

## MEMORANDUM

TO: Portsmouth City Council  
FROM: Brian Hart, Executive Director and Duane Hyde, Land Conservation Director  
Southeast Land Trust of New Hampshire (SELT)  
DATE: August 13, 2024  
RE: Partnership to conserve the 100-Acre Woods (Cavaretta Easement)

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Thank you for the opportunity to publicly present and discuss the proposed partnership between the City of Portsmouth and the Southeast Land Trust of New Hampshire (SELT) to permanently conserve 94-acres of forest, fields, and wetlands owned by Joe Cavaretta, known as the 100-Acre Woods. This first page provides a brief snapshot of why SELT believes the conservation of this property and the proposed project advances the City's conservation and community goals. Additional details on each aspect follow.

### Why conserve the 100-Acre Woods?

- **Identified Priority:** As the largest, privately-owned, unconserved and undeveloped property in the City, this land is a top priority, as determined by the City's own 2020 Open Space Plan and a multiple other science-based, data-driven conservation plans on the regional and state level. (see p. 2)
- **Protect critical natural resources:** These include wildlife habitat for rare and threatened species, the water quality of Berry's Brook, prime wetlands for flood storage and pollutant capture, and wildlife travel corridors connecting large blocks of habitat. (see p. 3)
- **Low-risk:** The project contract and proposed easement roles minimize the immediate and long-term risk to the City and shift it to SELT, minimizing future costs for the City and its taxpayers. (see p. 3)
- **A Strong Partner:** SELT is an independently accredited, professional land trust, whose sole mission is to conserve and steward land, and which has the resources, expertise and capacity to monitor and enforce the Cavaretta easement. (see p. 6)
- **A Future Option:** Once the easement is completed, the existing contract provides for a "right of first offer and refusal" to acquire the ownership of the 100-Acre Woods. Ownership is preferred by SELT and the Conservation Commission, and with input from the City, would further benefit the community through trails and nature-based education for area youth. (see p. 4)
- **Dedicated funds available:** The City's Conservation Fund, derived from the development of other land enrolled in current use, has been untapped for years and is available to provide the requested funds, at no direct cost to taxpayers through tax rate increases.
- **Leveraging City funds:** At 44% of the project's easement value and project costs, the City's contribution from the dedicated Conservation Fund will be matched dollar-for-dollar with other public and private funds raised by SELT. (see p. 6)
- **Now is the time:** After 12+ years of efforts, an agreement has been reached to provide the chance for conservation. Should this easement purchase not proceed, rising real estate values and increasing development pressure only increase the risk of this property being developed.

**Recognized Priority Locally and Regionally**

**City of Portsmouth’s 2020 Open Space Plan**

- **“High Priority”**: the Cavaretta property is identified as High Priority “parcel OO” that meets all four ranking categories (page 53).

Map Code	Description	Ownership	Opportunity		Ranking Categories				Priority		
			Acquisition/Conservation	Improvement	Proximity	Connectivity	Unique Resources	Equity & Access	High	Medium	Future
OO	Water quality protection for Berry’s Brook and habitat connectivity within Portsmouth and into nearby Rye.	Private	✓		*	*	*	*	X		

- **Identified as an “Emerging Area” to Retain and Expand Portsmouth’s Open Space Network:** the 100-Acre Woods property lies within the Berry’s Brook Headwaters which the plan describes as *“Even though this area of the City is dominated by wetlands and will not contribute as much recreational value overall, it is important to retain these open spaces. This will ensure water quality is maintained in Berry’s Brook as it flows into Rye and out to the Coast. These contiguous open space corridors also ensure habitat connectivity exists for the many species living in and passing through this area of the seacoast. This open space area also offsets the impact of the more intensely developed corridor along Route 1 while helping to reduce flooding, improve air and water quality, reduce the heat island effect, sequester carbon, and other benefits.”* (page 46)
- **Includes a general recommendation** to *“identify opportunities to partner with landowners and regional conservation organizations (such as Southeast Land Trust and the Society for the protection of NH Forests) to increase the percent of open space.”* (page 43).

**2021 New Hampshire's Coastal Watershed Conservation Plan<sup>1</sup>:** 87-acres (93%) of the 100-Acre Woods lie within a Focus Area of this plan, which represents the best thinking of conservation agencies, conservation scientists and non-profits about the highest priority critical lands in the coastal watershed to conserve and safeguard for ecosystem functions and services.

**2020 NHFG Wildlife Action Plan (WAP)<sup>2</sup>:** This plan seeks to identify critical habitat to conserve for wildlife before they become too rare or costly to restore. The Plan ranks habitat in tiers of importance: state, regional, and local level. The Cavaretta land included 59-acres (63%) in these three tiers.

**2019 Connect the Coast<sup>1</sup>:** This science-based plan identifies a network of lands critical to maintaining habitat connections for wildlife throughout the Seacoast region. 85-acres (90%) of the property is in an unfragmented, high-quality habitat area and 1.8-acre portion of the property is part of a key wildlife connectivity corridor that links this property to the Urban Forestry Center habitat block (The City’s Open Space Plan also recognized this connection – see the map on page 39.)

**Resilient and Connected Landscape (TNC):** This plan looked at what lands help wildlife and plants most effectively adapt to a changing climate (called climate resilience). 76-acres (81%) of the property identified average or better for climate resilience, a strong score due to its connectedness to undeveloped and conserved lands, its soils and geology, and topographic diversity.

**Berry’s Brook Watershed Management Plan (Berry's Brook Watershed Protection Council, 1993):** Specifically identified Cavaretta property as an area that if developed, could pose potentially serious

<sup>1</sup> The Nature Conservancy and Great Bay Resource Protection Partnership

<sup>2</sup> New Hampshire Fish and Game Department

impacts to the watershed due its size and nearness to Berry's Brook and its associated wetlands.

### **Protects Critical Natural Resources**

1. **Preserves diverse wildlife habitat** due to mix of upland forests (~40 acres), forested wetlands (~47 acres, based on National Wetlands Inventory mapping), and open fields and shrubland (~7 acres), including probable habitat for threatened and endangered turtles.
2. **Conserves travel corridors for wildlife**, including a **1.8-acre portion of a regionally significant wildlife connectivity corridor** linking and providing for the ability for wildlife to move between the large habitat blocks of the Urban Forestry Center and the Berry's Brook area.
3. **Protects water quality of Berry's Brook** by conserving a 1/3 mile of a perennial tributary.
4. **Preserves significant wetland systems from development impacts**, including at least three vernal pools and 47-acres of wetlands, primarily concentrated in the southern portion of the property and part of a larger 220-acre Prime Wetland. Vernal pools provide essential habitat for certain frog and salamander species and vernal pools are a food source for many other species.
5. **Provides green infrastructure services** through flood storage and risk mitigation while capturing pollutants, as the property's wetlands and forested buffers absorb and store run-off and assimilate nutrients from the more heavily developed surroundings and slowly release these waters.
6. **Helps protect drinking water supplies**, as ~34.6 acres of the property are within a high transmissivity aquifer.
7. **Supports dispersed access through LCHIP's passive recreation requirements while creating future opportunity** for public ownership of the 100-Acre Woods with trails and nature-based education opportunities. Although needing further exploration, the conservation of the Cavaretta tract protects the opportunity for elementary education for not just one school, but two public schools: Portsmouth's Dondero Elementary School and the Rye Elementary School. Both of these schools offer outdoor education as part of their curriculum and reportedly the Dondero school lacks sufficient useable land; the Cavaretta's tract's proximity to the school could facilitate opportunities in the future. This will require further discussion with both the landowner and the schools.

### **Project Structure**

- SELT and the City will have legal interests in the conservation easement on 94 acres of the Cavaretta property.
  - SELT would be the primary holder of the easement, carrying the costs and obligation to monitor the use of the land and take enforcement obligations against violations. SELT will provide the City with its monitoring reports and engage with the City with respect to the review of management plans and management activities on the property.
  - The City of Portsmouth would hold a third-party right of enforcement, allowing the City to minimize its ongoing costs, and choose to take enforcement action if SELT failed to do so. In addition, if SELT ceased to exist as an entity or if SELT became the future owner of the land,

the City will have the opportunity to decide if it would like to become the primary holder of the conservation easement.

- Excluded from the conservation easement is an approximately 5-acre area surrounding the existing house and outbuildings/improvements associated with the house. Mr. Cavaretta will retain the house and continue to pay property taxes on his buildings and the land.
- **Conservation easements are legal agreements that permanently limit the development** of land to protect critical natural resources, while allowing continued compatible uses, like agriculture, forestry, and outdoor recreation. Conservation easements are recorded in the Registry of Deeds, run with the land, and apply to the current and all future landowners.
- SELT's template conservation easement includes the following key terms:
  - Allows for forestry and agriculture. Commercial forestry must be conducted in accordance with a written forest management plan prepared by a licensed forester. Commercial forestry must be overseen by the licensed forester and follow best management practices and guidelines such as "Good Forestry in the Granite State". Agriculture must also follow best management practices
  - Prohibits subdivision of the land
  - Prohibits mining and excavations
  - Prohibits structures, except those used for forestry or agricultural purposes
  - Prohibits motorized vehicles (including ATVs) except for land management purposes
  - Prohibits burial of man-made materials or hazardous materials
  - Property cannot be used to satisfy the density, frontage or setback requirements for the development of any other property

Features specific to this property:

- Will allow for the maintenance and repair of the existing driveway and utilities along the driveway to serve the Excluded Area (house location)
- With the Land and Community Heritage Investment Program (LCHIP) funding proposed, the landowner has agreed to LCHIP's requirements that the land not be posted against public access or hunting. LCHIP's language has exceptions for when posting may be allowed, for instance during active timber harvest operations or agricultural cropland areas. This does not, however, require the landowner to provide opportunities for parking or for trail construction. This is a "dispersed" public access provision. Because SELT will likely someday have the opportunity to acquire the property, we will ensure the easement will allow for trails and parking at the landowner's discretion.
- The purchase agreement between SELT and the landowner stipulates a closing date of June 28, 2025 but the closing can extend until no later than December 31, 2025.

### **Right of First Offer and Refusal**

From the onset of our discussions with Mr. Cavaretta, SELT sought to acquire the fee ownership of the property in recognition of additional public benefits that could be achieved. We explored multiple approaches that met Mr. Cavaretta's short and long-term goals and while Mr. Cavaretta is not willing to sell the property now, he did agree to provide a future opportunity to acquire the land. As part of its contract, SELT has a right of first offer and refusal for the property. This means that if Mr. Cavaretta ever

sells the property outside of his family (he has two siblings, and he is not married and has no children) then SELT will have the right to make an offer.

- If that offer is rejected, he cannot sell the property for less than SELT's offer.
- If he gets an offer that is more than SELT's offer, then SELT can match that offer and the property must be sold to SELT.

Should SELT exercise its right to acquire the property in the future, SELT will proactively engage the City to receive its input and feedback about how the 100-Acre Woods could best serve the needs of the City's residents, for trails and nature-based education, while continuing to protect its natural resources.

Should SELT elect not to exercise its right of first offer and refusal when the opportunity arises, the City will then have the ability to decide if it wants to exercise this right. Mr. Cavaretta has agreed to this approach whereby the City can step in. Note that should SELT, the City, or any other party acquire the property, the conservation restrictions would remain in effect.

### **Easement Valuation and Purchase Price**

The standards of the land trust community require each of our proposed acquisitions to be appraised to ensure a fair valuation based on the property's size, characteristics, location, market conditions, and zoning regulations.

- In May of 2024, the easement was independently appraised at \$2.145 million, based on an appraisal completed by Stark & Webster Valuations, LLC, a certified and licensed general appraiser. The appraiser used a comparable sales analysis to determine fair market value.
- Mr. Cavaretta agreed to sell the easement for \$1.8 million, which represents a \$345,000 price reduction from the appraised value. We appreciate he chose to do this to support the conservation outcome.
- As part of the negotiation process, SELT hired Altus Engineering to provide a conceptual development plan based on the City's zoning regulations and the property's constraints, including the City's wetlands mapping. Altus evaluated two approaches, resulting in conceptual plans showing 13 single family homes or a planned unit development with 37 units in 8 buildings.
- Given the extraordinary growth in real estate values between 2019-20 and 2023-24, when the mean value of a condo in Portsmouth went from \$554,682 to \$955,808, the economic incentive to improve access and overcome development obstacles is very strong. While not considered for purposes of the appraisal, a likely scenario is that a developer would acquire the property *and* acquire an adjoining home(s) in the adjacent Elwyn Park and/or Woodlands neighborhoods. Doing so would provide additional points of access other than from Elwyn Road and increase the developability and density of housing on the property *beyond what the conceptual subdivision prepared by Altus Engineering.*

The purchase agreement between SELT and the landowner stipulates a closing date of June 28, 2025 but we can extend until no later than December 31, 2025.

## **Budget and Funding**

The enclosed budget shows a total project cost of \$2,276,600, which represents the easement's purchase price and bargain sale value, due diligence (boundary, title, legal, etc.), project management, and long-term stewardship costs. The contribution to the Stewardship Fund is a one-time contribution to ensure that SELT will have the long-term (permanent) capacity to monitor, enforce, and administer the conservation easement. SELT uses an annual distribution from the Stewardship Fund, typically 4% of the Fund's value, to support our costs of stewarding the property.

Funding for the 100-Acre Woods project will come from both public and private sources. The requested contribution of \$1 million from the City's Conservation Fund is 44% of the project's overall value, meaning each dollar of the City's funds will be leveraged dollar for dollar. The City's Conservation Fund currently has a balance of \$2,200,000; of this, \$1,200,000 was generated from Land Use Change Tax resulting from the development of open space land.

The remaining 56% of the necessary funding will include nearly \$1 million of private contributions, committed and to be raised.

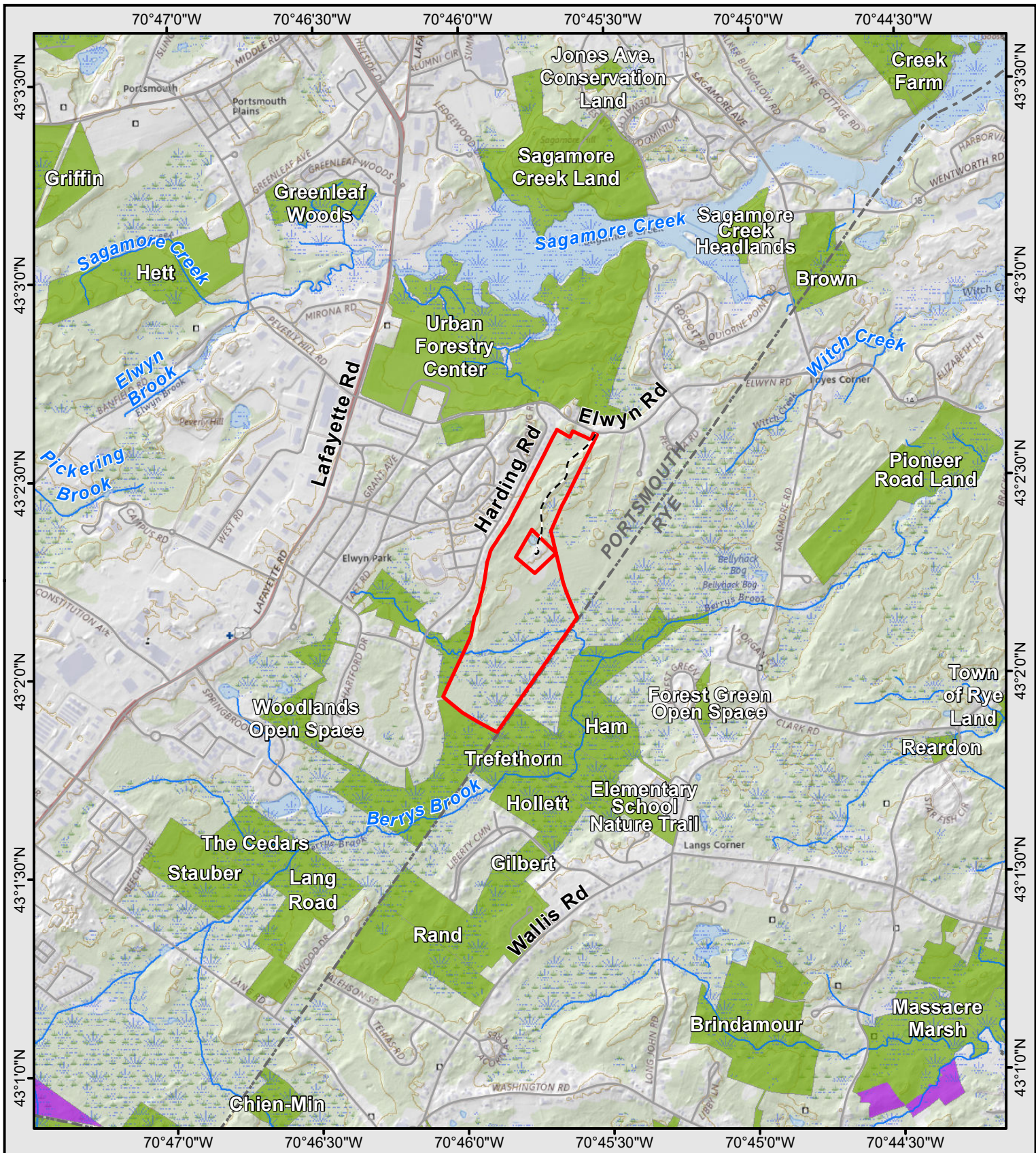
- Mr. Cavaretta has agreed to sell this conservation easement for \$345,000 less than its fair market value (aka, bargain sale), reflecting his commitment to the project and reducing the need to raise additional funds.
- SELT will raise the remaining \$581,600 from private foundations and individuals. This is a significant private fundraising effort for SELT, but we feel confident in our ability to raise these funds due to this being such a strong project and our well-established donor base in Portsmouth and the surrounding region.

SELT has requested \$350,000 from the NH Land and Community Heritage Investment Program (LCHIP), the state's land conservation and historic preservation program. This is a very competitive round for LCHIP and we learned this project is the largest dollar value request this round; however, the features of this property combined with its size and location in Portsmouth make it a competitive project. LCHIP makes its decisions in the fall with a December 2024 public announcement.

## **About SELT**

SELT is a regional, non-profit land trust originally founded in 1980 and born from the mergers of the Seacoast Land Trust, Rockingham Land Trust, and Strafford Rivers Conservancy. Serving 52 communities of Rockingham and Strafford counties, SELT works with landowners and communities to protect and sustain the significant lands in our communities for clean water, outdoor recreation, fresh food, wildlife, and healthy forests. To date, we have protected more than 27,000 acres of land; of this SELT owns 11,000 acres with 13 public properties with developed trail systems. The remaining 15,000 acres are permanently conserved through 260+ conservation easements. SELT has a professional staff of 18 full time employees and is governed by a volunteer Board of Directors, including four residents of Portsmouth. Since 2013, SELT has maintained accreditation with the Land Trust Accreditation Commission, affirming its commitments to excellence and conservation permanence. SELT has previously worked with the City to conserve Great Bog, the Maxam property, and three properties along the Bellamy Reservoir in Madbury.

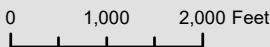
Attachments – Context Map  
Aerial Map  
Budget



- Project Boundary
- SELT Conservation Land
- Conservation & Public Land
- Driveway
- Road
- Town boundary



1:24,000

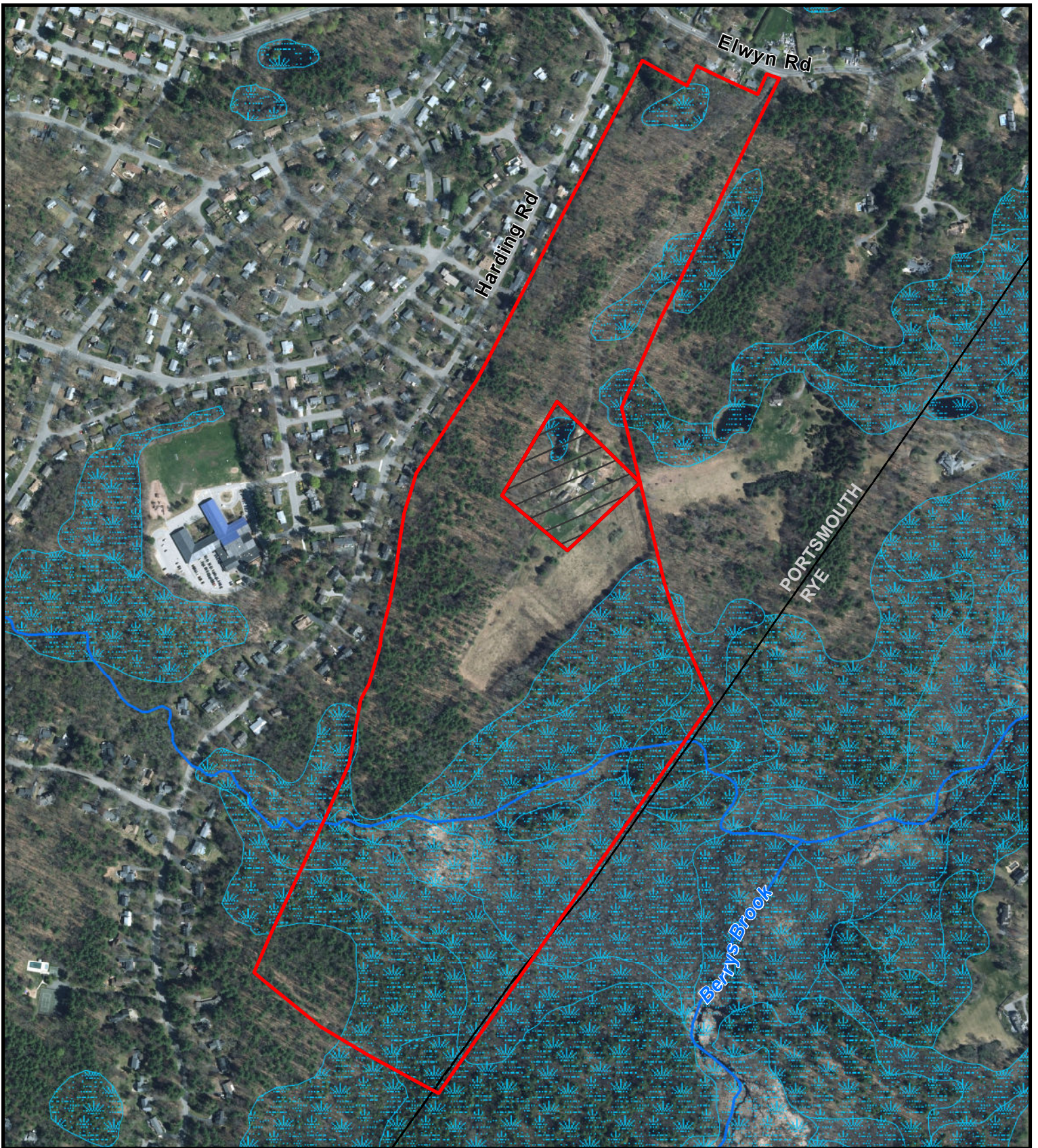


## Cavaretta Project & Nearby Conservation Lands Portsmouth, NH

Boundary and feature locations are approximate.  
Conservation lands from NH GRANIT. USGS topographic base map (published 1970-1998) processed by NH GRANIT; coordinate system is NAD83 UTM Zone 19N meters.

Map prepared by  
Southeast Land Trust of NH  
May 2024

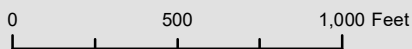




- Project Boundary
- Exclusion Area
- NWI wetland
- Stream



1:7,000



## Cavaretta Project Portsmouth, NH

Boundary and feature locations are approximate. Easement boundary based on tax maps.

Map prepared by  
Southeast Land Trust of NH  
May, 2022







## Budget Cavaretta Conservation Easement ~94- acres (Portsmouth)

### EXPENSES

<u>Transaction Costs</u>	<u>Budget</u>	<u>Notes</u>
<b>Acquisition Costs</b>		
Easement Purchase Price	\$1,800,000	<i>Appraised FMV of CE \$2,145,000</i>
Easement Bargain Sale	\$345,000	
<b>Due Diligence Costs</b>		
Legal	\$12,500	<i>Title exam, title insurance, legal fees</i>
Survey	\$25,000	
Hazardous Waste Assess.	\$2,100	<i>Phase 1</i>
Appraisal(s)	\$8,200	<i>Initial appraisal and updated appraisal</i>
<b>Closing Costs</b>		
Recording fees	\$500	
<b>Project Management Expenses</b>		
SELT Project Management	\$30,000	<i>Flat Fee</i>
Conservation Consulting	\$6,500	<i>Wetlands assessment</i>
Travel	\$300	
Printing & Postage	\$10,000	<i>Community Mailing and Brochure</i>
<b>Contingency</b>	<b>\$10,000</b>	
<b>Subtotal, Transaction Costs</b>	<b>\$2,250,100</b>	
<b>Stewardship Costs</b>		
<u>Budget</u>		
Easement Stewardship Fund	\$24,700	<i>Min. contribution for Conservation Stewardship Fund</i>
Legal Defense Fund	\$1,800	<i>Flat rate contribution for legal defense of CEs</i>
Forest Management Plan	\$0	<i>If we were to apply to ARM this would be \$5K</i>
Archeological Assessment	\$0	<i>If we were to apply to ARM this would be \$2K</i>
<b>Subtotal, Stewardship Costs</b>	<b>\$26,500</b>	
<b>TOTAL EXPENSES</b>	<b>\$2,276,600</b>	<i>total Transaction Costs + Long Term Stewardship Costs</i>

### REVENUES

<u>Revenue Sources</u>	<u>Budget</u>	<u>Notes</u>
<b>Government</b>		
Portsmouth Conservation Fund	\$1,000,000	<i>44% of total project cost</i>
LCHIP	\$350,000	<i>Application submitted</i>
<b>Private Fundraising</b>		
GBRPP	\$20,000	<i>To apply in 2025</i>
Private gifts	\$561,600	<i>SELT to Raise</i>
Landowner Bargain Sale-CE	\$345,000	<i>Per purchase agreement</i>
<b>TOTAL REVENUES</b>	<b>\$2,276,600</b>	