

February 3, 2015

Nathan Poore, Town Manager and
Chair Farber and Members of the Falmouth Town Council
Falmouth Town Hall
271 Falmouth Road
Falmouth, Maine 04105

Re: Unitil's Request for Approval of the Falmouth Land Trust's Conveyance of a Pipeline Easement on the Town's Conservation Easement Area on Trust Land, and Joinder with Unitil, the Trust, and the Attorney General to Obtain Judicial Approval of the Conveyance

Dear Town Manager Poore, Chair Farber and Members of the Town Council:

This letter is written on behalf of Northern Utilities, Inc., d/b/a Unitil, which seeks an additional pipeline easement ("Additional Pipeline Easement") on land owned by the Falmouth Land Trust on the Piscataqua River next to the Maine Turnpike, over which the Town has a conservation easement ("Conservation Easement"). For the reasons explained below, Unitil requests the Town consent to the Trust's conveyance to Unitil of the Additional Pipeline Easement, and also consent to joining Unitil, the Trust, and the Attorney General, in an action to obtain judicial approval of the Additional Pipeline Easement.

The Council will recall that, in 2014, it approved the Land Trust's conveyance to Unitil of a similar pipeline easement on the land ("2014 easement"), so that Unitil's existing transmission line could be relocated away from the Maine Turnpike bridge, as required by the Maine Turnpike Authority. Being only 40 feet in length, the 2014 easement was short enough so the pipeline could be installed entirely underground through horizontal directional drilling ("HDD") without excavating the soil. It thus complied with the Conservation Easement's general prohibition of soil excavation.

The forty foot pipeline installation was completed in the fall of 2014 as part of the larger pipeline relocation project. However, while the relocation work was underway, the soil became too unstable and waterlogged at its 28 foot depth relocation point, to safely complete as designed, and thus, the pipeline's relocation had to be extended and realigned. Although the further realignment would be entirely within the project's approved and established pipeline temporary work area, it would still require an Additional Pipeline Easement from the Trust, where shown on the attached plan, **Exhibit 1**. Further, it could not be installed without excavating the surface, but would have to be installed by excavated trench.

As the pipeline installation in the Additional Pipeline Easement area requires an excavated trench, and there was a question whether such excavation would qualify under one of the Conservation Easement's exceptions to the excavation prohibition, the Town Attorney sought the Attorney General's opinion as to whether the proposed Additional Pipeline Easement complied with Maine's Conservation Easements Act, 33 M.R.S. §§ 476-479 (C) ("Statute"). Assistant Attorney General Lauren Parker advised that it was the opinion of the Attorney General's office that the Additional Pipeline Easement would "materially detract" from the Conservation Easement's conservation values, and thus, under the terms of the Statute, the Additional Pipeline Easement conveyance required an amendment to the Conservation Easement by the Maine Superior Court.

Unitil has accordingly collaborated with the Assistant Attorney General and counsel for the Town and the Trust, to prepare the requisite petition to the Court ("Complaint," **Exhibit 2**, without exhibits), and proposed Stipulated Judgment for entry by the Court ("Stipulated Judgment," **Exhibit 3**), which Judgment would include the Trust's executed, but inchoate, Amended Relocation and Easement Agreement conveying the Additional Pipeline Easement and (upon the Town Council's vote of approval) also include the Town's executed, but inchoate, Holder Acceptance of that Agreement.

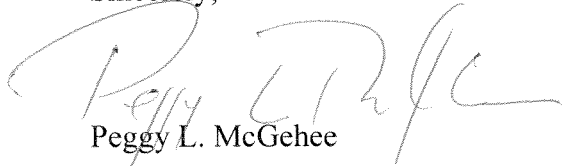
The Trust's Board of Directors has already approved for signature and filing the Complaint and proposed Stipulated Judgment and its appended Relocation and Easement Agreement, as stated in its attached January 21, 2015 vote, **Exhibit 4**. The Attorney General's office has also approved the documents, as stated in Assistant Attorney General Parker's February 2, 2015 email correspondence, **Exhibit 5**.

To complete the realigned installation, Unitil must also obtain the Falmouth Planning Board's approval of an amendment to the project's 2014 shoreland zoning permit. As of February 4, 2015, Unitil will have filed with the Town Planner an Application to Amend its Shoreland Zoning Permit (Application") for the Planning Board's review at its March 4, 2015 meeting. In the Application's right/title/and interest section, Unitil explains that, although the Trust has approved its conveyance of the Additional Pipeline Easement, its conveyance is conditional and inchoate until the Town Council and the Court also approve the conveyance. A copy of Unitil's explanatory letter to the Board is attached as **Exhibit 6** (without exhibits): the letter advises that Unitil hopes to have the Town's approval prior to the Board's March 4 meeting. Unitil anticipates that the Council's approval will be conditioned on the Planning Board's approval of the Application. Thus, although the Complaint could be filed with the Court prior to the Planning Board's approval of the Application, the Stipulated Judgment would not be in order for the Court's consideration until both the Council and the Board have given their approvals.

Falmouth Town Manager
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Thank you for your consideration of Unitil's request.

Sincerely,



Peggy L. McGehee

Enclosures

cc: David Kallin, Esq., Counsel for the Town
Lauren Parker, Esq., Asst. Attorney General
Tom Hanson, Esq., Counsel for the Trust

NORTHERN UTILITIES, INC., a New Hampshire corporation, authorized to do business in the State of Maine, seeking to relocate its pipeline easement on the conserved parcel,

TOWN OF FALMOUTH, MAINE, a municipal corporation, and holder of the conservation easement, and

FALMOUTH CONSERVATION TRUST, a Maine non-profit corporation, and owner of the conserved parcel,

Plaintiffs,

v.

JANET T. MILLS, ESQ., Attorney General
of the State of Maine,

Defendant.

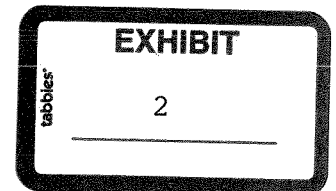
COMPLAINT

(Title to Real Estate Involved)

Plaintiffs, Northern Utilities, Inc., the Town of Falmouth, and Falmouth Conservation Trust (together, "Plaintiffs"), hereby file this Complaint pursuant to Section 477-A(2)(B) of Maine's Conservation Easement Act, against Defendant, Janet T. Mills, Esq., in her capacity as Attorney General of the State of Maine (the "Attorney General" or "Defendant"), in order to amend a conservation easement held by the Town to partially subordinate the conservation easement to a relocated gas pipeline easement for reasons of public safety.

Parties

1. Plaintiff Northern Utilities, Inc. ("Northern Utilities") is a New Hampshire corporation authorized to do business in the State of Maine with a place of business in the City of Portland, County of Cumberland, and State of Maine.
2. Plaintiff the Town of Falmouth (the "Town") is a municipal corporation duly organized and existing under Maine law in the County of Cumberland, State of Maine.



3. Plaintiff Falmouth Conservation Trust (the “Trust”) is a nonprofit corporation duly organized and existing under Maine law with a principal place of business in Falmouth.

4. Defendant, Janet T. Mills, Esq., is the Attorney General of the State of Maine and, pursuant to 33 M.R.S. § 477-A(2)(B), has a statutory duty to represent the public interest in certain court actions to amend conservation easements on land within the State of Maine.

Nature of Action

5. This is a civil action brought pursuant to 33 M.R.S. § 477-A (2)(B) to amend a conservation easement held by the Town that burdens certain property owned by the Trust and located in Falmouth, Maine, to relocate a segment of an existing pipeline easement held by Northern Utilities that also burdens the property owned by the Trust and is superior to the conservation easement held by the Town.

Jurisdiction and Venue

6. This Court has jurisdiction pursuant to 33 M.R.S. §§ 477-A(2)(B) & 478, describing the Court’s role in certain actions to amend conservation easements, as well as pursuant to 4 M.R.S. §105, granting the Superior Court general civil jurisdiction, 14 M.R.S. § 6051, granting the Superior Court general jurisdiction to grant appropriate equitable relief, and 18-B M.R.S. § 203(1), granting the Superior Court jurisdiction over matters involving trusts.

7. Venue is properly laid in this Court because the real property burdened by the conservation easement that is the subject of this action is located in Falmouth, Cumberland County, Maine.

Factual Background

8. The Trust is the fee owner of certain parcels of land together comprising approximately 15 acres located on opposing sides of the Piscataqua River in Falmouth, Maine, described in a 2002 deed recorded in the Cumberland County Registry of Deeds (“CCRD”) in Book 17953, Page 254, and in a 2003 deed recorded in the CCRD in Book 19183, Page 79 (collectively, the “Conservation Parcel”). Copies of the title instruments are attached as **Exhibit A**.

9. The Conservation Parcel is subject to 1968 and 1969 pipeline easements owned by Northern Utilities, recorded in the CCRD in Book 3027, Page 36 and Book 3075, Page 887 (collectively, the “Pipeline Easement”). Copies of the instruments conveying the Pipeline Easement are attached as **Exhibit B**.

10. The Conservation Parcel is also subject to conservation easements granted by the Trust to the Town in 2004 and in 2005, recorded in the CCRD in Book 22214, Page 23 and Book 22268, Page 23 (collectively the “Conservation Easement”). Copies of the instruments conveying the Conservation Easement are attached as **Exhibit C**.

11. The stated purpose of the Conservation Easement is “to conserve forever the scenic, natural, and wildlife habitat values of the Protected Property and to protect and foster its ecological health through sound silvicultural practices, while allowing the Grantor’s management of the Protected Property for public access and recreational purposes.”

12. To further the purpose of the Conservation Easement, the Conservation Easement imposes the following restrictions, among others, on the Conservation Parcel:

- “The Property shall be maintained in perpetuity as undeveloped, predominantly forested land, without any residential, industrial or commercial activities being conducted thereon,” except as provided in connection with authorized uses;
- “There shall be no development, construction, maintenance, installation, expansion, replacement and repair of new structures, improvements or utilities (including, without limitation, communication towers) on the Property after the date hereof,” except as provided in connection with authorized uses, including improvements “to foster safe and convenient public access for recreation purposes”; and
- “No filling, excavation or alteration of the surface of the earth, removal of soil or minerals, changes in the topography, surface or subsurface water systems, or other alterations to the surface of the Protected Property are permitted,” except as provided in connection with authorized uses, including improvements “to foster safe and convenient public access for recreation purposes”.

13. The Pipeline Easement on the Conservation Parcel predates and is superior to the Conservation Easement.

14. Northern Utilities owns and operates a natural gas transmission pipeline, together with all necessary meters, fittings, fixtures, equipment and appurtenances (collectively, the “Pipeline”), within the Pipeline Easement.

15. In addition to burdening the Conservation Parcel, the Pipeline Easement runs across land adjoining the Conservation Parcel owned by the Maine Turnpike Authority.

16. In 2014, the Maine Turnpike Authority undertook bridge reconstruction work on its land adjoining the Conservation Parcel, over the Pipeline.

17. The Maine Turnpike Authority required, and Northern Utilities agreed, that the Pipeline must be relocated as a matter of public safety to a location set back from the reconstructed bridge and buried underground.

18. The area to which the Pipeline must be relocated includes land protected by the Conservation Easement that is outside of Northern Utilities' existing Pipeline Easement.

19. As the Conservation Easement generally prohibits "filling, excavation, or alteration of the surface of the earth," Northern Utilities originally designed its 2014 Pipeline relocation project to limit the intrusion on the Conservation Easement to a 40-foot segment.

20. In addition, Northern Utilities' 2014 pipeline relocation project called for the Pipeline installation within this 40-foot segment to be installed entirely underground, without breaking the earth's surface.

21. On the condition that Northern Utilities installed the relocated Pipeline without disturbing the earth's surface in the 40-foot segment, and in recognition that the purpose of the relocation was to foster public safety, including "safe and convenient public access" for all purposes, including recreation purposes, the Trust agreed to convey to Northern Utilities a new easement covering the 40-foot segment.

22. Accordingly, on June 23, 2014, the Trust granted to Northern Utilities, with the Town's consent by joinder, a 40-foot Pipeline Easement, under the terms and conditions set forth in an Easement and Relocation Agreement with Northern Utilities, recorded in the CCRD in Book 31627, Page 132 (the "2014 Agreement"). A true copy of the 2014 Agreement is attached hereto as **Exhibit D**.

23. The 2014 Agreement also acknowledged Northern Utilities' right to create a temporary work zone abutting its existing Pipeline Easement (the "Temporary Work Zone") for the purpose of completing the Pipeline relocation work, based on its asserted right to do so, subject to the Trust's and the Town's re-vegetation and restoration requirements. *See Generally* **Exhibit D**.

24. The 2014 Agreement further acknowledged Northern Utilities' right to relocate the rest of the pipeline within its existing Pipeline Easement.

25. In undertaking the Pipeline relocation work in 2014, Northern Utilities' engineers determined that the soils at the pipeline relocation tie-in at the required depth of 27 feet were too waterlogged and unstable to safely complete the Pipeline relocation as originally designed and that a new Pipeline relocation design was necessary to excavate and tie-in the Pipeline at a shallower and safer depth.

26. The new design would require, however, that the Trust convey to Northern Utilities an additional easement to accommodate the relocated Pipeline (the "Additional Pipeline Easement"), and that some temporary surface excavation would take place within the Additional Pipeline Easement in order to install the relocated Pipeline.

27. Under the new design, the surface excavation required would be confined to the Temporary Work Zone which, by that time, had already been cleared of vegetation and graded.

28. Northern Utilities therefore requested that the Trust and the Town agree to an amendment to the 2014 Agreement in order to convey to Northern Utilities the Additional Pipeline Easement within the Temporary Work Zone.

29. In so requesting, Northern Utilities noted that the relocated Pipeline would be in a safer location than it is currently, which would therefore help foster safe and convenient public access to the Conservation Parcel for recreational purposes, consistent with the purposes expressed in the Conservation Easement.

30. Inasmuch as the pipeline relocation work proposed in the Additional Pipeline Easement would involve temporary excavation in the Temporary Work Zone, regardless of the fact that clearing and grading had already occurred in the Temporary Work Zone, the Town required, before consenting to the Trust's conveyance of the Additional Pipeline Easement, the concurrence of the Attorney General that the proposed Additional Pipeline Easement would not materially detract from the Conservation Easement's conservation values.

31. In December 2014, the Attorney General advised the Town of its opinion that, because the Conservation Easement is in the public interest, serves a publicly beneficial conservation purpose that can still be realized, and generally prohibits the installation and repair of new utilities as well as surface alterations, the proposed Additional Pipeline Easement may nevertheless materially detract from the conservation values protected by the Conservation Easement, and therefore requires amendment of the Conservation Easement by court order in accordance with 33 M.R.S. §§ 477-A(2)(B) & 478.

32. Northern Utilities, the Town, and the Trust accordingly file this Complaint, seeking approval from the Court of an amendment to the Conservation Easement to allow the Trust to convey to Northern Utilities the proposed Additional Pipeline Easement as set forth in the proposed Amendment to Easement and Relocation Agreement, which agreement is attached hereto as **Exhibit E**.

33. The relocation of the Pipeline away from the reconstructed Turnpike bridge is a matter of public safety and is required by the Maine Turnpike Authority.

34. Pursuant to 35-A M.R.S. § 470, Northern Utilities has the alternative right to petition the Maine Public Utilities Commission for authority to take by eminent domain the land comprising the Additional Pipeline Easement, but amending the Conservation Easement, instead of taking a portion of it, will better preserve the conservation values protected by the Conservation Easement.

35. The proposed Additional Pipeline Easement area is entirely within the Temporary Work Zone, which is already cleared and graded, and will be re-vegetated upon completion of the Pipeline relocation work according to the terms specified by the Trust and the Town.

36. The parties agree that, pursuant to 33 M.R.S. § 477-A(2)(B), any amount paid to the Trust in consideration for the Additional Pipeline Easement, as set forth in the proposed Amendment to Easement and Relocation Agreement, **Exhibit E**, must be used for the protection of conservation lands consistent, as nearly as possible, with the stated publicly beneficial conservation purposes of the Conservation Easement.

37. The provision of natural gas to the inhabitants of the State by natural gas pipeline utilities is a matter of public interest. *See* 35-A M.R.S. § 4501.

38. As the disturbed areas of the Conservation Parcel will be re-vegetated upon completion of the Pipeline relocation work, the adverse impacts to the Conservation Parcel's scenic, open space, and natural values will be minimized.

39. The Plaintiffs' proposed amendment of the Conservation Easement will further a legitimate public interest because it ensures the continued safe and efficient transport of natural gas to thousands of customers throughout Maine and will help ensure the safety of recreational users of the Conservation Parcel.

40. Upon completion of the Pipeline relocation work, the former Pipeline Easement will be abandoned and replaced by the relocated Pipeline Easement; in the location of the abandoned pipeline, Northern Utilities will release its Pipeline Easement rights, excepting only

its right to inspect and secure the abandoned pipeline for purposes of public safety and regulatory compliance; accordingly, the total area of land burdened by the Pipeline Easement remains approximately the same.

41. Pursuant to 33 M.R.S. §§ 477-A(2)(B) & 478, amending the Conservation Easement to accommodate the Pipeline relocation as described in **Exhibit E** is in the public interest.

WHEREFORE, Plaintiffs respectfully request the Court approve the amendment of the Conservation Easement to partially subordinate it to the relocated Pipeline Easement in a manner and as described in **Exhibit E**, and grant Plaintiffs such other and further relief as this Court deems reasonable and just.

DATED this ___ day of February, 2015.

Perkins Thompson, P.A.
One Canal Plaza, P.O. Box 426
Portland, ME 04112-0426
(207) 774-2635

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Tom S. Hanson, Maine Bar No. 8234
Attorney for Plaintiff Falmouth Conservation Trust

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
Docket No. RE-15-_____

NORTHERN UTILITIES, INC., a New Hampshire corporation, authorized to do business in the State of Maine, seeking to relocate its pipeline easement on the conserved parcel,

TOWN OF FALMOUTH, MAINE, a municipal corporation, and holder of the conservation easement,

and

FALMOUTH CONSERVATION TRUST, a Maine non-profit corporation, and owner of the conserved parcel,

Plaintiffs,

v.

JANET T. MILLS, ESQ., Attorney General of the State of Maine,

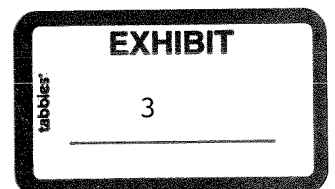
Defendant.

**ORDER APPROVING AMENDMENT
OF CONSERVATION EASEMENT
BY STIPULATED JUDGMENT**

**ON PROPERTY
OWNED BY THE FALMOUTH
CONSERVATION TRUST
AND SUBJECT TO A
CONSERVATION EASEMENT HELD
BY THE TOWN OF FALMOUTH**

(Title to Real Estate Involved)

This Judgment amends a conservation easement under 33 M.R.S. §§ 477-A (2)(B) & 478 to partially subordinate the conservation easement to a relocated gas pipeline easement upon completion of the pipeline relocation work as stated in the Amendment to Easement and Relocation Agreement attached hereto as **Attachment A**. Having considered the Joint Motion to Amend Conservation Easement by Stipulated Judgment filed by Plaintiffs, Northern Utilities, Inc., the Town of Falmouth, Maine, and the Falmouth Conservation Trust (together,



“Plaintiffs”), the Court now APPROVES the amendment of the conservation easement as stated in Attachment A, and further finds as follows:

1. That the record indicates the following Parties and Counsel of Record:

<u>Party</u>	<u>Address</u>	<u>Counsel of Record</u>
Plaintiff Northern Utilities, Inc., New Hampshire corporation and natural gas public utility authorized to do business in Maine	1075 Forest Avenue Portland, ME 04104	Peggy McGehee, Joseph Siviski Perkins Thompson P.O. Box 426 One Canal Plaza Portland, ME 04112
Plaintiff Town of Falmouth Maine, a municipal corporation organized under the laws of Maine	271 Falmouth Road Falmouth, ME 04105	David Kallin Drummond Woodsum 84 Marginal Way, Suite 600 Portland, ME 04101-2480
Plaintiff Falmouth Conservation Trust, a non-profit corporation organized under the laws of Maine	P.O. Box 6172, Falmouth, ME 04105	Tom Hanson Bernstein Shur 100 Middle Street PO Box 9729 Portland, ME 04101-5029
Defendant Janet T. Mills, in her official capacity as Attorney General of the State of Maine	6 State House Station Augusta, ME 04333-0006	Lauren Parker Assistant Attorney General Natural Resources Division 6 State House Station Augusta, Maine 04333-0006

2. That all parties have received notice of the proceedings in accordance with the applicable provisions of the Maine Rules of Civil Procedure;

3. That an adequate description of the real estate involved is included in the Amendment to Easement and Relocation Agreement incorporated herein;

4. That amendment of the conservation easement to partially subordinate the conservation easement to a relocated gas pipeline easement as stated in Attachment A is for a valid public safety purpose and therefore in the public interest;

5. That approval of the release from escrow of the executed original of the

Amendment to Easement and Relocation Agreement, Attachment A, for delivery to Northern Utilities, Inc. for recording in the Cumberland County Registry of Deeds at its cost, is hereby authorized;

6. That, pursuant to 33 M.R.S. § 477-A(2)(B), any amount paid to the Falmouth Conservation Trust in consideration for the Amendment to Easement and Relocation Agreement incorporated herein must be used for the protection of conservation lands consistent, as nearly as possible, with the stated publicly beneficial conservation purposes of the Conservation Easement; and

7. That the Clerk of Courts is hereby directed to incorporate this Judgment on the docket by reference pursuant to Rule 79 of the Maine Rules of Civil Procedure.

Dated: _____

Justice, Maine Superior Court

I hereby certify that the applicable appeal period expired without action on

_____.

CLERK, CUMBERLAND COUNTY
SUPERIOR COURT

ATTACHMENT A

**AMENDMENT TO EASEMENT
AND RELOCATION AGREEMENT**

AMENDMENT TO EASEMENT AND RELOCATION AGREEMENT

THIS AMENDMENT TO EASEMENT AND RELOCATION AGREEMENT (this “Amendment”) is made and entered into as of this _____ day of _____, 2015, by and between **FALMOUTH CONSERVATION TRUST**, a non-profit corporation organized and existing under the laws of the State of Maine (“Grantor” or the “Trust”), and **NORTHERN UTILITIES, INC.**, a corporation organized and existing under the laws of the State of New Hampshire and having a place of business at 1075 Forest Avenue, Portland, County of Cumberland, and State of Maine (“Grantee” or “Northern Utilities”). The **TOWN OF FALMOUTH**, a municipality organized under the laws of the State of Maine (the “Town”) joins in this Amendment as set forth in the Joinder hereto.

RECITALS

1. The Trust is the fee owner of approximately 15 acres of land on both sides of the Piscataqua River in Falmouth, Maine, described in 2002 and 2003 deeds recorded in the Cumberland County Registry of Deeds (“CCRD”) in Book 17953, Page 254, and Book 19183, Page 79 (collectively, the “Conservation Parcel”).
2. Northern Utilities owns and operates a natural gas transmission pipeline, together with all necessary meters, fittings, fixtures, equipment and appurtenances, extending from Portland to Lewiston (the “Pipeline”), a section of which is located on the Conservation Parcel pursuant to utility easements described in 1968 and 1969 deeds recorded in the CCRD in Book 3027, Page 36, and Book 3075, Page 887 (the “Pipeline Easement”).
3. In 2004 and 2005, the Trust granted to the Town conservation easements over the Conservation Parcel, described by deeds recorded in the CCRD in Book 22214, Page 23 and Book 22268, Page 23 (collectively “Conservation Easement”).
4. The purpose of the Conservation Easement is “to conserve forever the scenic, natural, and wildlife habitat values of the Protected Property and to protect and foster its ecological health through sound silvicultural practices, while allowing the Grantor’s management of the Protected Property for public access and recreational purposes.”
5. To further the purpose of the Conservation Easement, the Conservation Easement imposes the following restrictions, among others, on the Conservation Parcel:
 - “The Property shall be maintained in perpetuity as undeveloped, predominantly forested land, without any residential, industrial or commercial activities being conducted thereon,” except as provided in connection with authorized uses;
 - “There shall be no development, construction, maintenance, installation, expansion, replacement, and repair of new structures, improvements, or utilities...”

on the Property after the date hereof,” except as provided in connection with authorized uses, including improvements “to foster safe and convenient public access for recreation purposes”; and

- “No filling, excavation or alteration of the surface of the earth, removal of soil or minerals, changes in topography, surface or subsurface water systems, or other alterations to the surface of the Protected Property are permitted,” except as provided in connection with authorized uses, including improvements “to foster safe and convenient public access for recreation purposes”.

6. The Pipeline Easement on the Conservation Parcel predates and is superior to the Conservation Easement.

7. In addition to burdening the Conservation Parcel, the Pipeline Easement runs across land adjoining the Conservation Parcel owned by the Maine Turnpike Authority.

8. In 2014, the Maine Turnpike Authority undertook bridge reconstruction work on its land adjoining the Conservation Parcel over the Pipeline.

9. The Maine Turnpike Authority required, and Northern Utilities agreed, that the Pipeline must be relocated as a matter of public safety to a location set back from the reconstructed bridge and buried underground.

10. The area to which the Pipeline must be relocated includes land protected by the Conservation Easement that is outside of Northern Utilities’ existing Pipeline Easement.

11. As the Conservation Easement generally prohibits “filling, excavation, or alteration of the surface of the earth,” Northern Utilities originally designed its 2014 Pipeline relocation project to limit the intrusion on the Conservation Easement to a 40-foot segment.

12. In addition, Northern Utilities’ 2014 pipeline relocation project called for the Pipeline installation within this 40-foot segment to be installed entirely underground, without breaking the earth’s surface.

13. On the condition that Northern Utilities install the relocated Pipeline without disturbing the earth’s surface in the 40-foot segment, and in recognition that the purpose of the relocation was to foster public safety, including “safe and convenient public access” for all purposes, including recreation purposes, the Trust agreed to convey to Northern Utilities a new easement covering the 40-foot segment.

14. Accordingly, on June 23, 2014, the Trust granted to Northern Utilities, with the Town’s consent by joinder, a 40-foot Pipeline Easement, under the terms and conditions set forth in an Easement and Relocation Agreement with Northern Utilities, recorded in the CCRD in Book 31627, Page 132 (the “2014 Agreement”), a true copy of which is attached as **Exhibit 1** to this Amendment and made a part hereof, and which Agreement remains in full force and effect to the extent not modified by this Amendment.

15. The 2014 Agreement also acknowledged Northern Utilities' right to create a temporary work zone abutting its existing Pipeline Easement (the "Temporary Work Zone") for the purpose of completing the Pipeline relocation work, based on its asserted right to do so, subject to the Trust's and the Town's re-vegetation and restoration requirements.

16. The 2014 Agreement further acknowledged Northern Utilities' right to relocate the rest of the pipeline within its existing Pipeline Easement.

17. In undertaking the Pipeline relocation work in 2014, Northern Utilities determined that the soils at the pipeline relocation tie-in at the required depth of 27 feet were too waterlogged and unstable to safely complete the Pipeline relocation as originally designed, and that a new Pipeline relocation design was necessary to excavate and tie-in the Pipeline at a shallower and safer depth.

18. The new design would require, however, that the Trust convey to Northern Utilities an additional easement to accommodate the relocated Pipeline (the "Additional Pipeline Easement"), and that some temporary surface excavation would take place within the Additional Pipeline Easement in order to install the relocated Pipeline.

19. Under the new design, the surface excavation required would be confined to the Temporary Work Zone which, by that time, had already been cleared of vegetation and graded.

20. Northern Utilities therefore requested that the Trust and the Town agree to an amendment to the 2014 Agreement in order to convey to Northern Utilities the Additional Pipeline Easement within the Temporary Work Zone.

21. In so requesting, Northern Utilities noted that the relocation and underground installation of the Pipeline was made at the request of the Maine Turnpike Authority for safety reasons, with Northern Utilities' agreement, and would be in a safer location than it is currently, which would therefore help foster safe and convenient public access to the Conservation Parcel for recreational purposes, consistent with the purposes expressed in the Conservation Easement.

22. Inasmuch as the pipeline relocation work proposed in the Additional Pipeline Easement would involve temporary excavation in the Temporary Work Zone, regardless of the fact that clearing and grading had already occurred in the Temporary Work Zone, the Town required, before consenting to the Trust's conveyance of the Additional Pipeline Easement, the concurrence of the Attorney General that the proposed Additional Pipeline Easement would not materially detract from the Conservation Easement's conservation values.

23. In December 2014, the Attorney General advised the Town of its opinion that, because the Conservation Easement is in the public interest, serves a publicly beneficially conservation purpose that can still be realized, and generally prohibits the installation and repair of new utilities as well as surface alterations, the proposed Additional Pipeline Easement materially detracts from the conservation values protected by the Conservation Easement, and

therefore required amendment of the Conservation Easement by court order in accordance with the Maine Conservation Easement Act, 33 M.R.S. §§ 476-479 (C). (As to the Attorney General's further view that the 2014 Agreement alone may be ineffective in partially subordinating the Conservation Easement to those portions of the 2014 Agreement affecting land outside of the existing Pipeline Easement, the incorporation of the 2014 Agreement into this Amendment to Relocation and Easement Agreement cures that issue.)

24. Northern Utilities, the Town and the Trust accordingly filed a Complaint with the Maine Superior Court for Cumberland County, naming the Attorney General as Defendant, pursuant to the Conservation Easement Act for the Court's approval of this Amendment, which Amendment, although executed by Northern Utilities, the Town and Trust, is inchoate and to be held in escrow until such time as the Court's issues an order approving it.

25. The relocation of the pipeline away from the reconstructed Turnpike bridge is a matter of public safety and is required by the Maine Turnpike Authority.

26. Pursuant to 35-A M.R.S. § 470, Northern Utilities has the alternative right to petition the Maine Public Utilities Commission for authority to take by eminent domain the land comprising the Additional Pipeline Easement, but that amending the Conservation Easement, instead of taking a portion of it, will better preserve the conservation values protected by the Conservation Easement.

27. The Additional Pipeline Easement is to be located entirely within Temporary Work Zone that is already cleared and graded, and is to be re-vegetated upon completion of the Pipeline relocation work according to terms specified by the Trust and the Town.

28. Pursuant to 33 M.R.S. § 477-A(2)(B), any amount paid to the Trust in consideration for the Additional Pipeline Easement, as set forth in this Amendment, must be used for the protection of conservation lands consistent, as nearly as possible, with the stated publicly beneficial conservation purposes of the Conservation Easement.

29. As the disturbed areas of the Conservation Parcel will be re-vegetated upon completion of the Pipeline relocation work, the adverse impacts to the Conservation Property's scenic, open space, and natural values intended to be protected by the Conservation Easement will be minimized.

30. Although the Conservation Easement generally prohibits new utility installation, maintenance, and repair as well as surface alterations, amending the Conservation Easement to relocate the Pipeline Easement is in the public interest because it ensures the continued safe and efficient transport of natural gas to thousands of customers in Maine and ensures the safety of recreational users of the Conservation Parcel.

31. Upon completion of the Pipeline relocation work, the former location of the Pipeline Easement will be abandoned and replaced by the relocated Pipeline Easement; in the location of the abandoned pipeline, Northern Utilities will release its Pipeline Easement rights,

excepting only its right to inspect and secure the abandoned pipeline for purposes of public safety and regulatory compliance; accordingly, the total area of land burdened by the Pipeline Easement and protected by the Conservation Easement will remain approximately the same.

32. Pursuant to 33 M.R.S. §§ 477-A(2)(B) & 478, approval of the amendment of the Conservation Easement to accommodate the Pipeline relocation as described herein is in the public interest.

NOW, THEREFORE, KNOW ALL BY THESE PRESENTS, that the Trust (“Grantor”) hereby GRANTS to Northern Utilities (“Grantee”) the easement hereinafter described, affecting portions of Grantor’s Property as more particularly described in this Amendment, and that Grantee hereby agrees that, upon completion of the Pipeline Relocation Work described herein, in the location of the abandoned pipeline, Northern Utilities will release its Pipeline Easement rights, excepting only its right to inspect and secure the abandoned pipeline for purposes of public safety and regulatory compliance.

1. Additional Pipeline Easement in Additional Relocated Pipeline Easement Area.

Grantor grants to Grantee the Additional Pipeline Easement, being a non-exclusive easement in gross affecting a portion of the Conservation Parcel, which portion is described in Section 1(A), the scope and purpose of said Additional Pipeline Easement being more particularly described in the provisions below.

- A. Additional Relocated Pipeline Easement Area. The additional portion of the Conservation Parcel burdened by the Additional Pipeline Easement described in this Section 1 is as follows:

A strip of land, the centerline of which will be the centerline of Grantee’s Pipeline as relocated on the Conservation Parcel (the “Additional Relocated Pipeline Easement Area”) (the approximate location of said relocated pipeline being depicted as “Proposed Alignment of Relocated Gas Line” on the plan attached hereto as **Schedule A** and the approximate location of said Additional Relocated Pipeline Easement Area being depicted as “20’ Gas Line Easement (10’ Either Side of Gas Line)” on said plan attached hereto as **Schedule A**), said strip of land to be twenty (20) feet in width, being ten (10) feet on either side of the centerline of Grantee’s Pipeline as relocated, provided, however, that notwithstanding the foregoing dimensions, in the event that the centerline of the Grantee’s Pipeline as relocated is less than 10’ northerly of the southerly boundary of the “Temporary Work Area” shown on said plan, then the southerly boundary of the Additional Relocated Pipeline Easement Area shall be the southerly boundary of said Temporary Work Area.

- B. Scope and Purpose of Additional Pipeline Easement.

i. The scope and purpose of the Additional Pipeline Easement described in this Section 1 and affecting the Additional Relocated Pipeline Easement Area is the perpetual right to enter upon the Conservation Parcel and access the Additional Relocated Pipeline Easement Area and utilize said area to install, operate, maintain, protect, repair, replace, and remove the Pipeline or any portion thereof.

ii. Grantee may install the Pipeline in the Additional Relocated Pipeline Easement Area by excavating a trench for the Pipeline, provided, however, that Grantee shall comply with the re-vegetation requirements set forth in the Re-vegetation Plan described in the 2014 Agreement, as may be amended by the Falmouth Planning Board.

iii. Except as amended herein, all other provisions, terms, and conditions of the Conservation Easement remain in full force and effect.

2. **Release of Pipeline Easement in Area from which Pipeline was Relocated.** Grantee agrees that, upon completion of the Pipeline Relocation Work, it releases its Pipeline Easement in the portion of the Conservation Parcel from which the Pipeline was relocated and in which a portion of the Pipeline is to be abandoned in place, said portion of the Conservation Parcel being depicted as a dark-shaded area and labeled as “Existing Gas Line Easement Located in the Falmouth Land Trust Property” on said plan attached hereto as **Schedule A** (“Abandoned Pipeline”), except that Grantee excepts and reserves from the foregoing release the right to inspect and secure the Abandoned Pipeline for purposes of public safety and regulatory compliance.

IN WITNESS WHEREOF, the Parties, acting by and through their respective duly authorized representatives indicated below, have executed this Amendment to Easement and Relocation Agreement this _____ day of _____, 2015.

Signed, sealed and delivered
in the presence of:

FALMOUTH CONSERVATION TRUST

Witness

By:
Its:

State of Maine
County of Cumberland ss.

_____, 2015

The above named _____ in his/her capacity as _____ of the Falmouth Conservation Trust, personally appeared before me and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of the Falmouth Conservation Trust.

Notary Public/Attorney at Law
Printed Name
My Commission Expires: _____

NORTHERN UTILITIES, INC.

Witness

By:
Its:

State of Maine
County of Cumberland ss. _____, 2015

The above named _____ in his/her capacity as
_____ of Northern Utilities, Inc., personally appeared before me and acknowledged
the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed
of Northern Utilities, Inc.

Notary Public/Attorney at Law
Printed Name
My Commission Expires: _____

HOLDER ACCEPTANCE

The above and foregoing Amendment to Easement and Relocation Agreement was authorized to be accepted by TOWN OF FALMOUTH, Holder as aforesaid, and the said Holder does hereby accept the foregoing, by and through Nathan A. Poore, its duly authorized Town Manager, this ____ day of _____, 2015.

TOWN OF FALMOUTH

by: Nathan Poore, its Town Manager

State of Maine

County of Cumberland, ss.

_____, 2015

Then personally appeared the above-named Nathan A. Poore, Town Manager of the Town of Falmouth, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the Town of Falmouth.

Notary Public/Attorney at Law

Printed Name

My Commission Expires: _____

SCHEDULE A

(Plan Depicting the Pipeline Easement as modified by the 2014 Agreement and this Amendment
to the 2014 Agreement)
[Separately Provided]

Peggy L. McGehee

From: Analiese Larson [<mailto:info@falmouthlandtrust.org>]
Sent: Thursday, January 22, 2015 10:56 AM
To: Peggy L. McGehee
Subject: RE: REREVISED Draft Pleadings, plus Plan w/ DK edits

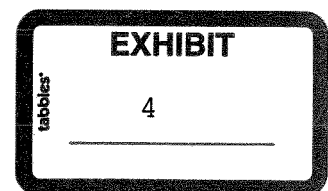
Hi Peggy,

Happy to report that all four motions regarding Unitil project were passed unanimously by FLT board last night.

Hope we can wrap this up in next few months!

Analiese Larson
Executive Director
Falmouth Land Trust
PO Box 6172
Falmouth ME 04105
info@falmouthlandtrust.org

(Motions Attached
PMcG)



MOTION:

1. To approve the Trust's conveyance of an additional pipeline easement to Northern Utilities, Inc. over the Trust's land along the Piscataqua River as described in the draft Amended Easement and Relocation Agreement ("Agreement"), contingent upon the Maine Superior Court approving the Agreement pursuant to the Maine Conservation Easement Act ("Approval");
2. To approve the Trust's joining Northern Utilities and the Town of Falmouth as a co-Plaintiff in a legal action to obtain the Court's Approval, as stated in the draft Complaint, entitled *Northern Utilities, Inc., Town of Falmouth, Maine, and the Falmouth Conservation Trust v. Janet T. Mills, Esq., Attorney General of the State of Maine*;
3. To approve the Trust's joining Northern Utilities, the Town of Falmouth and the Attorney General in the draft Joint Motion to Amend the Conservation Easement by Stipulated Judgment, with its attached draft proposed Stipulated Judgment that provides for Approval of the Agreement; and,
4. To authorize the Executive Director, as well as the Trust attorney, to approve any further non-substantive revisions of the Agreement, Complaint, Motion, and proposed Stipulated Judgment and related documents as necessary, and to take such other actions as may be required to implement the Agreement.

Peggy L. McGehee

From: Parker, Lauren <Lauren.Parker@maine.gov>
Sent: Monday, February 02, 2015 1:28 PM
To: Peggy L. McGehee
Subject: Northern Utilities et al. v. Mills

Dear Peggy,

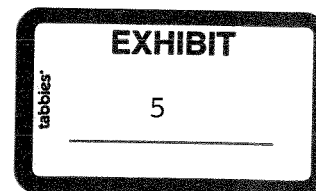
Based on my review of the draft Complaint and Order, including the Amendment to the Easement and Relocation Agreement, circulated via your January 26 and 27, 2015 emails, the Attorney General's Office consents to the filing of the Complaint and Order in *Northern Utilities et al. v. Mills* in Superior Court (Cumberland County) as drafted. The Attorney General's approval is contingent upon the Falmouth Town Council approving the documents as is. Should the Town Council require any changes to any of the draft documents to be filed in Superior Court, I will need to review and approve those changes prior to filing.

I also understand that, although the Falmouth Conservation Trust has approved the documents, the Trust's attorney may propose some minor changes. Please keep me apprised of any additional changes proposed by the Trust.

If you have any questions, please do not hesitate to contact me.

Regards,

Lauren



February 3, 2015

Chair Chase and Members of the
Town of Falmouth Planning Board
271 Falmouth Road
Falmouth, Maine 04105

**Re: Unitil Application to Amend 2014 Shoreland Zoning Permit: Legal Process re
Pipeline Easement from Falmouth Land Trust, and Amendment to Town's
Conservation Easement**

Dear Chair Chase and Members of the Falmouth Planning Board:

This letter is written on behalf of Northern Utilities, Inc., d/b/a Unitil, regarding a pipeline easement, anticipated to be granted in March 2015, for the relocation of its natural gas pipeline to the area described in its Application to Amend its 2014 Shoreland Zoning Permit ("Additional Pipeline Easement").

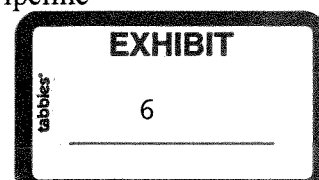
Unitil will not be able to acquire the Additional Pipeline Easement until March because, as explained below, the Additional Pipeline Easement conveyance must first be approved by the Maine Superior Court under the Maine Conservation Easements Act, and there is a process to complete before the Court can grant such approval that includes this Board's approval of the Application.

The area to which Unitil proposes to relocate its pipeline ("Amended Pipeline Segment") is on land owned by the Falmouth Land Trust. The Trust will agree to convey to Unitil the requested Additional Pipeline Easement. However, the Trust's agreement is conditioned on the Town of Falmouth's consent, as the Town holds a conservation easement over the Trust land ("Conservation Easement").

The terms of the Conservation Easement generally prohibit excavation of the soil, (although there is a recreational public safety exception). In 2014 the Town consented to the Trust conveying a similar 40 foot pipeline easement to Unitil as part of its pipeline relocation project (as described in Unitil's 2014 Shoreland Zoning Permit), conditioned on the 40 foot pipeline segment being installed entirely below ground through horizontal directional drilling ("HDD"). The 40 foot pipeline segment installation was completed in the fall of 2014 as part of the larger pipeline relocation project. However, while the relocation work was underway, the soil became too unstable and waterlogged at its 28 foot depth relocation point to safely complete as designed, and thus the pipeline's relocation had to be extended and realigned.

Although the further realignment would be entirely within the project's approved and established pipeline temporary work area, it would still require an Additional Pipeline

PHILIP C. HUNT
JOHN S. UPTON
PEGGY L. McGEHEE
MELISSA HANLEY MURPHY
JOHN A. HOBSON
JAMES N. KATSIARICAS
TIMOTHY P. BENOIT
J. GORDON SCANNELL, JR.
FRED W. BOPP III
MARK P. SNOW
WILLIAM J. SHEILS
DAVID B. McCONNELL
PAUL D. PIETROPAOLI
RANDY J. CRESWELL
JULIANNE C. RAY
DAWN M. HARMON
CHRISTOPHER M. DARGIE
STEPHANIE A. WILLIAMS
PETER J. McDONELL
SARA N. MOPPIN
SHAWN K. DOIL
JOSEPH G. TALBOT
LAUREN B. WELIVER
JOSEPH C. SIVISKI
JOHN W. MASLAND



February 4, 2015

Page 2

Easement where shown on the attached plan, **Exhibit 1**. Further, it would have to be installed by excavated trench.

As the installation of the Amended Pipeline Segment requires an excavated trench, and there was a question whether such excavation would qualify under one of the Conservation Easement's exceptions to its excavation prohibition, the Town Attorney sought the Attorney General's opinion as to whether the proposed Additional Pipeline Easement complied with Maine's Conservation Easement Act, 33 M.R.S. §§ 476-479 (C) ("Statute"). Assistant Attorney General Lauren Parker advised that it was the opinion of the Attorney General's office that the Additional Pipeline Easement would "materially detract" from the Conservation Easement's conservation values, and thus, under the terms of the Statute, the Additional Pipeline Easement conveyance required an amendment to the Conservation Easement by the Maine Superior Court.

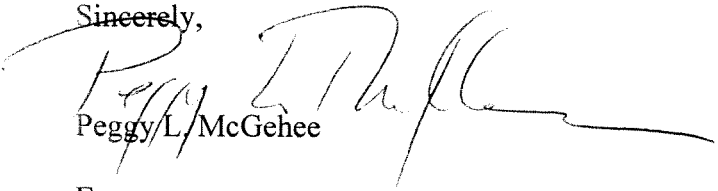
Unitil has accordingly collaborated with the Assistant Attorney General, and counsel for the Town and the Trust, to prepare the requisite petition to the Court ("Complaint", **Exhibit 2**), and proposed Stipulated Judgment for entry by the Court, which Judgment will incorporate by reference the Trust's executed, but inchoate, Amended Relocation and Easement Agreement and the Town's executed, but inchoate, Holder Acceptance ("Stipulated Judgment", **Exhibit 3**).

The Trust Board approved the documents for signature and filing as stated in its January 21 vote, **Exhibit 4**. The Assistant Attorney General has also approved the documents, as stated in her February 2, 2015 e-mail correspondence, **Exhibit 5**. The Town Council is scheduled to consider the documents for approval at its February 9 meeting, pursuant to Unitil's letter request dated February 3, 2015, **Exhibit 6** (without its exhibits 1-5, as they are the same as this letter's exhibits 1-5). Upon the Council's approval, the documents can be signed and filed for the Court's consideration. Unitil expects that the Council's approval will be conditioned on the Planning Board approving Unitil's Application. Thus, although the Complaint could be filed with the Court prior to the Planning Board's consideration of Unitil's Application, the Stipulated Judgment would not be in order for the Court's consideration unless and until the Board approves the Application.

Given these circumstances, Unitil requests the Board approve its Application, even though its' right, title and interest to install the pipeline is inchoate, with a condition of approval that Unitil obtain such Additional Pipeline Easement in accordance with the terms of the Stipulated Judgment as set forth in **Exhibit 3**.

Thank you for your consideration of Unitil's Application.

Sincerely,


Peggy L. McGehee

Encs.