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January 12, 2016

Reagan Bissonnette
Director of Easement Stewardship
Society for the Protection of New Hampshire Forests
54 Portsmouth Street
Concord, NH 03301

Re: Proposed Amendment to Balsams Conservation Restrictions: Dixville, Colebrook, Columbia and Stewartstown.

Dear Ms. Bissonnette:

This letter is in response to yours of December 30, 2015 requesting review of a proposed amendment to a conservation easement, specifically the Proposed Amendment to Balsams Conservation Restrictions¹ located in Dixville, Colebrook, Columbia and Stewartstown. In addition to that submission, you previously provided this office with materials concerning the Proposed Amendment. We also considered information submitted to us by others as well as publicly available materials. Based upon our review, we issue this no action letter effective January 12, 2016. The balance of this letter explains the reasons for our determination.

Background

The Balsams Conservation Restrictions affect large tracts of land surrounding the former Balsams Resort centered in Dixville. From 1866 to its closure, the Balsams Resort developed into a grand hotel for up to 400 guests, including a theatre, golf courses, tennis courts, swimming pool and lake, Nordic and alpine skiing trails, and riding and hiking trails. The entrepreneur Neil Tillotson, who was born and raised in the area, purchased the Balsams Resort in 1954. Specifically, the hotel and property came to be owned by Tillotson Corporation, the majority stockholder of which was the Neil Tillotson Trust. Mr. Tillotson expanded the facilities of the Balsams Resort over the years to include a downhill ski area, a manufacturing facility for Tillotson Rubber Company and a wood-fired boiler plant which provided heat and electricity for the buildings. The hotel employed up to 300 employees; the other operations employed 200.

¹ Capitalized terms have the same meaning as that found in the December 30, 2015 letter.

Mr. Tillotson died in 2001. In accordance with the terms of the trust instrument, the trustees of the Neil Tillotson Trust attempted to sell its assets, including the Balsams Resort, with most of the proceeds to be used for charitable purposes. As confirmed by a consent order issued by the Coos County Probate Court in 2002, with the assent of a prior Director of Charitable Trusts, the sale of the assets was to follow certain principles, including “the bestowal of economic benefit upon the North Country... and promoting the economic well-being of the region” and “the continued operation of the Balsams Hotel as a way of maintaining the special character of the North Country”.

Following Mr. Tillotson’s death, Tillotson Corporation continued to operate the Balsams Resort while the trustees looked for a buyer. After several years of losses, however, the hotel itself closed in September, 2011. When one deal fell through in 2011, the trustees became anxious to locate a buyer. They negotiated the sale of the property in December, 2011 to two local entrepreneurs doing business as Balsam View, LLC. Balsam View, LLC. was unable to reopen the Balsams Resort. In 2012, the hotel’s contents were auctioned off. In 2012 and 2013, portions of the facilities were demolished or burned in anticipation of future redevelopment.

In 2014, ski area entrepreneur Les Otten, through his business Dixville Capital, LLC, entered into an option agreement with Balsam View, LLC for a major revitalization and expansion of the Balsams Resort which would include the extension of its downhill skiing facilities. That proposal has been subject to regulatory review by various government agencies.

Conveyance of Conservation Easement

As part of their plan for the sale of the Tillotson Corporation assets, the trustees intended to preserve from development much of the land surrounding the Balsams Resort. Most of that acreage is wooded, although some portions had been used for agricultural purposes. The bulk of the land had been logged over the years. Because there had been a mixture of industrial, commercial, recreational, agricultural and forestry uses on much of the property, defining the scope of land protection was not an easy exercise. Moreover, Balsam View, LLC had no specific plan at the time for its redevelopment of the Balsams Resort.

Even prior to the Balsam View, LLC transaction, the trustees had been in the process of negotiating a conservation easement with the Society for the Protection of New Hampshire Forests (Forest Society). The urgency of completing that transaction increased after the first buyer backed out in 2011. Moreover, the trustees received in November 2011 an offer for \$2.2 million from an affiliate of Northern Pass Transmission, LLC to purchase a right of way for electric transmission lines across the property. Instead of selling the right of way to Northern Pass Transmission, LLC, and as part of the sale to Balsam View, LLC, the trustees agreed to a prompt conveyance of a conservation easement to the Forest Society for the bargain sale price of \$850,000. A prior Director of Charitable Trusts reviewed and assented to that conveyance,

despite the resulting decrease in cash available for distribution to charities. The Director's assent was based on the conclusion that the protection of the land constituted a valid charitable purpose under the Neil Tillotson Trust. The Forest Society succeeded in raising the needed funds through donations received from more than 1,600 donors during December 2011 and January 2012. The conveyance to the Forest Society took place on January 17, 2012.

The transaction took place in two phases. Tillotson Corporation conveyed certain property consisting of approximately 7,775 acres, including the Balsams Resort, to Balsams View, LLC, in December 2011. That conveyance was subject to the Balsams Conservation Restrictions placed on 5,690 acres, which the Tillotson Corporation reserved for itself. By Quitclaim Deed dated January 17, 2012, the Tillotson Corporation then conveyed the Balsams Conservation Restrictions to the Forest Society, together with a fee interest in the Keazer Ridge parcel north of Route 26. Since then, the Balsams Conservation Restrictions protect 5,690 acres of land owned by Balsams View, LLC (the Restricted Property).

The Balsams Conservation Restrictions contain typical language relating to the conservation and use of the subject property. Due to the proximity of the Balsams Resort, the provisions also include a number of reserved rights to the Fee Owner, including the right to operate and improve skiing trails, to conduct forestry and agricultural activities, to withdraw water, to maintain stump dumps, to construct wind farms on two separate neighboring parcels, and to construct one new ski lift. There was also language permitting easement amendments.

Proposed Amendment

As part of the proposed revitalization and expansion of the Balsams Resort, Balsams View, LLC, Dixville Capital, LLC, and the Forest Society have negotiated a Proposed Amendment to the Balsams Conservation Restrictions to permit certain structures and improvements on the Restricted Property. It would permit the erection of structures and improvements for skiing and other outdoor recreation in the area located south of Route 26 and west of Table Rock, specifically:

1. *Two Ski Lifts*: Two ski lifts extending from the hotel across Route 26 and across the Restricted Property to the area west of Table Rock. One lift will have a mid-terminal for exiting onto the Restricted Property. The base and top terminals of these lifts will be located outside the Restricted Property.

2. *Ski Back Trail*: A single return ski trail, with the southern abutment of a new pedestrian bridge over Route 26 for use by skiers and others returning from the existing Wilderness ski area to the hotel. The trail and abutment will be located on the Restricted Property.

3. *Top Lift Terminal and Trail*: An upper terminal area for a single new lift extending into abutting land outside of the Restricted Property, plus an associated trail to the existing Wilderness ski area across the Restricted Property.

The amendment proposes to require the following mitigation to enhance the Balsams Conservation Restrictions:

1. *Hodge Valley*: The existing Balsams Conservation Restrictions include a reserved right for the construction of a single new lift, associated trails, and related structures and improvements “in the vicinity of Dixville Peak”. While that location is not defined in the Balsams Conservation Restrictions, the parties assume that it refers to part of the area known as Hodge Valley. The current reserved right does not limit the acreage or impact from the development of this new area for skiing. The amendment will define and reduce the footprint. It will still permit one ski lift originating in the Restricted Property and terminating in the vicinity of Dixville Peak. However, the amendment will limit to about 47 acres the trails associated with that lift and will prohibit any further disturbances beyond the western boundary of said trails, except for relocation of an existing snowmobile trail and pedestrian recreational trails.

2. *Dixville Peak Wind Parcel*: The amendment will require Dixville Capital, LLC to purchase a 66-acre parcel of land on Dixville Ridge adjacent to the Restricted Property owned by the successor to the Tillotson Corporation. By virtue of that purchase, the terms of the Balsams Conservation Restrictions provide that this parcel will automatically become part of the Restricted Property. Additionally, Dixville Capital, LLC will eliminate the existing reserved right to erect wind towers on that 66 acre parcel, and will place additional restrictions creating a “Natural Area” to further protect the portion containing old growth forest. The amendment will allow continued use of the existing snowmobile trails and the Cohos Trail, as well as low impact pedestrian recreation.

3. *Dixville Ridge Extension*: The amendment will require Dixville Capital, LLC to convey additional restrictions to further protect approximately 90 acres of old growth forest located on the Restricted Property in the vicinity of the northern-most end of the Dixville Peak Wind Parcel.

4. *Route 26 Parcel*: The amendment will require Dixville Capital, LLC to purchase a 50-acre parcel of developable land, with some wetlands, along Route 26 near the Restricted Property. Dixville Capital, LLC will then convey a conservation easement to the Forest Society, making the parcel subject to the Balsams Conservations Restrictions. The restrictions will protect the parcel from future development (other than for agriculture or forestry). Dixville Capital, LLC will retain a reserved right to permit rights of way for utilities, water pipelines, and an overhead electrical distribution line in a limited corridor along Route 26.

These amendments are subject to an escrow closing agreement containing thirteen conditions that must be satisfied before the executed documents may be released for recording in the Coos County Registry of Deeds. Closing conditions include the following Dixville Capital, LLC deliverables: a deed and title insurance commitment for the Dixville Peak Wind Parcel and the Route 26 Parcel, funds for the payment of recording fees and funds for the expenses incurred by the Forest Society related to the amendment. Closing conditions include the following Forest Society deliverables: title insurance for the existing Restricted Property, a current conditions report for the Restricted Property and mitigation parcels, and a “no action” letter from the Attorney General.

Outreach to Donors

As mentioned above, payment for the conservation easement included a charitable gift from the Tillotson Corporation in the form of a bargain sale. That \$850,000 was then funded through gifts from public donors. The Forest Society represented that it contacted the prior management and owners of Tillotson Corporation for their views concerning the Proposed Amendment. They have indicated their assent.

The Forest Society represents that it also contacted by mail the 1,600 public donors of the \$850,000 raised to purchase the easement. Of the 63 who responded, 43% initially opposed the Proposed Amendment, largely because of the potential effect upon old growth forest. The Forest Society reached out to those donors, and after further explanation, most accepted the proposal.

Two public donors, James and Sandy Dannis, contacted the Charitable Trusts Unit directly and submitted their opposition to the Proposed Amendment along with written explanations for their position. Another person, apparently not one of the public donors, also registered opposition with the Charitable Trusts Unit.

Conservation Easement Amendments – Fiduciary Duties

In New Hampshire, a conservation easement conveyed to a charitable or governmental organization as a gift, in whole or in part, creates a charitable trust. See, RSA 7:21, II(a). It means that in addition to any applicable contract or property law duties, the holder of a conservation easement acts in a fiduciary capacity, that is it assumes the duties of a trustee under New Hampshire law. Accordingly, the holder of a conservation easement may not grant an amendment except after a thorough examination of a number of factors.

Because a conservation easement creates a charitable trust, the holder must consider whether an amendment proposal must receive court approval through a petition for deviation or the application of the *cy pres* doctrine. See, RSA 547:3-c, 3-d. But deviation and *cy pres* are used when a change of overall purpose is either threatened or contemplated. Because an interest in

real estate is affected, because the concurrent rights and obligations of the underlying owner and the fee owner need specificity, and because gifts of easements may have income tax consequences to the donor, the language of conservation easements can become quite detailed. Those detailed documents are then recorded. In some cases, as is the situation here, there may be time pressures that result in the failure to document all possible future scenarios. No matter how well drafted, circumstances may arise that call for an amendment to a detailed conservation easement. Some amendments are limited, and are not proposed to remove a threat to a purpose, nor to change a purpose, and so do not necessitate court action. Some amendments are major, and do result in the removal of a threat or a change of purpose that requires court review under the deviation or *cy pres* standard. In all cases, the fiduciary -- the holder of the conservation easement -- bears a heavy burden to justify its agreement with a proposed amendment.

To assist holders of conservation easements in meeting their fiduciary duties, the Charitable Trusts Unit advises they follow the guidelines set forth in *Amending or Terminating Conservation Easements: Conforming to State Charitable Trust Requirements* (2008) (the Guidelines). It describes seven principles for all conservation easement amendments to meet. It then details a process for review by the Charitable Trusts Unit of the easement holder's compliance with its fiduciary duties. Where the easement contains a provision allowing amendments that are consistent with the purpose of the easement, and where the seven principles are met, then review by the Charitable Trusts Unit may not be necessary, but may still be warranted. Where the easement contains no amendment provision, then Charitable Trusts Unit review is always recommended. If the holder of a charitable conservation easement approves an amendment without this review, the Director of Charitable Trusts may ask a court to void the transaction and may seek to hold the holder of the easement accountable for breach of trust.

Review of Proposed Conservation Easement Amendment

The Balsams Conservation Restrictions permit the holder and the owner to make amendments consistent with the document's delineated Purposes, which are land protection, scenic and recreational use, water resource protection and natural habitat protection. Deciding not to rely solely upon that language, and needing to satisfy a requirement of the escrow closing agreement, the Forest Society has sought review from the Charitable Trusts Unit of the Proposed Amendment.

For holders of conservation easements to meet their fiduciary duties, the Charitable Trusts Unit looks to see that any amendments meet the seven principles of the Guidelines, which can be summarized as follows:

1. Serve the public interest and the holder's mission
2. Comply with applicable laws
3. Not jeopardize the holder's tax exempt status

4. Not result in private inurement or private benefit to the owner
5. Be consistent with the conservation purposes of the easement
6. Be consistent with the documented intent of the donor and the grantor
7. Have a net beneficial or neutral effect on conservation values.

The Forest Society has addressed all seven principles in its letter, while paying particular attention to Principles 4 and 7. In fact, the Forest Society has defined the Proposed Amendment as a “more risk” amendment because of the facts associated with those two Principles. We add Principle 6 as a risk deserving greater scrutiny.

As to the other Principles, the Forest Society’s submission adequately addresses Principles 1 through 3. As to Principle 5, as the Forest Society noted, recreational use is among the purposes of the Balsams Conservation Restrictions and the reserved rights specifically contemplate new skiing terrain in Hodge Valley.

Private Benefit

No amendment to a conservation easement may confer private benefit upon the owner. That would constitute a breach of the holder’s fiduciary duty of care, jeopardize any federal tax advantage received by the land donor and threaten the tax exempt status enjoyed by the Forest Society. Since the Proposed Amendment involves trade-offs of restrictions on some portions of the Restricted Property in exchange for new parcels to be added to the Restricted Property and additional restrictions placed on certain existing Restricted Property, there is a risk that the increased market value to the owner from easing certain restrictions could exceed the value lost from the inclusion of new parcels subject to new restrictions.

To test whether a private benefit may occur from the Proposed Amendment, the Forest Society retained an independent, licensed professional appraiser who confirmed that the financial value to be received by the owner through the Proposed Amendment is less than the value sacrificed through the addition of mitigation parcels to the Balsams Conservation Restrictions. The appraisal compared the acreage in which the Proposed Amendment will benefit the owner with the acreage to be added to the Restricted Property. Specifically, the appraisal states that the value of the Proposed Amendment to the owner from the eased restrictions is \$46,000, whereas the value of the Route 26 Parcel being added as mitigation to the Balsams Conservation Restrictions is \$67,000. The appraisal assumed that the owner would receive a financial benefit from 4.9 additional acres, but that land was not included in the final Proposed Amendment. The appraisal also did not assume the removal of reserved rights to a portion of Hodge Valley, which removal was included in the final Proposed Amendment. The appraisal conclusion is that the owner will receive a net economic loss of \$21,000, to which could be added an amount representing the additional changes reflected in the final Proposed Amendment.

Mr. Dannis, in his written comment, asserted that the Proposed Amendment will allow the owner to place additional chairlifts and expand the skiing capacity of the Balsams Resort. He

argued that this in turn becomes the “linch pin” for Dixville Capital, LLC’s entire development. Mr. Dannis then urged the Charitable Trusts Unit to require the creation of a financial model for Dixville Capital, LLC’s proposed development of the Balsams Resort and creation of financial projections that will determine the profitability of the entire project. The Charitable Trusts Unit declined that approach, but asked that the appraiser further address his decision to determine value based upon the use of comparable sales of residential property on a per acre basis, rather than the use of an income approach applied to the profitability of the proposed development. The appraiser responded in a letter dated January 7, 2016. He opined that consideration of the proposed development in an appraisal would be “extremely speculative”. It would require an income analysis of the proposed upgraded hotel, dwelling units and ski area, none of which has been built. In the scope of the overall development, he believed that the impact of the Proposed Amendments on the value of the overall project “would in all likelihood be too insignificant to be measurable”.

The Charitable Trusts Unit has extensive experience reviewing amendments to conservation easements and is familiar as well with the approach of the Internal Revenue Service in reviewing conservation easement appraisals. Standard real estate appraisal techniques, including the “before and after” method for valuing change in the development rights of undeveloped land, are well accepted in these circumstances. The Charitable Trusts Unit is not aware of the use of investment banking financial models in the valuation of land subject to conservation easements, nor is it aware that an easement holder has a fiduciary duty to extract a “hold out” premium from the owner before agreeing to an amendment. In fact to do so may needlessly undermine the relationship between the holder of a conservation easement and the owner of the underlying fee interest where the parties of necessity must co-exist on the same land.

Mr. Dannis in his comment also raised the possibility that the Internal Revenue Service would find impermissible “private benefit”, arguing that the Proposed Amendment amounts to a “land swap” that runs afoul of the perpetuity requirement for deductible conservation easements under the Internal Revenue Code. That is not the case here, for two reasons. First, we understand that Tillotson Corporation took no charitable tax deduction for the gift portion of its bargain sale of the Balsams Conservation Restrictions to the Forest Society. Accordingly, the Internal Revenue Code and related case law do not apply. Second, the cases concerning the tax deductibility of conservation easements involving “land swaps” deal with situations where land is removed entirely from the easement restrictions. Here, the acreage at the center of the Proposed Amendment remains subject to the Balsams Conservation Restrictions. The affected land will be devoted to skiing activities, a recreational use that is one of the four Purposes delineated in the Balsams Conservation Restrictions.

In summary, the Forest Society negotiated the acquisition of a new mitigation package in exchange for certain skiing use changes within a limited area of the Balsams Conservation

Restrictions. No land is to be removed from the Balsams Conservation Restrictions. An appraisal concluded that value to the owner from the changes was more than offset by the new mitigation package. As such, the Forest Society acted within its fiduciary duties when it concluded that the appraisal confirmed the absence of net private benefit conveyed to the owner through the Proposed Amendment.

Donor Intent

Donor intent is important to the review of the Proposed Amendment since it may shed light upon the purposes of the Balsams Conservation Restrictions and any understandings with respect to the possibility of amendments. Since there are two classes of donors, each must be considered separately.

Tillotson Corporation conveyed the Balsams Conservation Restrictions to the Forest Society for the bargain sale price of \$850,000. It was represented by counsel and its president signed the deeds, therefore Tillotson Corporation is presumed to know the terms of the documents, including the inclusion of a recreational purpose and amendment provisions. The Forest Society represents, moreover, that the management of the former Tillotson Corporation and the Neil Tillotson Foundation trustees have been consulted about the Proposed Amendment and assent to it.

Since our review leads us to believe that the Proposed Amendment is compatible with the Balsams Conservation Restrictions, the equivalent view expressed by the grantor/former owner adds weight to this conclusion. Had the grantor/former owner opposed the amendment, based upon an interpretation of the intent of the Balsams Conservation Restrictions, then the Proposed Amendment may have required court review. There could have been a call to rescind the transaction or to enjoin the implementation of the Proposed Amendment, relief which comes within the jurisdiction of the courts.

The second class of donors consists of those members of the public who gave money to the Forest Society in its campaign to purchase the Balsams Conservation Restrictions for \$850,000. By raising money for a specific purpose, the Forest Society had a duty to use the funds for that purpose. The Forest Society did raise that money and did use it to purchase the Balsams Conservation Restrictions. Unlike Tillotson Corporation, those donors have no chain of title connection to the Balsams Conservation Restrictions; their connection is to the Forest Society only.

The question raised by Mr. Dannis, and potentially other public donors, is whether the Forest Society made false, unfair or deceptive representations in the course of its appeal. The Forest Society's appeal consisted of few direct mail pieces and an extensive blog on its web site. We have reviewed the content of this material and the entries highlighted by Mr. Dannis and the

Forest Society. The materials largely consist of general statements about the protection “forever” of more than 5,000 acres adjacent to the Balsams Resort. It mentions forestry, recreational use and the continued operation of the Balsams Resort. It also mentions that the Balsams Conservation Restrictions will block Northern Pass Transmission, LLC from extending electrical transmission lines through any of the property.

Mr. Dannis correctly points out that the solicitations to public donors do not appear to reference the possibility of amendment. The solicitations also do not point out that the Balsams Resort had been an extensive commercial enterprise with accommodations for 400 people, employment for 300 workers, facilities for skiing, golf, tennis, swimming and hiking, a latex rubber factory and a wood fired heating and electrical generation facility. Are the presence of amendment rights in most conservation easements and the many years of intense commercial development at the Balsams Resort facts that should have been obvious to potential donors? We need not decide that.

On balance, we cannot judge whether an individual public donor may have been misled into making a gift to the Forest Society based upon the absence of a disclosure concerning either 1) the possibility of an amendment like the Proposed Amendment or 2) the intense commercial nature of the Balsams Resort adjacent to the Restricted Property. We note, however, that the Forest Society’s campaign took place at the same time as it was galvanizing opposition to Northern Pass Transmission, LLC’s proposal. It may be that opposition to Northern Pass motivated a number of public donors to contribute to the purchase of the Balsams Conservation Restrictions, and the specific terms of the easement were of little consideration.

There are money damage remedies available to donors who can prove that they reasonably relied upon an intentional or negligent misrepresentation made by the Forest Society, and there may be other remedies. That possibility alone does not demand court review of the Proposed Amendment. Public donors likely do not have standing to challenge the Proposed Amendment in court. The alleged misrepresentations at worst were omissions of facts already well known to the grantor/owner, and perhaps other members of the public. The Forest Society does not appear to have made any affirmative misstatements that call into question the purpose or terms of the Balsams Conservation Restrictions.

There is no evidence that the Forest Society made any statement to Tillotson Corporation that is inconsistent with the Proposed Amendment. We cannot determine whether any public donor was misled into making a contribution, but there is no evidence that the Forest Society made any misleading affirmative statement concerning the possibility of amendments or the commercial future use of the Balsams Resort. For these reasons, the Forest Society acted within its fiduciary duties to go forward with the Proposed Amendment in light of statements made to donors. Still, as a cautionary note, it may be prudent for charitable organizations soliciting funds

from the public to invite potential donors to review relevant documents and, in the case of conservation easements, to disclose the possibility of future amendments.

Ecological Effect

In reviewing the Proposed Amendment, we look to see what effect it will have on the conservation values protected by the Balsams Conservation Restrictions. This analysis requires a comparison of any lost conservation attributes with those gained from the mitigation. The Forest Society sums it up as follows:

Total Acreage: 19.7 acres of the Restricted Property would be directly impacted by the proposed structures and improvements requested, whereas 50 acres of developable land and 66 acres of high elevation land would be added to the Balsams Conservation Restrictions;

Old Growth: 6.39 acres of fragmented old growth forest would be cut; whereas approximately 150 acres of higher-elevation unfragmented old growth forest would be newly protected;

Reduced Reserved Right: The reserved right in Hodge Valley for one lift and unlimited trails would be reduced to limit the impact to approximately 47 acres of lifts and trails; and

Visual Impacts: The proposed amendment would eliminate the impacts from previously permitted wind towers along a portion of Dixville Ridge, which helps to offset visual impacts of the two lifts and bridge crossing Route 26.

The Forest Society hired an independent ecological consultant to evaluate the effects of the Proposed Amendment on the conservation values and attributes protected by the Balsams Conservation Restrictions. The ecologist surveyed the areas proposed to be affected by the amendment and the mitigation parcels. The resulting report detailed the impacts and the initially proposed mitigation requested by the owner. The ecologist recommended that the Forest Society consider additional mitigation measures beyond what had been proposed. The parties then agreed to further mitigation to address some of the recommendations of the ecologist, including a reduction of the original reserved right to expand skiing into Hodge Valley, a reduction that would reduce the impact to old growth forest in Hodge Valley.

The Forest Society concluded that the final mitigation package would result in a net beneficial effect on the relevant conservation values and attributes protected by the Balsams Conservation Restrictions. In doing so, the Forest Society acted within its fiduciary duties to approve the mitigation package as part of the Proposed Amendment.

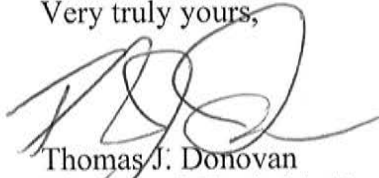
Conclusion

This review of the Proposed Amendment to the Balsams Conservation Restrictions included a detailed analysis of economic valuation, conservation values and donor intent. From a broad perspective, the Proposed Amendment seeks to include within the Restricted Area less than 20 additional acres of land to be used for skiing, a recreational purpose permitted within the Balsams Conservation Restrictions. The owner will add to the Restricted Property 116 acres of new mitigation land plus it will protect from use 150 additional acres of old growth forest. The Proposed Amendment must also be reviewed in context. The Restricted Property and the Proposed Amendment support the recreational uses of the Balsams Resort, which has been and is proposed again to be a major commercial enterprise. Much of the Restricted Property is available for these recreational uses and, despite the name of the Balsams Resort ski area, those areas are not "wilderness".

Our analysis of the Proposed Amendment finds that the Forest Society provided documentation showing compliance with the seven principles contained in the Guidelines. It is not a "high risk" amendment and it does not propose or threaten a change of overall purpose requiring a court petition for deviation or for application of the *cy pres* doctrine.

We therefore issue this no action letter effective January 12, 2016. If you have any questions please do not hesitate to contact me or Assistant Director Terry Knowles.

Very truly yours,



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