

# CONCORD MUNICIPAL AIRPORT DEVELOPMENT AND CONSERVATION MANAGEMENT AGREEMENT

THIS DEVELOPMENT AND CONSERVATION MANAGEMENT AGREEMENT is made and executed on this 9th day of November, 2000, by and through the CITY OF CONCORD, New Hampshire having its principal office at 41 Green Street, (City Manager's office) Concord, New Hampshire 03301 (hereinafter referred to as "City"); the U. S. FISH AND WILDLIFE SERVICE, having its principal office at 22 Bridge Street, Concord, New Hampshire 03301 (hereinafter referred to as the "Service"); the NEW HAMPSHIRE FISH AND GAME DEPARTMENT, having its principal place of business at 2 Hazen Drive, Concord, New Hampshire 03302 (hereinafter referred to as the "Department"); the NH DEPARTMENT OF RESOURCES & ECONOMIC DEVELOPMENT, 172 Pembroke Road, Concord, New Hampshire 03301 (hereinafter referred to as "DRED"); the NH DEPARTMENT OF TRANSPORTATION, DIVISION OF AERONAUTICS, 65 Airport Road, Concord, New Hampshire 03301 (hereinafter referred to as "NHDOT"); and the NH ARMY NATIONAL GUARD, State Military Reservation, 4 Pembroke Road, Concord, New Hampshire 03301-5652 (hereinafter referred to as the "NHARNG").

This Agreement is entered into by the above parties for the purpose of managing airport lands in a manner that provides and enhances essential habitat for federally- and state-listed threatened and endangered species of Lepidoptera, such as the Karner Blue Butterfly. This Agreement shall serve as the City's compensation to offset the loss of species and habitat in the designated Development Zones as illustrated on Exhibit A herein. Development within the designated Development Zones may proceed without further consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531-43), the New Hampshire Endangered Species Conservation Act (RSA 212-A), or the New Hampshire Native Plant Protection Act (RSA 217-A), provided that such development is consistent with 1) the Service's August 18, 2000, formal Biological Opinion and 2) other federal and state statutes.

WITNESSETH:

WHEREAS, the Karner Blue Butterfly (Lycaeides melissa samuelis) is a federally-endangered species under the Endangered Species Act of 1973; and the Karner Blue, Persius Duskywing (Erynnis persius persius), and Frosted Elfin (Callophrys irus) are endangered species and Pine Barrens Zanclognatha Moth (Zanclognatha martha) is a threatened species under the New Hampshire Endangered Species Conservation Act (RSA 212-A); and

WHEREAS, Wild Lupine (Lupinus perennis) is the host plant to these butterfly (Lepidopteran) species and the Blunt-Leaved Milkweed (Asclepias amplexicaulis) and Golden Heather (Hudsonia ericoides), are threatened under the New Hampshire Native Plant Protection Act of 1987 (RSA 217-A); and

WHEREAS, the Concord Pine Barrens consist of the unique and greatly diminished Pitch Pine Scrub Oak Pine Barrens ecosystem which provides habitat for the aforementioned species; and

WHEREAS, the City is the owner of certain real estate, hereinafter described, which encompasses natural features of recognized value (namely a significant portion of the declining Concord Pine Barrens natural community, habitat essential to the aforementioned species, a portion of the only known Karner Blue Butterfly population in New England, and the largest Frosted Elfin, Persius Duskywing, Golden Heather and Wild Lupine populations in New Hampshire); and

WHEREAS, the City granted a Conservation Easement approximately 28 acres, more particularly described in Exhibit A as USFWS Conservation Easement, for the purposes of the preservation and maintenance of habitat for the Karner Blue Butterfly, as well as protection and enhancement of plants, animal habitat, and wildlife populations; and

WHEREAS, the City is obligated under its agreements with the Federal Aviation Administration (hereinafter referred to as the "FAA") to plan, manage, and maintain the operational areas of the Airport; and

WHEREAS, the designation of the Karner Blue as an endangered species affords the species protection and initiates a program for recovery; and

WHEREAS, the Service is the agency authorized under the Federal Endangered Species Act of 1973 (16 U.S.C. 1531-43) as amended to administer protective regulations and programs for threatened and endangered species; and

WHEREAS, the Department is the agency with jurisdiction pursuant to RSA 212-A over State endangered and threatened wildlife species charged with the protection, conservation, and enhancement of said species; and

WHEREAS, DRED is the agency with jurisdiction pursuant to RSA 217-A over State endangered and threatened plant species charged with the protection, conservation, and enhancement of said species; and

WHEREAS, the City, the Service, Department, DRED, and the NHARNG all are committed to preserving the wildlife and plant populations located on, about, and indigenous to said Concord Pine Barrens (Airport Site), more particularly described as Exhibit A, attached hereto and made a part hereof; and

WHEREAS, the NHARNG has proposed to assist the Service, Department, and DRED with the actions outlined in the "Final Environmental Assessment for Replacement of the New Hampshire Army National Guard Army Aviation Support Facility, Concord, New Hampshire" (to be published); and

WHEREAS, the City, NHDOT, and FAA approved the March 1996 Airport Master Plan and the Airport Layout Plan on April 15, 1997, that set forth existing and future projected uses and development, and which incorporated the Airport Conservation Management Agreement that preceded and is replaced by this Agreement;

NOW, THEREFORE, the parties mutually covenant and agree as follows:

1. DESCRIPTION OF PREMISES

The premises subject to this Development and Conservation Management Agreement (hereinafter referred to as "Agreement") are described in Exhibit A as Conservation Zones 1, 2, 3, and 4 and Development Zones 1, 2, 3, 4, 5, 6, 7, and 8. The areas subject to the Agreement are described as follows:

**a. Conservation Management Zones**

The Service, Department, DRED and NHARNG may proceed within these zones to undertake management actions in accordance with Sections 4 and 5 herein. The City will not undertake any development activities in the conservation zones without written consent of the Service, Department, and DRED.

**(i) Conservation Zone 1 (CZ 1)**

The area directly northeast of Discontinued Runway 3/21, as depicted in Exhibit A. Said zone shall be in the airport side of the airport fence and shall continue along the easterly edge of the airport fence, 120 feet wide, southerly to connect it with CZ 3.

**(ii) Conservation Zone 2 (CZ 2)**

The area directly west of Discontinued Runway 3/21 and north of Active Runway 12/30 as depicted in Exhibit A.

**(iii) Conservation Zone 3 (CZ 3)**

The area directly east of Discontinued Runway 3/21 and north of Active Runway 12/30 as depicted in Exhibit A. Said zone shall be in the airport side of the airport fence.

**(iv) Conservation Zone 4 (CZ 4)**

The area of the airport south and east of Runway 12/30, west of Runway 17/35 to the Building Restriction Line and east of Runway 17/35 to the Soucook River and DZ 5, East Development Zone as depicted in Exhibit A.

**b. Development Zones**

While the City may voluntarily conserve threatened and endangered species and habitat within these zones, the City or its designee may proceed to develop in these zones for all activities specified in the March 1996 Airport Master Plan and Airport Layout Plan approved April 15, 1997, except as specified in this Agreement, without further consultation with the Service, Department, or DRED under the Endangered Species Act of 1973 (16 U.S.C. 1531-43), the New Hampshire Endangered Species Conservation Act (RSA 212-A), or the New Hampshire Native Plant Protection Act (RSA 217-A), provided that such development is consistent with 1) the Service's August 18, 2000, Biological Opinion and 2) other federal and state statutes. As the Airport Layout Plan is amended, such amendments shall be consistent with this Agreement. Neither the

Service, Department, nor DRED shall propagate or reintroduce State or Federal Threatened or Endangered species or habitat, or undertake habitat management, in the development zones except as specified in 4.a.ii, without the written consent of the City. Future amendments to the Master Plan and Airport Layout Plan shall comply with the Agreement.

(i) Development Zone 1 (DZ 1)

The area west of Discontinued Runway 3/21, north of Active Runway 12/30 and south of Regional Drive as depicted in Exhibit A.

(ii) Development Zone 2 (DZ 2)

The area directly north of CZ 1 and directly south of Regional Drive Extension as depicted in Exhibit A.

(iii) Development Zone 3 (DZ 3)

The area directly west of Discontinued Runway 3/21 as depicted in Exhibit A.

(iv) Development Zone 4 (DZ 4)

The area directly east of Discontinued Runway 3/21 as depicted in Exhibit A.

(v) Development Zone 5 (DZ 5) East Development Zone

The area in the East Development Zone directly east of Runway 12/30 as depicted in Exhibit A.

(vi) Development Zone 6 (DZ 6) South Runway Extension Zone

The area south of Runway 17/35 continuing to the eastern, southern, and western boundaries of the airport property as depicted in Exhibit A.

(vii) Development Zone 7 (DZ 7) Regional Drive Extension

The area north of Runway 17/35 to the boundaries of the Airport property including that area necessary to extend Regional Drive from its current western terminus to Airport Road designated in Exhibit A labeled Regional Drive Extension.

(viii) Development Zone 8 (DZ 8)

The area designated in Exhibit A labeled DZ 8 located west of the Building Restriction Line and east of Airport Road.

## 2. UNDERSTANDING OF COMPENSATION

The signatory agencies agree to accept this Agreement as the City's compensation to offset the loss of species and habitat in the designated Development Zones as illustrated in Exhibit A. Development within the designated Development Zones may proceed without further consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531-43), the

New Hampshire Endangered Species Conservation Act (RSA 212-A), and/or the New Hampshire Native Plant Protection Act (RSA 217-A), provided that such development is consistent with 1) the Service's August 18, 2000, formal Biological Opinion and 2) other federal and state statutes.

Neither the Service, Department, nor DRED shall propagate or reintroduce State or Federal Threatened or Endangered species or habitat, or undertake habitat management, in the development zones except as specified in 4.a.ii, without the written consent of the City.

**3. TERM OF AGREEMENT AND RENEWAL**

This Agreement shall have an initial 15-year term which shall automatically continue for one (1) additional fifteen year period unless it is mutually amended or terminated in writing by all signatory agencies. At the conclusion of the second fifteen year term, the Agreement shall automatically continue for four (4) 5-year periods if biological benchmarks laid out in the Conservation Management Plan as specified in Section 6 herein, are met. These benchmarks will be determined by the Service, Department and DRED and will reflect the conservation goals for the preservation, protection, and propagation of federal and state threatened and endangered species and their habitat.

**4. USE OF PREMISES**

a. Each party may proceed to undertake such activities on the premises as described herein in Section 1 and as follows:

(i) **Conservation Zones**

The Service, Department, DRED, and NHARNG may proceed to ensure the perpetuation of the natural features thereon including, but not limited to, the right to restrict general public access (excepting City, FAA, NHDOT Division of Aeronautics, or NHARNG personnel, or their designees) to sensitive natural areas; remove woodchuck and other foragers; propagate Wild Lupine and nectar species; manage woody vegetation through manual and mechanical clearing and prescribed fire; monitor rare species populations including, but not limited to, Karner Blue Butterflies, Frosted Elfin Butterflies, Persius Duskywing Skippers, and Wild Lupine; and release rare species including, but not limited to, Karner Blue Butterflies.

- a.) CZ 1 The Service, Department, DRED, and NHARNG may proceed in CZ 1 to undertake management actions in accordance with Sections 4 and 5 herein.
- b.) CZ 2 The Service, Department, DRED, and NHARNG may proceed in CZ 2 to undertake management actions in accordance with Sections 4 and 5 herein.
- c.) CZ 3 The Service, Department, DRED and NHARNG may proceed in CZ 3 to undertake management actions in accordance with Sections 4 and 5 herein.
- d.) CZ 4 The Service, Department, DRED and NHARNG may proceed in CZ 4 to undertake management actions in accordance with Sections 4 and 5 herein.

(ii) DZ 6 South Runway Extension Zone -

The Service, Department, and DRED may proceed to ensure the perpetuation of the natural features thereon including, but not limited to: restrict public access (excepting City, FAA, NHDOT Division of Aeronautics, or NHARNG personnel or their designees) to sensitive natural areas; remove woodchuck and other foragers; propagate Wild Lupine and nectar species; manage woody vegetation through manual and mechanical clearing and prescribed fire; monitor rare species populations including, but not limited to, Karner Blue Butterflies, Frosted Elfin Butterflies, Persius Duskywing Skippers, and Wild Lupine; and release rare species including, but not limited to, Karner Blue Butterflies. Such actions may proceed provided the City may proceed with the extension of the runway and taxiway and provided that they do not interfere with maintenance and operational requirements of Airport facilities.

b. The City and/or its designees:

(i) Development Zones -

- a.) DZ 1 The City or their designees may proceed to develop in DZ 1 all activities specified in the March 1996 Airport Master Plan and Airport Layout Plan approved April 15, 1997, except as specified in this Agreement, without further consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531-43), the New Hampshire Endangered Species Conservation Act (RSA 212-A), and/or the New Hampshire Native Plant

Protection Act (RSA 217-A), provided that such development is consistent with 1) the Service's August 18, 2000, formal Biological Opinion and 2) other federal and state statutes.

b.) DZ 2 The City or its designees may proceed to develop in DZ 2 all activities specified in the March 1996 Airport Master Plan and Airport Layout Plan approved April 15, 1997, except as specified in this Agreement, without further consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531-43), the New Hampshire Endangered Species Conservation Act (RSA 212-A), and/or the New Hampshire Native Plant Protection Act (RSA 217-A), provided that such development is consistent with 1) the Service's August 18, 2000, formal Biological Opinion and 2) other federal and state statutes.

c.) DZ 3 The City or its designees may proceed to develop in DZ 3 all activities specified in the March 1996 Airport Master Plan and Airport Layout Plan approved April 15, 1997, except as specified in this Agreement, without further consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531-43), the New Hampshire Endangered Species Conservation Act (RSA 212-A), and/or the New Hampshire Native Plant Protection Act (RSA 217-A), provided that such development is consistent with 1) the Service's August 18, 2000, formal Biological Opinion and 2) other federal and state statutes.

d.) DZ 4 The City or its designees may proceed to develop in DZ 4 the approved 10 units of t-hangar development without further consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531-43), the New Hampshire Endangered Species Conservation Act (RSA 212-A), and/or the New Hampshire Native Plant Protection Act (RSA 217-A), provided that such development is consistent with 1) the Service's August 18, 2000, formal Biological Opinion and 2) other federal and state statutes. The City and/or its designees may proceed to develop a 30 foot wide access road with utilities to connect Chenell Drive and DZ 4 as depicted in Exhibit A. The adjacent wild lupine shall be clearly designated and protected during construction. The City agrees to require restrictive construction practices to limit the disturbance of habitat, to the maximum practicable, to the actual footprint of the access road and utilities and connecting stubs.

e.) DZ 5 The City or its designees may proceed to develop in DZ 5 all activities specified in the March 1996 Airport Master Plan and Airport

Layout Plan approved April 15, 1997, except as specified in this Agreement, without further consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531-43), the New Hampshire Endangered Species Conservation Act (RSA 212-A), and/or the New Hampshire Native Plant Protection Act (RSA 217-A), provided that such development is consistent with 1) the Service's August 18, 2000, formal Biological Opinion and 2) other federal and state statutes.

f.) DZ 6 The City may proceed in DZ 6 with the extension of the runway and taxiway as specified in the March 1996 Airport Master Plan and Airport Layout Plan approved April 15, 1997, and with maintenance and operational requirements of airport facilities without further consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531-43), the New Hampshire Endangered Species Conservation Act (RSA 212-A), and/or the New Hampshire Native Plant Protection Act (RSA 217-A), provided that such development is consistent with 1) the Service's August 18, 2000, formal Biological Opinion and 2) other federal and state statutes.

g.) DZ 7 The City or its designees may proceed to develop in DZ 7 all activities specified in the March 1996 Airport Master Plan and Airport Layout Plan approved April 15, 1997, in particular the extension of Regional Drive from its western terminus to Airport Road, except as specified in this Agreement, without further consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531-43), the New Hampshire Endangered Species Conservation Act (RSA 212-A), and/or the New Hampshire Native Plant Protection Act (RSA 217-A), provided that such development is consistent with 1) the Service's August 18, 2000, formal Biological Opinion and 2) other federal and state statutes.

h.) DZ 8 The City or its designees may proceed to develop in DZ 8 all activities specified in the March 1996 Airport Master Plan and Airport Layout Plan approved April 15, 1997, and as specified in future City Master Plans, Airport Master Plans, and Airport Layout Plans, except as specified in this Agreement, with the concurrence of the Service, Department, and DRED.

(ii) Conservation Zones -

In accordance with the Conservation Management Plan, the City shall manage vegetation in these zones in cooperation with the Service, Department, and DRED to ensure the perpetuation of the natural features thereon. Management guidelines will be included in the Conservation Management Plan. Cooperative management activities can be conducted upon execution of this Agreement.

The City shall consult and cooperate with the Service, Department, and DRED on maintenance and operational activities (including, but not limited to, drainage maintenance and paving activities) to minimize the deleterious effects of these activities on the natural features thereon.

a.) CZ 1 and CZ 3

The City may proceed to construct a 30-foot-wide access road with utilities between CZ 1 and CZ 3 to connect Chenell Drive and DZ 4 as depicted in Exhibit A without further consultation with the Service, Department, or DRED. The City agrees to require restrictive construction practices to limit the disturbance of habitat, to the maximum practicable, to the actual footprint of the access road and utilities and connecting stubs.

b.) CZ 4

The City may proceed to construct a 35-foot-wide parallel taxiway with connecting stubs south of Runway 12/30 in CZ 4, as generally depicted in Exhibit A, with the concurrence of the Service, Department, or DRED as to the specific location. The City agrees to require restrictive construction practices to limit the disturbance of habitat, to the maximum practicable, to the actual footprint of the parallel taxiway and connecting stubs.

5. ACCESS AND MANAGEMENT

The City grants to employees, contractors, and cooperators of the Service, Department, DRED, and the NHARNG the right of unencumbered access to the Airport for the purposes of formulating the conservation management plan as specified in Section 6 herein and carrying out the conservation management practices specified therein. The Airport Manager or his designee shall be notified prior to said employees, contractors, and cooperators entering the airport property. Such access shall not interfere with the safe, efficient operations of the airport facilities and shall follow the Airport Safety Plan attached as Exhibit B.

6. CONSERVATION MANAGEMENT PLAN

The NHARNG, in coordination with the Service, Department, and DRED, will prepare and implement a Conservation Management Plan that will be based on the elements of the mitigation plan in the "*Final Environmental Assessment for Replacement of the New Hampshire Army National Guard Army Aviation Support Facility, Concord, New Hampshire*" (to be published) to guide the necessary long-term monitoring and management of State and Federal threatened and endangered species and habitat in the designated Conservation Zones in Exhibit A.

The Conservation Management Plan shall take into account the maintenance and operational requirements of airport facilities and the City's plans for future airport and area expansion and development. Conservation measures can be conducted upon execution of this Agreement.

7. WAIVER OF CLAIMS

The Service, Department, DRED and their agents agree to observe and conform to all safety procedures required by the City, the Fixed Base Operator (FBO), and the FAA while conducting activities within the Conservation Zones.

8. LIABILITY

There is no assumption of liability by any party signatory to this Agreement.

9. TERMINATION

This Agreement shall be terminated without penalty by mutual consent of all signatory parties if the Service, Department, and DRED determine that certain significant natural features on the property have ceased to exist or the role of the Service, Department, and DRED, as biological managers, is no longer possible or appropriate. In such event, the Service, Department, and DRED shall provide written notice of intent to terminate to all signatory parties at least sixty (60) days prior to the date of intended termination.

10. NOTICE

All notices, reports, statements, requests, or authorizations required to be given hereunder shall be sufficiently given by first class mail addressed to: the City Manager, City of

Concord, 41 Green Street, Concord, New Hampshire 03301, the U. S. Fish and Wildlife Service, 22 Bridge Street Concord, New Hampshire 03301, the New Hampshire Fish and Game Department, 2 Hazen Drive, Concord, New Hampshire 03302, the NH Department of Resources & Economic Development, P.O. Box 1856, Concord, New Hampshire 03302-1856, the NH Army National Guard, State Military Reservation, 4 Pembroke Road, Concord, New Hampshire 03301-5652, the NH Department of Transportation, Division of Aeronautics, 65 Airport Road, Concord, New Hampshire 03301, and the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803. The notice shall be effective upon receipt.

11. **BINDING EFFECT**

All of the terms, conditions, and covenants to be observed and performed by the parties hereto shall be applicable to their several successors and assigns, as the case may be. This Agreement is entered into with concurrence of all signatory agencies and remains in effect until the Agreement is mutually amended or terminated by all signatory agencies, according to the terms as specified in Section 3.

12. **MEETINGS**

Representatives of the Service, Department, DRED, the City, and the NHARNG and appropriate contractor and cooperators shall meet annually to review existing conservation management practices at the airport and any conflicts between these practices and airport operations, and discuss management strategies which would facilitate the recovery of the protected species at the airport in a manner that is compatible with safe, efficient airport operations.

13. **HAZARDOUS MATERIALS**

The City shall indemnify the other parties to this Agreement from any and all liabilities incurred as a result of the presence at the airport of any hazardous materials or oil, including any materials which are toxic, explosive, corrosive, flammable, or otherwise hazardous to health.

14. **CHOICE OF LAW**

This Agreement is being executed and is intended to be performed in the State of New Hampshire and shall be governed in all respects by the laws of that State.

15. REQUIRED CLAUSES

- a. This Agreement and all obligations of the Service, Department, and DRED hereunder are subject to availability of funds. Nothing contained herein shall be construed as binding the Service, Department, DRED, or the NHARNG to expend in any fiscal year any sum in excess of appropriation made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the Service, Department, or DRED in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.
- b. This Agreement will allow the City to continue to maintain, operate and plan the Airport in accordance and compliance with all FAA Grant Sponsor Assurances in particular B.1, 5.a. and b., 19.a., 20, 28 and 29 attached herein as Exhibit C and FAR Part 77.
- c. No member of Congress or resident Commissioner shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.
- d. During the performance of this Agreement, the parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, or national origin. The parties will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, or national origin.
- e. Notwithstanding the foregoing, any performance required of the NHARNG under this Agreement shall be contingent upon other and further agreement between NHARNG and the City in accordance with the parties' Memorandum of Understanding dated November 20, 1996, and which, at a minimum, shall include:
  1. Airport joint use agreement permitting construction of a new Army Aviation Support Facility on city property.
  2. Extension of Regional Drive in accordance with the City Master Plan.
  3. Conveyance of mutual long-term lease agreements, rights-of-way, or easements which shall conform to the City Master Plan (adopted December 15, 1993) with respect to the extension of Regional Drive.

IN WITNESS WHEREOF, the parties to this Development and Conservation Management Agreement have subscribed their names hereto on the day and year above first written.

Witness:

CITY OF CONCORD

Jan A. Tesser

[Signature]

Witness:

NH FISH & GAME DEPARTMENT

Samy L. Croteau

Wayne E. Vetter

Witness:

U. S. FISH AND WILDLIFE SERVICE

Florence L. Dube

[Signature]

Witness:

NH DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT

S. AH

George T. Bald

Witness:

NH ARMY NATIONAL GUARD

Judith A. Cleary

John E. Blair

Witness:

NH DEPARTMENT OF TRANSPORTATION,  
DIVISION OF AERONAUTICS

Samuel J. Conway

Carol A. Murray

