

27 September 2022

Town of Durham  
8 Newmarket Road  
Durham, NH 03824-2898

Re: 2-Lot Subdivision for 20 Adams Point Road (Map 230, Lot 7)  
The Nature Conservancy Conservation Easement (Bk 2428; Pg 0101; Plan #64-26)

Dear Planning Board Members:

My name is Krista Helmboldt, and I am the Easement Program Manager for The Nature Conservancy's New Hampshire Program. The Nature Conservancy (TNC) is an international conservation organization whose mission includes the protection of important natural areas using a variety of protection tools, including conservation easements. In the New Hampshire our organization holds 45 conservation easements, protecting 41,000 acres.

As you know, TNC holds a Conservation Easement (Bk 2428, Pg 0101) which is shown on Plan #64-26. I note that you have both of these documents in the Applicant's online Subdivision file. **This Conservation Easement and Plan covers all of the property currently owned by Anthony & Natalie Diberto (Map 230, Lot 7 (and proposed 7-1)) as well as the adjoining property owned by "36 Adams Point LLC" (Map 230, Lot 6).** Parcels 230-6 & 7 (and proposed 7-1) are collectively referenced as the "Protected Property" and are subject to the terms of the Conservation Easement. The Nature Conservancy has a positive working relationship with both owners of the Protected Property.

I have reviewed the 2-Lot Subdivision Plan (prepared by Chris Berry of Berry Surveying) for 20 Adams Point Road (owned by Anthony & Natalie Diberto). Broadly speaking, the proposed subdivision and house site are not inconsistent with the terms of the Conservation Easement. However, there are some foundational inaccuracies in how the Conservation Easement is referenced in the proposed plan, and there are terms in the Conservation Easement that are relevant to the proposed plan. I offer the following comments for the purpose of ensuring that The Nature Conservancy's conservation interests with respect to the Conservation Easement are being met and to provide the Planning Board with relevant information to help its deliberations regarding the Subdivision Application with the Conservation Easement in mind.

First, as stated above, it is important to note that the entire property owned by Anthony & Natalie Diberto as well as the adjoining property owned by "36 Adams Point LLC" (Map 230, Lot 6) are subject to the above referenced Conservation Easement. The Conservation Easement references a "Development Area" (Section 2.1) and "Conservation Areas" (Section 2.2), and these areas are delineated on Plan #64-26. The Development Area is not excluded from the Conservation Easement and is thus subject to the terms of the Conservation Easement broadly, and to the

Reserved Rights and Prohibited Activities specified in Section 2.1 for the Development Area. This is relevant to the following documents associated with the Subdivision application:

- “Town Planner’s Project Review” of 8/24/2022, Note 8) regarding the Easement incorrectly states: “There is a conservation easement on the parcel comprising the southerly  $\frac{3}{4}$  or so of the parcel.” The Conservation Easement covers the entire parcel.
- Berry Surveying Plan for Proposed Subdivision (File No. DB 2019-016, dated 7/24/22 and submitted 8/3/22):
  - Note 8. Incorrectly states: “A portion of the Property is encumbered by an Easement held by The Nature Conservancy. Areas shown on the Plan per the Easement Plan prepared for that effort.” As stated previously, this note should be corrected to clarify that the entire Property is encumbered by a Conservation Easement.
  - It may be helpful for the public record if the Berry Plan identified each the Development Area and the Conservation Areas more clearly.
  - It might also be more accurate to re-label the “Easement Line Per Plan Ref. #2” so as to clearly define that line as the boundary between the “Development Area” and the “Conservation Areas”. (In other words, that is a line within the Conservation Easement, not on its perimeter.)
- For the reasons already stated, I would also point out that the Berry Letter to Town Planning Department (dated 3 August 2022) also incorrectly states:
  - In paragraph 2 that “... the lower section of the subject parcel was placed in easement ...” (All of the subject parcel was placed in Conservation Easement.)
  - In paragraph 4 that “... looking to subdivide the current 20 Adams Point Road house away from the remaining acreage and eased areas ...” (The subdivided lots will still be subject to the Conservation Easement.)
  - In paragraph 5 that “.. two existing easement easements ...” (I am not sure if this referencing the Conservation Easements or the Access Easements.)

Given that the subject property and adjoining lot 230-6 are all part of the Protected Property under the Conservation Easement, I would like to draw attention to some limitations that should be viewed in the context of the entire Protected Property:

- **The Conservation Easement allows within the Development Area a total of 4 single-family residential structures as defined in Section 2.1.1.c.** These include the original farm (main house) and newer house (“Everglades”) in existence at the time the Conservation Easement was granted. It also includes a new house to be built N/NW of the main house and a new house S/SE of the main house. TNC wishes to be clear that this right can only be exercised one time by one landowner for the entire Protected Property. In other words, if the right to build a house W/NW according to Section 2.1.1.c.(3) is exercised by the owner of proposed Lot 230-7-1, then it cannot be exercised

by any other owner of any other portion of the Protected Property subject to the Conservation Easement.

- **The Conservation Easement allows subdivision of up to 4 parcels as defined by Sections 2.1.1.b, 2.2.2.b., and 2.3.** The owners have the right to sell, subdivide, convey portions of the Development Area and Conservation Areas, provided that such conveyance be subject to the terms of the Conservation Easement with written notice provided to The Nature Conservancy. However, Section 2.3 limits that the Protected Property may be subdivided into not more than 4 conforming lots. In other words, after this subdivision, there will only be one more subdivided lot allowed for the entire Protected Property (encompassing the Lots 230-6, 230-7, and proposed 230-7-1), and that might be needed for the owner of Lot 230-6 if they were to exercise the right to construct a single-family residential structure to the E/NE of the original main house as described in Section 2.1.1.c.(4).

Lastly, I would like to draw attention to the Prohibited Activities for each the Development Area (Section 2.1.2) and the Conservation Areas (Section 2.2.1) so they are front-of-mind with prospective building and occupancy. These prohibitions include:

- within the Development Area, there shall be no planting of invasive species, no impervious driveways, and no adverse impacts on water purity and/or flow over the Conservation Areas.
- Within the Conservation Area Lower Fields, there shall be no docks, horseback riding, and no motorized or mechanized vehicles.

Please let me know if you have any questions. I am grateful for the care being given by the landowners, community, and Planning Board to uphold the conservation values of this Protected Property.

Sincerely,

Krista Helmboldt  
Easement Program Manager

CC: Hans Birle, Associate General Counsel