

22572

**CONSERVATION EASEMENT
ON PROPERTY OF RUTH D. BOWDEN,
TOWN OF BLUE HILL, HANCOCK COUNTY, MAINE,
TO BLUE HILL HERITAGE TRUST**

I, **RUTH D. BOWDEN**, of Blue Hill, Hancock County, Maine, (hereinafter referred to as the "GRANTOR," which word is intended to include, unless the context clearly indicates otherwise, the above-named Grantor, her personal representatives, heirs and assigns, any successors in interest to the Protected Property, and their executors, administrators and personal representatives),

GRANT as a partial gift to **BLUE HILL HERITAGE TRUST** a non-profit corporation organized and existing under the laws of the State of Maine, with a mailing address of P.O. Box 222, Blue Hill ME 04614, (hereinafter referred to as the "HOLDER," which word shall, unless the context clearly indicates otherwise, include the Holder's successors and/or assigns),

with COVENANTS OF WARRANTY, in perpetuity, the following described Conservation Easement on approximately 208 acres of real estate in that part of the Town of Blue Hill, Hancock County, Maine, known as North Blue Hill, (hereinafter referred to as the "Protected Property"), more particularly described in Exhibit 1, and as depicted in Exhibit 2, both attached hereto and made a part hereof by reference.

The Conservation Easement on the Protected Property is granted exclusively for the following conservation purposes:

~ Purpose ~

It is the purpose of this Conservation Easement to provide significant public benefit by preventing the conversion of prime agricultural soils to development or other land uses that would limit their productivity and availability for agricultural purposes in the future, and by protecting and preserving in perpetuity the highly scenic and open views of and across the Protected Property.

~ *Conservation Values* ~

The following recitals more particularly describe the conservation values of the Protected Property and the significance of this grant.

WHEREAS, Grantor is the sole owner of the Protected Property, an important agricultural property in North Blue Hill, Blue Hill, Maine; and

WHEREAS, the Protected Property remains in a substantially undeveloped state, consisting primarily of scenic open fields and woodland; and

WHEREAS, the Protected Property is composed almost entirely of Prime Agricultural Soils, as defined by the U.S. Department of Agriculture's Soil Conservation Service, which soils are a non-renewable resource and represent only 1.6 % of the land in Hancock County; and

WHEREAS, open lands available for agricultural uses are subject to increasing development pressures, and existing land use regulations are neither permanent nor currently sufficient to preserve the scenic and agricultural values of the Protected Property; and

WHEREAS, the Legislature of the State of Maine passed on March 24, 1983, a "Joint Resolution Relating to Conservation of Maine Farmland, " in which it is resolved as follows:

"RESOLVED: That We, the Members of the 111th Legislature now assembled in the First Regular Session, consider the state's farmland to be a unique and irreplaceable resource, whose conservation is essential to present and future sustained agricultural activities, and yields significant benefit to the people of the State; and be it further

RESOLVED: That the Members hereby consider it the policy of this State to encourage the efforts of both public agencies and private organizations to protect and maintain open agricultural land within Maine for present and future use. Toward this end, the members endorse the voluntary transfer of rights and interest in agricultural lands through agreements between farmland owners and private land conservation agencies. . . . ; "

and

WHEREAS, the State of Maine recognizes the importance of preserving potential and active farmland in its Constitution at Title IX § 8, and by virtue of the "Farm and Open Space Tax Law" at Title 36, M.R.S.A. § 1101-1121, which confers special property tax status on property which owners agree to keep open and available or active as farmland;

and

WHEREAS, Grantor and Holder, recognizing the Protected Property as a scenically and agriculturally significant parcel under threat of conversion to development that would forever alter the open views and destroy the land's prime soils, have established a Conservation Easement on the Protected Property that seeks to preserve these public values and permit only minor improvements or alterations to the land;

~ Establishment of Conservation Easement ~

NOW, THEREFORE, the Grantor and Holder have established a Conservation Easement on, over, and across the Protected Property consisting of the following terms, covenants, restrictions, and affirmative rights granted to Holder, which shall run with and bind the Protected Property in perpetuity:

~ Restrictions on Use of Protected Property ~

1. LAND USE.

The Protected Property may be used only for conservation, non-commercial low-impact outdoor recreation, limited residential use, and agricultural and forestry uses (including cover crops, row crops, animal husbandry and orchardry) that do not adversely affect its undeveloped, scenic and open character. No commercial, industrial, quarrying or mining activities are permitted on the Protected Property except for home occupation (including by way of illustration, professional office by a person resident on the premises and bed and breakfast) not detrimental to the conservation values of the Protected Property, agriculture, and forestry, conducted in accordance herewith.

2. SUBDIVISION AND GRANTOR'S RESERVED LAND.

Notwithstanding that the Protected Property was conveyed in separate parcels or lots, it shall remain as a unified entity under one ownership, and shall not be divided, subdivided, partitioned or otherwise conveyed in separate parcels or lots. The parties

acknowledge that Grantor has reserved from the Protected Property a parcel of land associated therewith described as an exception to Exhibit 1 attached hereto, which Grantor hereby covenants and agrees will not be sold or conveyed, except as a unit and except subject to restrictive covenants, for the benefit of the Protected Property, limiting development to not more than one residence designed for single family use, and usual and customary accessory outbuildings and structures, and limited to non-commercial uses except for agriculture, home occupation (including by way of illustration, professional office by a person resident on the premises and bed and breakfast) and forestry.

3. **STRUCTURES.**

At the time of this grant there are no structures on the Protected Property except for a farm residence with a barn, septic system, well, mailbox, small signs, sheds and other small outbuildings and accessory structures all located within 100 feet of the farm residence; as well as corrals, feed troughs, fencing for livestock; boundary markers, old stone walls and the remains of other fencing, and public utilities, as documented in Baseline Data.

No additional structures, temporary or permanent, may be located on the Protected Property without the prior written consent of Holder, except that Grantor, her heirs and assigns, reserve the following rights:

A. Grantor reserves the right to locate on the Protected Property minor roofed and unroofed structures to enhance the opportunity for permitted agricultural use of the Protected Property, including feed troughs, corrals, fresh water systems, and low fences, as well as boundary markers, temporary tents for occasional non-commercial camping and events, and trail improvements such as small unlighted signs, steps, railings, and bog bridges; provided that such structures shall not materially alter the traditional rural and agrarian character and scenic appearance of the Protected Property, as documented in Baseline Data.

B. Grantor reserves the right to maintain and replace existing structures with substantially similar structures in substantially the same locations, and to locate additional structures, such as greenhouses and sheds, accessory to the farm residence and barn within two hundred fifty (250) feet of any perimeter wall of either the existing farm residence or barn. Septic waste disposal systems and fresh water wells and associated systems, to serve the Protected Property and Grantor's reserved land, may be located outside of the aforementioned area upon notice to Holder that they cannot be practicably located within said area. Temporary "hoop houses" or similar devices may be located within the open fields to extend the growing season.

C. Grantor reserves the right to build or convert one additional structure for residential housing, together with minor accessory structures ordinarily necessary for such use. Any such additional structure may be occupied by the Grantor or leased to other persons for residential purposes. Any such housing shall be located on or near a cleared area with a large rock maple tree. The cleared area is located generally northwesterly of and approximately 1200 feet from the house. The area is now accessible by an existing woods road which may be improved to permit travel appropriate to residential use. Utilities may be installed along the road or in other place as the parties may agree.

4. SURFACE ALTERATIONS

As of the date of this grant, there are no surface alterations on the Protected Property except for those associated with existing structures and agricultural activities, and a driveway to the residence, parking or turning areas associated with the farm curtilage, and a woods road. No additional alterations to the surface or to watercourses or wetlands on the Protected Property, other than irrigation and similar devices customary to the operation of a farm, are permitted without the prior written consent of Holder, except that Grantor, her heirs and assigns reserve the following rights:

A. Grantor reserves the right to alter the surface to the extent necessary to install and maintain permitted structures, to maintain and expand the existing fields and pasture, and to maintain the existing unpaved woods road and footpaths, and establish additional woods roads and footpaths located to avoid fragmentation of agricultural fields, and to install steps, berms, culverts, drainage ditches, and other measures necessary to prevent or minimize erosion.

B. Grantor reserves the right to permit small select portions of the Protected Property to be excavated for ecological studies or archeological purposes, subject to the prior written approval of Holder, which may be granted only if such activities will be conducted according to generally accepted professional practices and standards and the area will be restored to a condition consistent with the conservation purposes of this grant.

5. VEGETATION MANAGEMENT.

As of the date of this grant, the Protected Property consists of an open farmstead area containing substantially all of the development on the Protected Property, extensive open fields, and farm woodlands, as depicted in as documented in baseline data. The destruction or removal of vegetation on the Protected Property is prohibited without the prior written approval of Holder, except that the Grantor, her heirs and assigns, reserve the following rights and accept the following obligations:

A. Grantor reserves the right and covenants and agrees to maintain the existing open fields on the Protected Property, depicted in Exhibit 2, at her own expense, by mowing, harrowing, brush-hogging and the removal of woody vegetation, subject to specimen trees, orchard trees and low shrubs that may be established therein.

B. Grantor reserves the right to maintain existing open areas, including those surrounding existing structures, and as necessary to locate permitted additional structures; and to clear forest and brush to establish additional fields for agricultural purposes, including row crops, orchards and pasture, the latter in accordance with a plan that assures timely completion of such clearing and restoration of the soil to prevent erosion of valuable agricultural soils and return the Protected Property to its scenic agrarian character.

C. Grantor reserves the right to selectively cut and prune trees and other vegetation in forested areas of the Protected Property to provide forest products for use on the Protected Property, to improve wildlife habitat, to control or prevent the spread of fire or disease, to establish views from trails, roads and structures on the Protected Property, and for the harvesting of forest products having commercial value, provided that all such cutting shall be done under the supervision of a licensed Maine forester in accordance with good husbandry in a manner that will preserve the flora and wildlife habitat.

D. Grantor reserves the right to alter vegetation to the extent necessary to exercise the rights reserved herein, and to permit alteration of vegetation to the extent of the rights of the public or the power utility established by deed or by operation of law within the public road or utility rights-of-way along the town road.

6. WATER PROTECTION AND WASTE DISPOSAL.

A. The use of herbicides, insecticides, fungicides, chemical fertilizers or other chemical substances, as well as the use or disposal of agricultural products and by-products, must be limited so as not to have a demonstrable adverse effect on water courses and wildlife habitat associated with the Protected Property and shall be used consistent with state and federal law.

B. It is forbidden to dispose of or to store rubbish, garbage, debris, abandoned automobiles or equipment, parts thereof, or other unsightly, offensive, toxic or hazardous substances or waste material on the Protected Property; except that vegetative waste may be composted or used on the Protected Property, and other waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate containment for removal at reasonable intervals, subject to all applicable local, state, and federal laws and regulations. This should not be construed to prohibit the storage, within a reasonable distance of the farm residence, of farm equipment and materials and other salvage customarily kept for future agricultural use.

7. ACCESS.

Nothing contained herein should be construed as affording the general public physical access to any portion of the Protected Property. Nothing in this Easement should be construed to preclude Grantor's right to grant public access across the Protected Property, provided that such use does not conflict with the conservation values of the Protected Property.

8. NOTICES.

Any notice to Holder required hereunder must be made by certified mail, return receipt requested, addressed to: Director of Stewardship, Blue Hill Heritage Trust, P.O. Box 222, Blue Hill, Maine 04614; or to such other authorized person and address hereafter designated in writing by Holder.

Any notice to Grantor required hereunder must be made by certified mail, return receipt requested, addressed to: Ruth D. Bowden, RFD #1 - Box 670, Blue Hill, ME 04614, or to such other authorized person and address hereafter designated in writing by Grantor.

Any notices to Holder or Grantor or requests to Holder or Grantor for consent, required or contemplated hereunder, must include, at a minimum, sufficient information to enable Holder or Grantor to determine whether proposed plans are consistent with the terms of this Conservation Easement and the conservation purposes hereof.

9. COSTS AND TAXES, INDEMNIFICATION.

Grantor is responsible to pay and discharge when due all property taxes and assessments lawfully imposed and to avoid the imposition of any liens that may impact Holder's rights hereunder.

Grantor acknowledges that Holder has no possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property, and will, to the fullest extent permitted by law, defend, release, relieve, hold harmless and indemnify Holder, its officers, directors, agents, and employees therefrom and from any claims for damages which arise therefrom, except for harm proximately caused by the negligent act or misconduct of Holder, its assignees, employees or agents, or as may arise out of its workers' compensation obligations.

10. HOLDER'S AFFIRMATIVE RIGHTS.

A. Holder has the right to enforce this Conservation Easement by proceedings at law and in equity, including the right to require the restoration of the Protected Property to a condition in compliance herewith, after providing Grantor with prior notice and reasonable opportunity to cure any breach, except where emergency circumstances require more immediate enforcement action. Holder may not bring an enforcement action against Grantor for injury to or change in the Protected Property resulting from "acts of God" so called, such as, but not limited to, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If a Court (or other decision maker chosen by mutual consent of the parties) determines that this Conservation Easement has been breached, Grantor will reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, and any other payments ordered by such Court.

B. Holder has the right to enter the Protected Property for inspection and enforcement purposes, at a reasonable time and in a reasonable manner that is consistent with the conservation purposes hereof, and prior to entry onto any area of the Protected Property, Holder will make reasonable efforts to notify persons in residence on the Protected Property.

C. Holder has the right to require that Grantor's reserved rights be exercised in a manner that avoids unnecessary harm to the conservation values to be protected by this Easement.

D. Holder has the right to conduct a professional boundary survey of the Protected Property or any part thereof, which survey will be at Holder's cost only if and to the extent necessary to determine the existence of a prohibited land use.

11. CONSERVATION EASEMENT REQUIREMENTS UNDER MAINE LAW AND U.S. TREASURY REGULATIONS.

A. This Conservation Easement is created pursuant to The Uniform Conservation Easement Act at Title 33, Maine Revised Statutes Annotated (1989), Sections 476 through 479-B, inclusive, as amended, and shall be construed in accordance with the laws of the State of Maine.

B. This Conservation Easement is established exclusively for conservation purposes pursuant to the Internal Revenue Code of 1986 as amended (hereinafter referred to as the "Code") at Title 26, U.S.C.A., Section 170(h)(1)-(6) and Sections 2055 and 2522, and under Treasury Regulations at Title 26 C.F.R. §1.170A-14 et seq., as amended; and

C. The Holder is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statutes Annotated (1989), Section 476(2)(B), as amended, and is a Qualified Organization under Code Section 170(h)(3), to wit: a publicly funded, non-profit 501(c)(3) organization operated primarily to accept lands, easements, and buildings for the purpose of preserving and protecting natural, scenic, educational, recreational and open space values of real property, in particular the islands and coastal mainland of Maine, having a commitment to protect the conservation purposes of the donation, and the resources to enforce the restrictions hereof.

D. This Conservation Easement is assignable, but only to an entity that satisfies the requirements of Section 170(h)(3) of the Internal Revenue Code of 1986, (or successor provisions thereof) and the requirements of Section 476(2) of Title 33 of the Maine Revised Statute Annotated (1989), as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the conservation purposes of this grant.

E. Grantor agrees to notify Holder prior to undertaking any activity or exercising any reserved right that may have a material adverse effect on the conservation purposes of this grant.

F. In order to establish the present condition of the Protected Property and its natural and scenic resources so as to be able to monitor properly future uses of the Property and assure compliance with the terms hereof, Holder and Grantor have prepared an inventory of the Property's relevant features and conditions (the "Baseline Data"), and have certified the same as an accurate representation of the condition of the Protected Property as of the date of this grant.

G. Grantor represents that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property. Grantor has the right to use the Protected Property as collateral to secure the repayment of debt, provided that the right of the Holder to enforce the terms, restrictions and covenants created under this easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien, regardless of date. The restrictions of this Conservation Easement, and Holder's right to enforce them shall be superior to any subsequently placed mortgage or lien, except with respect to Holder's right to monetary damages based upon a violation that occurs subsequent to recording of such mortgage or lien. Holder may execute limited subordination to this effect upon request by Grantor.

H. This Conservation Easement constitutes a property right owned by the Holder. Notwithstanding that this Conservation Easement is an obligation, and not a financial asset, should it be extinguished, which may be accomplished only by court order, Holder is entitled to a share of the proceeds of any sale, exchange or involuntary conversion of the unrestricted property, according to Holder's proportional interest in the

Protected Property as determined by Treasury Regulations 1.170A-14(g)(6)(ii). Holder's proportional interest is determined as of the date of this grant and will not include value attributable to improvements to the Protected Property made after the date of this grant. Holder will use such proceeds for its conservation purposes.

12. GENERAL PROVISIONS.

A. The failure or delay of the Holder, for any reason whatsoever, to enforce this Conservation Easement shall not constitute a waiver of its rights and Grantor hereby waives any defense of laches, prescription or estoppel.

B. A person's obligation hereunder as a Grantor or successor owner will cease, with respect to the Protected Property, if and when such person or entity cease to have any present, partial, contingent, collateral or future interest in the Protected Property, but only to the extent that it is in compliance herewith. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer. Holder will execute certificates, certifying the compliance of the Protected Property with the terms of this grant, at Grantor's cost, after an inspection made upon reasonable prior notice.

C. In making this grant, Grantor has considered the fact that uses prohibited hereby may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Grantor and Holder that any such changes not be deemed to be changed conditions permitting termination of this Easement.

D. If any provision of this Conservation Easement or the application of any provision to a particular person or circumstance is found to be invalid, the remainder of this Conservation Easement and the application of such provision to any other person or in any other circumstance, shall remain valid.

E. Grantor has retained Attorney Barry K. Mills of Hale & Hamlin, 10 State Street, P.O. Box 729, Ellsworth ME 04605, to represent only her interests in this transaction.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Holder its successors and assigns forever.

BK 2795 PG 564

IN WITNESS WHEREOF, the GRANTOR, RUTH D. BOWDEN, a widow, has
hereunto set her hand and seal this day of , 1998.

Signed, sealed and delivered
in the presence of:

Cheryl L. Cousins
Witness

Ruth D. Bowden
Ruth D. Bowden, Grantor

STATE OF MAINE
COUNTY OF HANCOCK, ss.
December 28, 1998

SEAL

Then personally appeared the above-named Ruth D. Bowden and acknowledged the
foregoing instrument to be her free act and deed.

Before me,

Barry K. Mills
Notary Public

Barry K. Mills

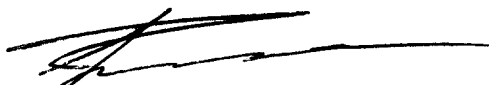
Commission expires June 25, 2002
Type or Print Name of Notary

My commission expires:

HOLDER ACCEPTANCE.

BLUE HILL HERITAGE TRUST hereby accepts the above and foregoing Conservation Easement by and through Lorenzo Mitchell, its president, hereunto duly authorized this 28th day of December, 1998.

BLUE HILL HERITAGE TRUST

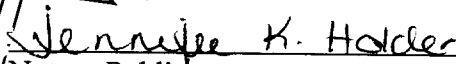

By: Lorenzo Mitchell
Its President

STATE OF MAINE
COUNTY OF HANCOCK, ss.

December 28, , 1998

Personally appeared Lorenzo Mitchell, President and authorized representative of the above-named Holder, BLUE HILL HERITAGE TRUST, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of BLUE HILL HERITAGE TRUST

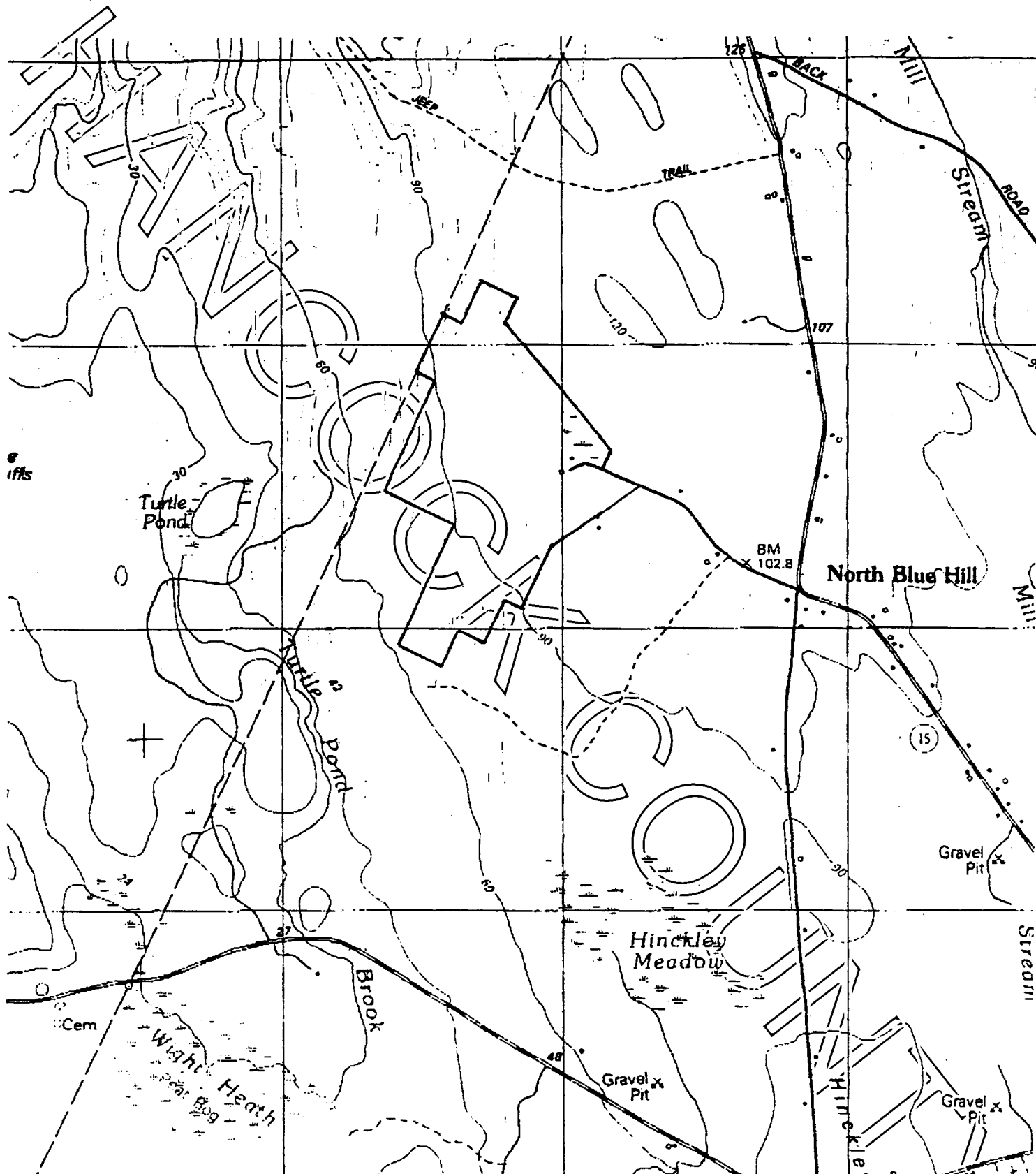
Before me,


Notary Public

Jennifer K. Holden, Notary Public
State of Maine
Type or Print Name of Notary
My Commission Expires 5/18/2002

My commission expires:

SEAL



98 DEC 28 PM 3: 16

REGISTER OF DEEDS
HANCOCK COUNTY SS.
Margaret H. Henshaw

REGISTER

TOTAL P.02

#2