effective Date. Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the Registry of Deeds of Merrimack County, New Hampshire. Grantor and Grantee intend that the restrictions arising under this Easement take effect on the day and year this instrument is recorded in the Registry of Deeds of Merrimack County, New Hampshire.

EXTINGUISHMENT

21. Extinguishment.

Grantor and Grantee hereby recognize that unique and unlikely circumstances may arise that may make impossible the continued ownership or use of the Property in a manner consistent with the Purpose of this Easement and necessitate extinguishment of the Easement. Such circumstances may include, but are not limited to, partial or total destruction of the Buildings resulting from casualty. In the event that such circumstances occur and the Grantee and Grantor agree that the Property is no longer deemed feasible or necessary to preserve, extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property after such termination or extinguishment, and after the satisfaction of prior claims and any costs or expenses associated with such sale, the Grantor and Grantee shall urge the Court to distribute the net assets, if any, to another qualified entity to be used for purposes consistent with those of this Easement.

22. Condemnation. If all or any part of the property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. After the satisfaction of prior claims and net of expenses reasonably incurred by Grantor and Grantee in connection with such taking, Grantor shall be respectively entitled to compensation from the balance of the recovered proceeds provided Grantor continues to serve the public, as contemplated by the deed quoted above and this Easement.

INTERPRETATION

23. Interpretation. The following provisions shall govern the effectiveness, interpretation, and duration of the Easement.

(a) This Easement shall be interpreted broadly to effectuate the Purposes of this Easement and to foster the continued ability of Grantor and Grantee to accomplish the Purposes of this Easement.

(b) This instrument may be executed in two counterparts, one of which may be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern.

(c) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision

of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(d) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property may be developed more intensively (in terms of height, bulk, or other objective criteria related by such ordinances) than the Property is developed as of the date hereof, such development rights shall not be exercisable on, above, or below the Property during the term of the Easement, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Easement.

(f) To the extent that any action taken by Grantee pursuant to this Easement gives rise to a claim of breach of contract, Grantor and Grantee agree that the sole remedy on the part of Grantor shall be reimbursement of actual direct out-of-pocket expenses reasonably incurred by Grantor as a result of such breach and that Grantor shall not have any right to indirect, consequential or monetary damages in excess of such actual direct out-of-pocket expenses.

GRANTS

24. Grants. Grantee agrees to assist or support Grantor, if asked by Grantor, in the obtaining of grants (or other state and federal financial assistance), so long as said grant purposes are consistent with this Easement.

AMENDMENT

25. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code and the laws of the State of New Hampshire. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the Purpose of this Easement; shall not affect its perpetual duration; shall not permit additional residential and/or commercial development on the Property other than the residential and/or commercial development permitted by this Easement on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Easement. Any such amendment shall be recorded in the

Registry of Deeds of Merrimack County, New Hampshire. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

THIS EASEMENT reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Preservation and Conservation Easement, unto the said Grantee and its successors and permitted assigns forever. This **DEED OF PRESERVATION AND CONSERVATION EASEMENT** may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

IN WITNESS WHEREOF, Grantor has hereunto set its hands under seal this _____ day of _____, 200_ .

GRANTOR

By:

Duly authorized Representative

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this the ___ day of _____, 200___, before me, the undersigned officer, personally appeared the above-named _____, as _____ of _____, the Grantor, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same for the purpose therein contained.

(Name)

Justice of the Peace/Notary Public

My commission expires: _____

