

Assessing Conservation Easements and Their Adaptability to Change in Strafford  
County, New Hampshire

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## Abstract

Conservation easements have many positive benefits to society which include land preservation and protection of natural resources. Often, they are designated in perpetuity, which makes them difficult to modify and presents challenges in the face of a changing climate, landscape, and ecosystem (Owley, 2011). This content analysis assessed the conservation easements located in Strafford County, New Hampshire, in order to understand their preparedness to handle land use modifications and the amendment process. A majority of the easements in Strafford County can be characterized as encouraging open space, natural resource and habitat protection. Most do not have an amendment provision, making them less prepared to adapt to future land use needs. Amendment provisions should be included into future agreements to facilitate the modification process. It appeared that easement holders are working in close collaboration with the Charitable Trusts Unit during the amendment process which should continue to occur.

## Acknowledgements

I am indebted to a multitude of people for helping me through this endeavor. I pray to repay those kind souls before the end of my journey.

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## Chapter 1: Introduction

The preservation of land and natural resources, protection of critical environmental infrastructure, historical sites, and scenic and recreational areas are typically done through use of conservation easements (*Conservation Easements: Conserving Land, Water and a Way of Life*, n.d.). Conservation easements are a useful legal tool for land preservation organizations, municipalities or state and federal agencies that removes the development rights from a specified tract of land in perpetuity or for a specified period. They are critical for preservation efforts and have positive benefits to society (Baldwin, 1997). Nevertheless, they are subject to limitations in terms of being difficult to change, particularly if an amendment clause<sup>1</sup> is not specified in the agreement's text or the proposed amendment to the easement is not clearly neutral or enhancing (Nancy A. McLaughlin, 2006). While there is an agreement in the legal and preservation fields that conservation easements may have to change their provisions due to unexpected circumstances - - even if perpetual -- the process can become cumbersome (Jay, 2012). The ability for conservation easements to adapt and change is important, particularly to ensure that original conservancy goals survive in the context of changing landscapes and ecosystems (Owley, 2011).

The State of New Hampshire contains many natural areas that are preserved through conservation easements. This thesis explores the composition of conservation easements in Strafford County, New Hampshire - a coastal area.

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<sup>1</sup> An "amendment clause" is a provision in the original easement that permits all parties involved to make changes to the easement.

Particularly, how prepared they are to adapt to future changes in land use as the surrounding environment transforms over time, and how they have been treated during the amendment process<sup>2</sup>. There is extensive literature that touches upon the typical components, statutory challenges and requirements, merits and disadvantages of perpetual conservation easements, as well as the methods, consequences and recommendations to improve the amendment process thereof. However, the literature is silent on the topic of how adaptable conservation easements are to future change within a New Hampshire context (i.e. whether language within the agreement allows enough flexibility for future interpretations as land use needs evolve, or whether an amendment clause is stipulated within the agreement to allow for such changes).

The aim of this thesis is to provide a better understanding of the adaptability of conservation easements in Strafford County, New Hampshire, by assessing the language of the agreements as well as the types of amendments proposed and how the state reacted and categorized them. To the best of the author's knowledge, there has not been a similar study conducted at the county level in New Hampshire. This is important because New Hampshire will undergo changes as a result of sea-level rise and the impact of climate change in the future (US EPA, n.d.; "What Conservation Commissions Can Do to Protect Natural Resources in a Changing Climate [factsheet] | UNH Extension," n.d.). Strafford County, located in the southeastern region of New Hampshire, will be particularly vulnerable to such

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<sup>2</sup> While many conservation easements are "perpetual" (i.e. forever encumbered), they are subject to change through an amendment clause or through doctrine of change conditions (e.g. if an easement did not have a forest management plan, and it was determined that one was needed, then an amendment to the easement could stipulate it).

changes due to its proximity to the ocean and population increase (“Strafford County, New Hampshire detailed profile,” n.d.; “What Conservation Commissions Can Do to Protect Natural Resources in a Changing Climate [factsheet] | UNH Extension,” n.d.; US EPA, n.d.). It is therefore imperative that strategies be developed to adapt to an ever-evolving landscape and ecosystem if conservation efforts are to be maintained (Owley, 2011).

The NH Granit database -- a descriptive database of the conservation easements located in Strafford County that included information on the properties’ coordinates, given nickname, ownership, type of deed, acreage, allowed use, and book and page -- was used as a starting point for this analysis (“NH GRANIT: New Hampshire’s Statewide GIS Clearinghouse,” n.d.). To understand the amendment process and the types of amendments proposed, decision letters indicating whether or not to take action and the level of risk imposed on the conservation easement were obtained from the Charitable Trusts Unit<sup>3</sup> (“Charitable Trusts Unit | NH Department of Justice,” n.d.).

Through a detailed content analysis of conservation easements, this thesis addresses an important gap in knowledge: understanding the ability of conservation easements to adapt to change and evolve with the changing landscape to maintain a conservation goal in Strafford County. Specifically, to identify and better understand:

1. The composition of conservation easements located throughout Stafford County, New Hampshire;

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<sup>3</sup> The Charitable Trusts Unit oversees charities and trusts within the state.

2. The conditions within the language of those easements to determine their flexibility to adapt to future changes; and
3. The approval rate for amending a conservation easement from the Charitable Trust Unit of the New Hampshire Attorney General' Office.

Taken together, these findings will provide a snapshot of the current state of conservation easements in Strafford County, how prepared they are to change, and in what circumstances they may be amended without being exposed to legal challenges. It is hoped that land trust<sup>4</sup> organizations in NH will use these methods to replicate this analysis across the state, to identify conservation easements that may become incompatible with evolving land use needs.

The layout of this thesis is as follows: Chapter 2 introduces background information on the purpose, origins, challenges, and reform efforts of a conservation easement. Moving forward, Chapter 3 will focus on the evolution of conservation easements in New Hampshire and identify gaps in the literature. After identifying the key focal points of the analysis, Chapter 4 describes the methods for data collection and analysis of Strafford County conservation easements along with action letters issued by the New Hampshire Charitable Trusts Unit. Chapter 5 reviews the results of the analysis while Chapter 6 provides recommendations and conclusions.

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<sup>4</sup> Land trusts are organizations whose purpose is to seek the preservation of a land's ecological, scenic, recreational or historical characteristics. Typically, land trusts are in the form of a 501(c)(3) nonprofit organization who are authorized by state statute to be a permitted holder of a conservation easement (Olmsted, 2011).

## Chapter 2: Background

In order to understand the state of New Hampshire conservation easements, it is important to gain a familiarity on the general composition of conservation easements and how they reached their current form. The purpose of this section is: (1) to gain a better understanding of the conservation easement's purpose, anatomy and legal origins, (2) to illustrate the challenges the conservation easement encounters without statutory protection, (3) to review the reform efforts that eased the restraints imposed by common law doctrine in connection with the financial incentives provided by the Internal Revenue Service that influenced their proliferation, and finally (4) to identify the outstanding issues during the reform process and their consequences on the management of conservation easements, and their ability to adapt to future changes. The following chapter will introduce and explore the evolution of the conservation easement in New Hampshire and identify gaps in the literature that this thesis will address.

### Understanding what a conservation easement is and its purpose

Traditionally, conservation easements were created for the specific purpose of preserving and protecting land that possessed ecologically significant characteristics, valuable natural resource and important scenic views and structures of historical significance (Owley, 2011; "What are Conservation Easements | The Nature Conservancy," n.d.). To achieve this, a conservation easement places a restriction on the right to develop on the property on which the easement is located.

The development rights are then transferred to an organization that is designated to hold the conservation easement (Owley, 2011).

Since the early 1980's, the reasons which conservation easements were created has expanded. For example, in addition to the traditional aspects listed above, conservation easements have been used to protect an array of environmental and historical resources such as: wildlife habitat, working farms, burial sites; water rights; air space; and recreational facilities (Cheever & Mclaughlin, 2015).

While conservation easements traditionally specify to last in perpetuity due to tax regulations promulgated by the United States Internal Revenue Service (IRS) and state revenue agencies, they can also be created for specified durations of time or upon the successful completion of certain conditions (Cheever & Mclaughlin, 2015). The latter two options are undesirable to both the property owner and easement holder in that the property owner cannot receive the tax benefits associated with conveying a conservation easement and the easement holder fails to preserve the targeted values in perpetuity (Cheever & Mclaughlin, 2015).

The tax benefit aspect of conservation easements is an essential part of the discussion because it incentivizes land owners to place their land in conservation. This presents a challenge during the amendment process which will be discussed in more detail in the section on "Reform Efforts and Incentives". First, it is important to understand how conservation easements evolved.

## Common law of servitudes: the legal origins and evolution of conservation easements

Land held in conservation usually takes form as an easement, but can also take the form of a real covenant or equitable servitude (Berger, 1986). These three types of common law servitudes and their requirements will be described in detail below in order to show how a conservation easement in gross<sup>5</sup> (i.e. an easement that has been transferred to a third party) is not permissible under traditional common law doctrine.

Servitudes are used by two or more parties on the private use of land (French, 1981). For example, the use of servitudes can range from crossing land to access a particular location, permitting utilities to cross a segment of a property owner's land for the benefit of an abutter or other party, or to allow air or light to pass through. The general purpose of a servitude is to create rights, obligations and restrictions affecting ownership, occupancy and land use (Morrisette, 2001). Common law has organically developed three different types of servitudes that achieve the previously mentioned purposes: easements, real covenants and equitable servitudes (Berger, 1986). While each servitude conceptually strives to establish benefits and burdens on a certain tract of land, each one has evolved separately and possesses different requirements that permit their existence and assignment to current and future holders (Berger, 1986; French, 1981).

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<sup>5</sup> In a conservation easement "in gross", the easement has been transferred to a party or entity and not tied to a specific portion of land. In an "easement appurtenant", the easement is tied to the land. The main difference between the two is that "in gross" is tied to the easement holder, whereas "appurtenant" is tied to the land and transfers with the land ownership (LaGrasse, 2002).

## *Easements*

Simply put, an easement is used for the purpose of establishing the right of an entity to use another's land (French, 1981). The parties to the easement are divided into two groups: the servient tenement and the dominant tenement (Hollingshead, 1996). The servient tenement is defined as the entity subjected to the burden of the easement. In other words, an individual (servient tenement) with possession of the title to land who allows another entity (dominant tenement) to access and use the land or its resources to their benefit. The servient tenement is often referred to in deeds as the "grantor" of the easement.

The reverse party of the easement agreement is the dominant tenement to whom benefits from the easement (Hollingshead, 1996). The dominant tenement is referred to as the "grantee" in easement deeds. Easements comprise two forms: affirmative and negative (French, 1981). An affirmative easement provides the holder of the dominant tenement the right to enter onto servient tenement's land to use as stipulated in the agreement and to remain unobstructed in the pursuit of benefiting from the easement by the servient tenement (French, 1981). Whereas affirmative easements grant the dominant tenement holder the right to access another's land for a certain purpose, a negative easement in contrast is designed to remove usage rights from the owner of the estate and convey them to the dominant tenement to hold unused, thereby preventing those rights from being exercised by the servient tenement (French, 1981). In this situation, the dominant tenement benefits from the easement by disallowing the servient tenement to develop the land

to its “highest and best use”, which translates as the land’s maximum development potential and corresponding financial yield (Tapick, 2002).

Accordingly, the negative easement preserves the land via the forfeiture of development rights by the servient tenement (Korngold, 1984). Traditionally, common law only permits the granting of negative easements onto the servient tenement in certain situations to the benefit of the dominant tenement: the blockage of light and air flow, the obstruction of artificial water courses, and building support structures on the dominant tenement’s designated area (French, 1981).

As exemplified above, negative and affirmative easements are the effect generated by the easement agreement, whereas the legal mechanisms that effectuate the conveyance of the designated benefits and burdens are through an “appurtenant” or “in gross” easement (French, 1981). An appurtenant easement is an agreement between parties that conveys an interest in land to the dominant tenement for a specific benefit; normally the dominant tenement is an abutting property (Kratovil, 1984). The key feature permitting the creation of an appurtenant easement is that the dominant tenement must specifically benefit from the servient tenement (Kratovil, 1984). Once an appurtenant easement is established, it may only terminate, with the exception of a few circumstances, at the volition of the dominant tenement or by the courts, thereby affixing the easement perpetually to both the dominant and servient tenement’s title of land (French, 1981). The reason it is difficult to abolish an easement is because an easement is considered a bona fide property right, which translates to the easement possessing economic value and characterizing it similar to normal real property subject to the easement’s

limitations (Tapick, 2002). Considering that the easement runs with the land, common law jurisprudence has found consistently that the appurtenant easement is assignable, meaning and intending that the benefits and burdens transfer to subsequent holders and future successors of the fee simple of the properties involved in the original easement agreement (French, 1981).

The alternative to an appurtenant easement is the conveyance of an easement 'in gross'. An 'in gross' easement conveys the benefits to use the grantor's land to an entity rather than to a dominant tenement (Hollingshead, 1996). For example, an owner of a certain parcel of land may convey to a utility company the right to access and build power lines for the utility company's benefit. The utility company in this situation does not possess abutting land, thereby rendering the easement in gross. Through the lens of common law, in gross easements are permissible but are not transferable except in the instance that the in gross easement established use was for commercial purposes (French, 1981). In the case for both appurtenant and in gross easements, court rulings determined that the absence of privity requirements<sup>6</sup> permit the burden and benefits to assign to future owners and occupiers of both the fee land and encumbered land<sup>7</sup> unless it is the case that a paramount title<sup>8</sup> is possessed by the servient tenement (French, 1981).

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<sup>6</sup> A "privity requirement" is the doctrine establishing the relationship and accompanying rights between the original parties and future owners of interest of a contract.

<sup>7</sup> "Fee land" means the owner has all the rights to the land, resources, and improvements to the property; "encumbered land" is land reserved for a certain use.

<sup>8</sup> If a certain piece of land has a "paramount title", then that title supersedes the conservation easement and the easement is therefore not enforceable when the property is sold.

## *Real Covenants*

A real covenant is a promise to abide by an agreed upon set of actions as it pertains to land (Madden, 1983). The actions can either restrict certain types of uses, dictate how the permitted uses are carried out and require the maintenance of pre-existing uses or attributes (French, 1981). To actualize a real covenant, the parties involved must possess an interest in the property identified in the agreement (Korngold, 1984). Unlike with easements, the doctrine of privity<sup>9</sup> is an essential component to the real covenant and its rules must be strictly heeded to ensure the benefits and burdens run with the land and future holders, otherwise, the agreement becomes invalid upon conveyance to a future successor (Diener, 2006).

An additional requirement for a real covenant to run with the land is that the parties' land must "touch and concern"<sup>10</sup> the estate in question (Baldwin, 1997). The touch and concern requirement as it relates to real covenants is abstract and has been liberally interpreted to not only include the physical link of the estate but to incorporate other stipulations in the agreement that do not pertain to direct physical use of the land (Madden, 1983). While touch and concern in its more literal sense is similar to the requirements of the appurtenant easement, it is more expansive in its application than the appurtenant easement (French, 1981). With regard to the

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<sup>9</sup> A "doctrine of privity" refers to the rights and obligations which cannot be imposed on anyone who is not part of the agreement.

<sup>10</sup> "Touch and concern" is the standard that connects a burden (i.e. restriction on the land) or benefit (i.e. an agreed upon permitted use) to the land. For example, touch and concern would be achieved if person A allows person B to go onto their land and harvest timber because the benefit is tied to the land (the "burden" would be on person A because they own the land and the "benefit" would be for person B because they're allowed to harvest timber there).

satisfaction of the privity requirement, there are two forms that need addressing: “horizontal” and “vertical” (Dana & Ramsey, 1989). Horizontal privity is the relationship between the original promisor and promisee and vertical privity is an entity pursuing the benefits of the original promisee (Dana & Ramsey, 1989).

### *Equitable Servitudes*

The equitable servitude resembles the real covenant; however, the main difference is that equitable servitudes are enforced in a court of equity whereas real covenants in a court of law (Diener, 2006; Madden, 1983). In a similar fashion, if the equitable servitude is held in gross, the burden cannot be assigned to the next successor of the promisee in that the in gross easement does not touch and concern the land (Brophy, 2002; Madden, 1983).

Under common law, a conservation easement in gross is not permitted because the benefits and burden do not run with the land but rather with the easement holder. Common law does not permit the assignability of any in gross restriction expected under very specific circumstances (Korngold, 1984). In order for a conservation easement to survive a legal challenge, a statutory framework that removes the impediments of servitude law is required (Hollingshead, 1996). Thus, while conservation easements can fall under the three servitudes described above, conceptually they do not fit into those frameworks (Diener, 2006).

## Challenges: Trying to square conservation easements with common law doctrine

Perpetual in gross conservation easements are problematic under common law of servitudes because they do not meet their criteria (Korngold, 1984). Under the cloak of the three servitudes of common law, conservation easements have had a difficult time fitting into each of their frameworks (Morrisette, 2001). Unable to harmonize with any of the servitudes exposes common law conservation easements to legal challenges.

Typically, a conservation easement is characterized as a negative non-possessory easement in gross (Dana & Ramsey, 1989). In accordance with common law doctrine, only in certain situations may a negative, non-possessory easement be issued. In those situations, the grantee must be appurtenant to grantor's land in order for the benefits to remain with the grantee's land and their successors (Dana & Ramsey, 1989). Whereas the benefits of an appurtenant easement run with the land, an easement 'in gross' which is granted to an individual or organization rather than to a specific adjacent estate, has been found unassignable (Dana & Ramsey, 1989). In other words, the easement does not carry over to subsequent owners of the estate who were not privy to the initial agreement, rather it dissolves and the land becomes unencumbered (Tapick, 2002).

The reason for this is because a conservation easement does not fall under the four categories of common law that permit an easement in gross to be perpetually fastened onto the encumbered land (Tapick, 2002). The logic behind disallowing an in gross easement to be perpetually affixed is to avoid the encumbered land becoming permanently undevelopable and instead have the

ability to be reintroduced into the marketplace to be used to its highest and best use (Dana & Ramsey, 1989).

Common law has had a difficult time trying to define what a conservation easement actually is (Baldwin, 1997). Given common law's strict criteria for permitting perpetual in gross easements and its unwillingness to expand its scope, an in gross conservation easement fails to meet the definition under common law and it would most likely dissolve once the property is alienated (Korngold, 1984).

Failing to meet the strict criteria for establishing a perpetual common law easement, a conservation easement may be interpreted as a real covenant because it is an agreed upon promise between two parties that imposes use limitations on a property that the individual living thereon would have to obey (Dana & Ramsey, 1989; Tapick, 2002). However, similar to common law easement, a conservation easement does not particularly fit into the definition of a real covenant in that the execution of a real covenant agreement constitutes the establishment of a contract, which will then place conservation restriction under the jurisdiction of contract law (French, 1981). Real covenants to a greater extent possess a set of unyielding criteria than common law easements that must be satisfied in order for benefits to run with the land (Tapick, 2002).

The dilemma, again, with classifying a conservation easement as a real covenant resides with the perpetual status, geographic proximity and enforcement capabilities (Dana & Ramsey, 1989). As with an in gross easement, a real covenant that does not meet the 'touch and concern' requirement and cannot be enforced after the transfer of the estate to a future successor who was not privy to the original

contract (Tapick, 2002). Moreover, under contract law, when seeking to enforce the conditions of the real covenant agreement, the court may only award the plaintiff monetary damages rather than receiving equitable relief, which is a nonmonetary judgement awarded by the court (Tapick, 2002; “Wex | LII / Legal Information Institute,” n.d.). Accordingly, a conservation easement does not fit the standards of a real covenant or easement under common law (Dana & Ramsey, 1989).

While a conservation easement resembles a real covenant more than an easement under common law, a conservation easement also shares characteristics that are similar to an equitable servitude (Korngold, 1984). Unlike a real covenant, an equitable servitude is less stringent because it does not need to satisfy the privity requirement that a real covenant must in order for the benefits to run with the land (Tapick, 2002). Moreover, equitable servitudes are more easily enforced by the courts in that enforcement is based on equity not law (Tapick, 2002). Nevertheless, similar to real covenants, in order for the benefits to run with the land, the equitable servitude must touch and concern the restricted land (Berger, 1986). Since most conservation easements are held in gross, they would fail to meet that requirement and risk having the benefits dissolve upon the transfer to a subsequent owner of the estate (Dana & Ramsey, 1989).

Since conservation easements primarily comprise an in gross easement held in perpetuity, they fail to meet any of the requirements of servitudes governed under common law. As common law jurisprudence struggled to find a solution to permit the perpetuity of an in gross conservation easement, legal scholars convened to solve this problem by developing a framework under the Unified Conservation

Easement Act of 1981 (Gustanski & Squires, 2000). The following section discusses the reform efforts that were made to remove the shackles of common law principles from conservation easements.

## Reform Efforts and Incentives

### *Unified Conservation Easement Act*

Recognizing the benefits and importance of the conservation easement as an effective land and historical preservation tool, legal organizations and scholars called for action to draft language that would assist states enact legislation to remove the ambiguities and deficiencies that hindered the use of the conservation easement (King & Fairfax, 2006). The opportunity to address those issues came at the 1981 National Conference of Commissioners on Uniform State Laws (NCCUSL). The primary focus of the conference centered on providing state legislators with statutory language that established the conservation easement as a legitimate preservation tool while simultaneously intending to reconcile the constraints common law doctrine placed onto the function of the conservation easement (e.g., permitting the conveyance of an in gross easement to future owners and determining the type of entities that may hold a conservation easement) (King & Fairfax, 2006). Prior to the conference, several states already established their own conservation easement enabling legislation, albeit they varied and lacked and uniformity (Gustanski & Squires, 2000). In addition, there wasn't a consensus on how to adequately rectify the common law obstacles, which prompted efforts by the federal agencies and the legal community to collaborate to develop an unified

code that states could emulate and alter to meet their certain needs (King & Fairfax, 2006).

The final product that emerged from the conference resulted in the establishment of the Unified Conservation Easement Act (UCEA) (Gustanski & Squires, 2000). The key components of the act that granted relief from common law's constraints are: expanded the purpose for which a conservation easement may be created; removed the condition that the conservation easement must run with land in order for it to be perpetual; required the recording of a conservation easement so as to remove the possibility of losing easements as land is assigned to future owners; and clarified the parties who can bring an action in the case a party to the agreement failed to comply with the easement conditions (Gustanski & Squires, 2000; King & Fairfax, 2006).

Along with removing common law impediments, the UCEA also left untouched existing common law mechanisms that would help keep easement holders accountable, and left room for interpretation to apply other legal doctrines in governing conservation easements (King & Fairfax, 2006). Specifically, the act did not prohibit the ability to use eminent domain nor condemnation and opened-up the ability for states to apply charitable trust laws to conservation easements (Gustanski & Squires, 2000).

As stated above, the UCEA left open the ability for states to apply charitable trust principles to conservations easements (Cliff, 2013). The reason for this was because the granting of a conservation easement to a governmental unit or a type of non-profit organization that specializes in land preservation was deemed to have

established a trust (Cliff, 2013). The UCEA also directs states that the authority to enforce conservation easements derives from charitable trust principles (Cheever & McLaughlin, 2015). Typically, the enforcement of charitable trusts is undertaken by the attorney general because the office possesses the ability to bring an action in cases where a breach of trust of a use that the public benefits from occurs (Cheever & McLaughlin, 2015).

Recognizing that it may be possible that a conservation may need to amend its provisions or terminate en masse, the UCEA recommended the implementation of the cy pres doctrine as the appropriate method to use (King & Fairfax, 2006). The use of cy pres is beneficial in that it gives the easement holder expressed and implied powers to modify the easement (Cliff, 2013).

In brief, this UCEA was designed as a boilerplate statute for states to use to help create their own conservation enabling statute. The purpose of the act was to rectify contradictions between common law doctrine and the conservation easement while providing enough flexibility for states to cater to their existing laws that govern easements and charitable trusts. While the UCEA provided the statutory mechanism to fix the problems between common law and the conservation easement, Congress and the Internal Revenue Service provided the financial incentives that promoted the proliferation of conservation easements.

#### *Incentives through tax subsidies*

Tax deduction incentives created by Congress created a proliferation of conservation easements throughout the country (Cheever & McLaughlin, 2015). However, the rules and regulations that the Internal Revenue Code Governing

Conservation Easements specify make it difficult to amend conservation easements without jeopardizing their tax status (Lindstrom, 2008). This section will review the basic elements of the tax code and discuss the challenges the tax incentives present to the land preservation field, especially as it concerns its effect on land preservation efforts, local tax rates, and the quality of conservation easements.

Federal and state tax law have had a significant influence on the way conservation easements have evolved (Cheever & McLaughlin, 2015). In particular, the incentives that they offered to landowners have arguably been the most influential reason for obtaining a conservation easement (Cheever & McLaughlin, 2015). The Income Tax Regulations for Conservation Easements has gone through many renditions since its introduction into the tax code in early 1980's. Before becoming a segment of the tax code, Congress had a difficult time striking a balance between promoting land preservation through tax incentives and incorporating regulations that protect the intent of the law (Lindstrom, 2008). Emerging from these renditions of the code came the foundation of the current regulations (Section 170 of the Internal Revenue Code) with which must be strictly followed in order to qualify for a tax deduction ("26 U.S. Code § 170 - Charitable, etc., contributions and gifts | US Law," n.d.).<sup>11</sup>

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<sup>11</sup> The conservation easement must be granted in perpetuity; the conservation easement must be granted to a qualified holder, specifically a governmental unit or publicly supported charity; must be donated for one or more of the following purposes: a) the preservation of land areas for outdoor recreation by, or the education of, the general public, b) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, c) the preservation of an historically important land area or a certified historic structure, or d) the preservation of open space (including farmland and forest land) ("26 U.S. Code § 170 - Charitable, etc., contributions and gifts | US Law," n.d.).

This tax code can be characterized as having the largest impact on the conservation movement (Cheever & Mclaughlin, 2015). The regulations have a powerful influence on how conservations easements are drafted because certain provisions as dictated by the Section 170(h) must be included in the text of the agreement or the donee will fail to qualify for the tax deduction (Lindstrom, 2008). Because there is such a financial incentive to create a conservation easement, many donees look to donate their land even though it may not provide any conservation value at all.

The criteria in Section 170(h)(2) and 170(h)(3) was created to prevent this type of manipulation of the tax code (Colinvaux, 2013). The idea behind their inclusion in the code was that a qualified organization would apply more scrutiny to the conservation value and designated purpose of the proposed easement (Lindstrom, 2008). In actuality, this does not occur because there is lack of enforcement by the IRS to challenge donations that violate the regulations due to unavailable resources (Colinvaux, 2013). Furthermore, it is difficult for the IRS evaluate the conservation value of an easement because they do not have the evaluation expertise to measure their biological or ecological characteristics (Colinvaux, 2013).

Another consequence of the lack of enforcement by the IRS on the donee is the ability of the land preservation organization to take on as many easements as they wish without proving they have adequate amount of resources to properly maintain and enforce the easement. Without any oversight by the IRS,

organizations may take in more easements than they are able to properly maintain, which may degrade the conserved land (Colinvaux, 2013).

The insufficient rate of enforcement by the IRS has the potential to affect local tax assessments and the quality of land being conserved. Specifically, when a portion of land goes into conservation, the assessed value of the property in which it is located is reduced. This in effect will decrease the amount of revenue that the local and state may collect, thereby reducing services and increasing the tax rate.

The property tax issue is especially important within a New Hampshire context because it is the main source of revenue that a municipality can use. In addition, land that is placed into conservation that does not in reality have actual conservation value that warrants protection reduces the ability of the town to develop land, thereby further reducing the municipality's ability to generate more tax revenue.

While the federal government provides the economic incentive to create conservation easements, its regulations and enforcement capabilities have unintentional consequences that affect the duration, quality and type of land being conserved along with potentially impacting local municipal financing. Overall, these challenges have the ability to negatively impact a community's means to evolve and adapt to future changes.

## Chapter 3: Conservation easements in New Hampshire

### Conservation Easements within a New Hampshire Context

Over the past two centuries, there has been efforts by New Hampshire residents and organizations to preserve the state's natural features (Keesler, 2013). At the turn of the 20<sup>th</sup> century, a response to the aggressive extraction of natural resources, in particular timber and wood products, prompted concerned citizens to form organizations to protect a portion of the remaining natural landscape (Keesler, 2013). One prominent organization to that movement was the Society for the Protection of New Hampshire Forests (SPNHF). The society's focus was to acquire land and influence public policy to promote their mission to improve the preservation of New Hampshire's forestlands (Keesler, 2013). Stemming out of the early half of the 20<sup>th</sup> century was the establishment of more conservation organizations that sought to protect and preserve the state's environment and wildlife. These organizations were instrumental in securing some the state's more iconic and beloved parks and landmarks that are enjoyed today (Appler, 2004).

The first recorded case of a conservation easement was established in 1967 (Appler, 2004). Seeing that there was a need and general support throughout the state to preserve iconic and environmentally significant lands, the state legislator, in 1973, codified the conservation-enabling statute under RSA 477:45-47 (Appler, 2004). The enabling statute's intention was to remove the impediments of common law by eliminating the requirement for a conservation easement to be a valid property of interest only if easement holder was an adjacent property owner. In

other words the statute expanded the circumstances for which an in gross conservation easement may be created (Gustanski & Squires, 2000). Other important common law elements that the statute removed were the inability for in gross easements to be assignable as well as the application of land use limitations on the encumber land (Gustanski & Squires, 2000).

RSA 477:45-47 was expansive in its permission of a wide variety of entities to hold conservation easements. The broad definition of a permitted easement holder was deemed to have propelled the preservation movement in New Hampshire during the initial years inasmuch as it broadened with whom property owners could partner (Appler, 2004; Gustanski & Squires, 2000). Yet, the statute's language is much broader than the IRS' definition of a qualified easement holder, which has the potential to become problematic in that the organizations that are not considered non-profits are not held to the same standards as charitable organization or non-profits (Gustanski & Squires, 2000).

In addition to RSA 477:45-47, the legislator provided land owners with an alternative method to a conservation easement that does not permanently remove the development rights from the land ("Overview of Current Use Assessment RSA 79-A," n.d.). In 1973, RSA 79-A Current Use Taxation was enacted to help facilitate the preservation of open space and keep their land undeveloped without conveying the development rights to the land ("Overview of Current Use Assessment RSA 79-A," n.d.).

Seeing that there was a need for the state to facilitate the preservation of the state's most important land and cultural resources, the creation of the Land

Conservation Investment Program (LICP) followed by the Land and Community Heritage Investment Program (LCHIP) occurred (Appler, 2004). The LCIP program existed for six years and preserved an estimated 100,000 acres (LCIP, 2017). During that period, the state through public funds and private donations was able to secure the preservation of cultural and ecologically significant lands valued over \$83 million (LCIP, 2017).

The State of New Hampshire considers the granting of a conservation easement as the equivalent to establishing a charitable gift or trust (Knowles, 2013). The authority figure who oversees them falls under the jurisdiction of the Attorney General's Charitable Trusts Unit. The interpretation of classifying the conservation easement as a charitable trust and the delegation of their regulation derives from a few sources (Knowles, 2013).

In the early 2000's the Attorney General issued an opinion that conservation easements were to be considered, under most circumstances, as a charitable trust which hinged on case law and the state's definition of a charitable trust (Knowles, 2013). In regard to the justification of oversight by the Attorney General's Charitable Trusts Unit, the foundation for the position was based on a statute granting the Attorney General the authority to preside over common law and charitable trust activities<sup>12</sup>. The legislation gave regulatory authority by extension to the Charitable Trusts Unit to ensure that trustees are meeting their fiduciary responsibilities while also being allowed to enforce compliance or bring an action in the instance that trust was breached.

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<sup>12</sup> <https://www.doj.nh.gov/charitable-trusts/index.htm>

The Attorney General reinforced her position as the legal authority to define and oversee conservation easements as charitable trust by citing the state's adoption of the Uniform Trust Code (UTC)<sup>13</sup> (Knowles, 2013). The UTC directs in its commentary to label conservation easements as a charitable trust rather as a trust consisting of cash or securities because the intention and composition between cash and securities and conservation easements which comprise as a property of interest were categorically distinct and needed to be handled differently (N.A. McLaughlin & Weeks, 2010). The commenters further elaborated that the conservation easement should be held to a higher standard than other trusts due to its permanent nature as well as recognizing the risk of committing a breach of trust in the instance of amending the easement's parameters (N.A. McLaughlin & Weeks, 2010). In particular, the commentators emphasized the application of greater scrutiny over amendments or termination efforts in order to avoid such instances (Knowles, 2013).

The primary reason the state classifies the conservation easement as a charitable gift or trust is because the grantor intention and definition of what constitute a trust in the state (Knowles, 2013). In essence, the grantor establishes a fiduciary relationship for the purpose of environment conservation with the grantee of the conservation easement to ensure that the eased land is administered and maintain in accordance to the grantor's intentions.

For example, a landowner who owns a 20-acre lot with significant ecological features encumbers 15 of those acres with the conveyance of a

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<sup>13</sup> The Uniform Trust Code of 2000, similar to the motives of the Uniform Conservation Easement Act, was a response to help nationally standardize the law of trust.

conservation easement to a local land trust for the purpose preserving those attributes. The landowner's intention to preserve those ecologic features and convey the land and responsibility to the land trust organization implies the creation of a trust.

In the example above, under New Hampshire statute, the land trust's acceptance as the benefited party establishes a fiduciary responsibility to carry out the purpose of the eased land in accordance with the agreement's specific language. This remains true whether or not the easement's language explicitly expresses the formation of a trust. In essence, the key elements in the formation of a charitable trust are the intent of the grantor and to whom the easement is conveyed (Knowles, 2013).

With the interpretation of a conservation easement falling under the jurisdiction of the CTU, many in the land trust community became anxious with the added regulations that came with designated as a charitable trust (Knowles, 2013). In particular, land trusts were distressed over the consequences of failing to meet the expectations as a charitable trust as they required to report to the CTU (Knowles, 2013). In order to assuage the anxiety of the land trust community, the CTU met with the land trust community and received a recommendation that the CTU develop guidelines on the amendment process of conservation easements. In 2007, the state published guidelines that illustrate the procedural requirements to successfully obtain approval from the CTU (Knowles, 2013).

Conservation easements in New Hampshire have a long tradition than most other states. New Hampshire was on the forefront of the conservation movement in

that it codified its legislation 8 years before the UCEA was published. Recognizing the need for facilitation to amend conservation easements in the event of unseen circumstances, the state has also provided guidelines to the land preservation community to help them through the amendment process (Doscher, Knowles, & McLaughlin, n.d.).

While there is literature on the history, statutory composition, state programs as it relates to conservation easements in New Hampshire, there exists a large gap in the literature on the composition of the state's conservation easements, the reasons they were created, and how prepared they are to adapt to future changes. In addition, there hasn't been a comprehensive review on how the Charitable Trusts Unit has ruled on proposed amendments to conservation easements.

## Chapter 4: Methods of Identifying the Composition and Adaptability of Conservation Easements in Strafford County, New Hampshire

### Data Collection & Preparation for Analysis

#### *Conservation Easement Database*

A comprehensive list of 281 conservation easements was created in order to determine their content (i.e. purpose, permitted uses, restricted uses, reserved rights) and adaptability to future change through the creation of a composite score (described in detail later). This adaptability score helps to assess the easements' ability to change its parameters, as a result of land use, environmental, and economic pressures, without compromising the grantor's original purpose or intent.

The data collection process consisted of two phases: (1) the refinement of the conservation easement database obtained from NH Granit, and (2) the collection of conservation easements from the Strafford County Registry of Deeds (SCRD) website (“NH GRANIT: New Hampshire’s Statewide GIS Clearinghouse,” n.d.; “Strafford County Registry of Deeds,” n.d.).

*Phase 1—Refining Sampling Frame of Conservation Easements in Strafford County*

The goal was to find a comprehensive source that contained information on all the easements located in Stafford County; however, a detailed list was not available. A strategy was developed to create a more



*Figure 1 Strafford County, NH*

informative database by obtaining a list from the New Hampshire Granit website<sup>14</sup>, which is an online Geographic Information System data repository for the state. The selected file was “New Hampshire Conservation/Public Lands” at 1:24,000 Scale because it contained valuable information on conservation easements and public lands.

<sup>14</sup> New Hampshire Granit website: <http://www.granit.unh.edu/>

From that file, a Microsoft Access database was downloaded and converted into a Microsoft Excel file. The Excel file initially was found to be promising; providing a list of thousands of properties throughout the state that were under conservation restriction or owned by a local, state and federal agency. For example, the database included information on the properties' coordinates, given nickname, ownership, type of deed, acreage, allowed use, and book and page. Informative as it was, nevertheless, the database did not give a clear understanding of the purpose of the conservation easement, nor any indication of the rights and use limitations associated therewith. Essentially, the NH Granit database gave the user elementary information while providing a few key pieces of information such as the conservation easement's book and page number that would permit the user to conduct further research.

Obtaining more information about the conservation easement's required searching through the SCRD website<sup>15</sup>. Unfortunately, the NH Granit database did not furnish information on the county where the conservation easements were located, which was necessary in order to refine it. In order to identify those conservation easements located in Stafford County, two Geographic Information System shapefiles were downloaded: "New Hampshire Conservation/Public Lands" at 1:24,000 Scale and "New Hampshire Political Boundaries" at 1: 24,000 Scale. The previously mentioned shapefiles were brought into ArcGIS and used together to select only those conservation easements located in Strafford County.

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<sup>15</sup> Strafford County Registry of Deeds website: <http://www.nhdeeds.com/strafford/StHome.html>

Upon isolating those easements, the attributes from the conservation easement shapefile, which identically resembled the Excel dataset variables, were exported back into an Excel format. One of the major hurdles during Phase 1 was the absence of book and page references for a good portion of the

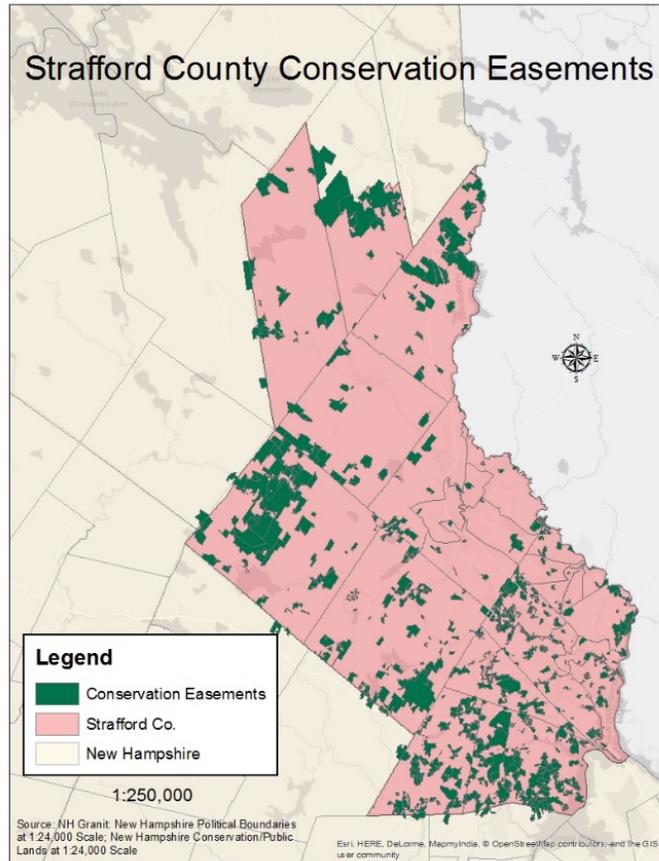


Figure 2 Conservation Easements in Strafford Co., NH

conservation easements. If the book and page was absent for a conservation easement, other information was used (e.g., grantor and grantee name, date of recording etc.) to search for those easements; however, if there wasn't enough information provided in the NH Grant database to search for the conservation easements on the SCRD's website, those easements were discarded from the data collection process. In addition to removing those conservation easements that didn't provide enough information, property that was owned by government agencies that were not designated for conservation purposes were culled. After the disqualification process, 281 easements were selected to be included in the analysis.

Another obstacle of the data collection process was that the conservation easements from the NH Granit database comprised of only two or more acres, thus the easements that were < 2 acres were not included. It is acknowledged that there are likely conservation easements located in Strafford County that are < 2 acres, however, it is unknown how many and it was beyond the scope of this analysis to incorporate them. While this sample size does not include all the conservation easements in the county, 281 easements will still be useful in understanding the characteristics of the county's conservation easements.

#### *Phase II—Conservation Easement Deed Collection*

The second phase of the database construction was to collect the conservation easement deeds from the SCRD online portal. The website in its current format is antiquated and not intuitive, resulting in spending a few hours to become familiar with how it operates. When searching for a deed on the SCRDs website, there were three approaches used: search by book and page, grantor name, or grantee name. During certain points of data collection, a combination of attributes had to be used to locate the correct deed. The SCRD's portal only allows a user to view an individual document at a time and doesn't provide download options. In response to this setback, Microsoft's Snip It tool was used to capture a JPEG image of each page of a conservation easement. After collecting all the conservation easements from the SCRD's portal, the images were converted into a single PDF document. The logic behind converting the JPEG images into PDF

format was so the coding program NVivo 12 Pro<sup>16</sup> (NVivo) could recognize and read the text of the document during the coding phase of the content analysis.

## Data Analysis

### *Content Analysis*

The PDF documents were imported into NVivo software. Subsequently, case nodes were created (i.e. nodes that represent the individual conservation easement deeds). Case nodes allowed for cross table (with the easements representing the rows and nodes representing the columns) results to be exported upon the completion of the content analysis. After the case nodes were established, the content analysis commenced. Nodes were created while examining the documents and categorized accordingly into broad themes: basic information, purpose, use limitations, reserved rights etc. After this phase of the analysis, the word frequency and text search query tools were used to code content into submersible categories. A limitation of the coding stemmed from the document conversion process in that the text became jumbled and sometimes inscrutable or NVivo was unable to recognize certain words or phrase of the document. In these instances, the original documents were referred to gain clarification. Additionally, 78 letters obtained from the Charitable Trusts Unit Director's Office were analyzed using the same approaches described above. These letters were included in order to gain insight into why holder's were amending conservation easements and how the Charitable Trusts Unit evaluated and ruled those amendments, as described in a previous section.

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<sup>16</sup> QSR International's NVivo 12 Software

### *Creation of Crosstab Tables and Adaptability Score Variables*

After the coding was complete, descriptive tables were created illustrating the percentage of conservation easements coded at a particular category. These tables were created using “explorer” and “cross table” tools in NVivo. The codes were crossed tabbed against the cases for coding presence and exported to Excel with frequencies and percentages. Tables were then created within Excel.

SPSS was used to create an adaptability score using the following variables that were coded during the content analysis: additional easements, amendment, arbitration, assignment, warranty, severability, commercial activity, ancillary uses, may disturb if necessary to achieve purpose, management plans, non-commercial activity, and recreation use. These variables were selected because their presence makes a conservation easement more secure and versatile. A dataset containing the above variables was copied from Excel and imported into SPSS. The composite score variable was then created using the “compute variable function”, ranging from 0-12, with a score of 12 indicating the presence of all the above-mentioned variables. A categorical Likert variable was then created using the score variable. Categories ranging from 1-4 with 1 being the lowest (score of 0-3) and 4 being the highest (score 10-12).

## **Chapter 5: Results**

A total of 281 easements were analyzed. Out of those 281, the highest percentage of conservation easements were granted to one municipality and three conservation organizations. Specifically, 13% of the conservation easements were

held by the City of Dover followed by 11% by the Society for the Protection of New Hampshire Forests, 9% by the Nature Conservancy and 8% by the Strafford Rivers Conservancy, which is now under the name of Southeast Land Trust.

When conveying the property to the grantee, it was identified that 66 % were conveyed with a warranty deed, while 8% were with a quitclaim<sup>17</sup>. The difference between a warranty and quitclaim deed is stark in that a warranty deed guarantees a clear title while a quitclaim does not. The ramification of not having a clear title to the property could jeopardize the easement's existence if ownership issues over fee simple arise.

A large segment of the conservation easements possessed a Benefits, Burdens and Access (54%). The purpose of this clause is typically three-fold: (1) to affirm that the easement is enforceable to the current and future owner, (2) to declare that it is not appurtenant but rather in gross, and (3) to confirm that the easement can only be transferred or assigned to the State of New Hampshire, the United States of American, or a qualified organization. A "qualified organization" is one that meets the criteria of Section 170(h)(3) of the U.S. Internal Revenue Code of 1986, in which its purpose is to promote conservation and preservation of land and water areas and be able to enforce the conditions established in the easement.

In addition to the typical language found in this section, this clause is used to add additional benefit or burdens such as: Grantee access rights in order to enforce the conditions of the easement, and/or prohibit certain types of public uses and direct the manner in which resources extracted from the easement are handled.

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<sup>17</sup> A "quitclaim" is a title of land which is not cleared of any other claims to the property.

The Benefit, Burden and Access clause is important in that it removes any ambiguity around the conservation easement classification (appurtenant or in gross) and it ensures that a qualified agency or organization will hold and manage the conservation easement.

A large segment of the conservation easement was furnished with a Breach of Easement clause (50%). The purpose of this clause is to layout the process in which the grantee goes about enforcing the easement agreement when the grantor, or whomever is living on the property is violating the terms of the conservation easement.

A severability clause was found in 43% of the conservations easements. This is an important clause to have in a conservation easement in that it protects the entire easement from becoming invalid if one or more conditions of the easement were to be found illegal. Surprisingly, 48% of the conservation easements had a provision that allowed for the addition of conservation easements, while 14% of conservation easements have a specific amendment clause permitting the grantor and grantee to engage in such a process. The lack of an amendment clause and the ability to add easements may significantly make the process to adapt to future change more cumbersome in that the conservation easement would be held to a higher scrutiny by the Charitable Trusts Unit. This is significant because the absence of an amendment clause would cause the easement holder to go through a more bureaucratic process in order to achieve its goal. E.g. a land swap would constitute a 'more risk' amendment and would be subjected to more intense review

by the CTU, which would not receive as much scrutiny if an amendment provision was included in the original agreement.

One of the objectives of the research was to determine why the conservation easement was created. The establishment of the easement’s purpose is critical because it creates the intent of its founding. The intention is vastly important in that it is the reason why the conservation easement is being created and why the property rights that are inherently attached thereto are conveyed. The purpose section is referenced and closely adhered to in the event a conservation easement is amended; failure to meet the grantor’s intention shall jeopardize a proposed amendment. Essentially, the purpose of the conservation easement cannot be compromised because the trust that was created with the conservation easement would be violated. In addition, knowing why conservation easement were created will give us an understanding of how they can be amended as surrounding land use and environmental conditions evolve. **Table 1** illustrates a summary of the purpose section of the conservation easements.

**Table 1. Purpose of Conservation Easements**

<b>Purpose (not mutually exclusive)</b>	<b>n (%)</b>
Education of general public	22/281 (8%)
Enhance or protect natural resources and/or habitats	105/281 (37%)
Outdoor recreation	124/281 (44%)
Preservation of biodiversity	37/281 (13%)
Preservation of open spaces	168/281 (60%)
Preservation of productive farm or forest land	61/281 (22%)
Protection of historic and cultural importance	21/281 (7%)
Protection of long-term capacity to produce economically valuable agricultural & forestry products	14/281 (5%)

Protection of undeveloped water frontage	8/281 (3%)
Protection of water resources	146/281 (52%)
Protection of wetlands	93/281 (33%)
Research	7/281 (2%)
Scenic enjoyment of general public	93/281 (33%)

As demonstrated in the table, many conservation easements were established for multiple purposes. On average, 3 purposes were listed per easement. The leading objectives of the analyzed easements were the protection of open space, water resources, outdoor recreation, nature and habitat, and scenic enjoyment by the public.

### Permitted Uses

The primary focus of the first portion of the analysis was to determine the permitted and restricted uses, as well as the reserved rights of the grantor and grantee. According to the analysis, 149 easements (53%) had a use limitation section within the agreement. When commercial activity was permitted on the encumbered land, the two primary allowed uses were either agricultural (23%) or forestry (25%) related business activities. Included with the definition of agriculture were a few other uses such as animal husbandry (12%), floriculture (13.5%), horticulture (15%), production of plant and animal products (11%), and pick your own fruits and vegetables (7%).

As for permitted commercial forestry activities, 21% of the easements allowed for the growing, harvesting and sale of forestry products. Frequently mentioned activities regarding forestry activities were Christmas tree sales (12%), maple syrup production (12%) and timber and forestry product production (18%).

In addition to commercial agriculture and forest activities, 22% of the conservation easements allowed for domestic use and personal consumption of those resources located within the bounds of the easement, meaning that the easement language permitted the owner in fee to cultivate and harvest agriculture and silviculture products. Typically, this type of clause is located in the grantor or grantee's reserved rights section of the agreement.

Agriculture and forestry activities were the two primary commercial and non-commercial activities that were permitted on the conservation easements. In an effort to support those uses and ensure that they are done using the best practices and most modern techniques, 15% of the conservation easements called for an agricultural management plan while 20% required the issuance of forestry management plan. Whereas only 4 % of conservation easements required additional measures, for example, the plan needs to be updated every 10 years, designation of a no agriculture zone, and notification of the commencement of agricultural activities, the additional requirements within the forestry management plan were more extensive.

For example, out of the 20% of conservation easements that required a forestry management plan, 71% required prior notification of harvesting activities, 51% mandated that the harvesting be conducted by a professional, and 58% stipulated an updated forest management plan every 10 years. Furthermore, 17% of the conservation easements designated a no cut zone within the encumber land. It appears that conservation easements that permitted forestry activities conditioned

more that more precautions be in place when planning and executing the management activity by comparison to agricultural activities.

Along with commercial activities, 34% of the conservation easements permitted certain development uses. Specifically, there were three main themes extracted from the data: ancillary uses (80%), disturbance to achieve conservation purposes (51%), and the ability to construct signs (68%) that are related to the purposes of the conservation easement.

Another notable use that came out of the analysis was recreation; however, it was anticipated that recreation use would have been a more prevalent permitted use than was recorded because of Strafford County's proximity to natural features and outdoor tourism. According to the analysis, 13% of the conservation easements permitted recreation use. The noteworthy components of that specific use were fishing (55%), hunting (50%), cross-country skiing (50%), hiking (47%), motorized recreation (36%), wildlife observation (30%) and horseback riding (25%).

The analysis illustrated that the use limitation primarily revolved around a few themes: agricultural and forestry use, construction of certain structures and disturbance of the land in order to fulfill the purpose of the conservation easement, and the various recreational uses. The analysis then turned to determining the impermissible uses found in conservation easements.

## Restricted Uses

Emerging from the restricted use section of the conservation easements were some common themes. For example, creation of new access rights, types of commercial not permitted to occur, prohibitive types of development, and form of proscriptive uses.

A general provision prohibiting access through a conservation easement that was separated from the reserved rights section was not commonly found in any of the conservation easements, with only 1% possessing such a clause within the agreement. Nevertheless, a recurring theme that did emerge from the data was a prohibition of granting new right-of-ways or access easements (13%) over the conservation easement without the expressed permission of the easement holder.

A general prohibition on all commercial (27%) and industrial activities (26%) were found in the data. An outright prohibition on all commercial activities, which included agriculture and forestry activities, was low at 1%. Along with the ban on commercial and industrial activities, a prohibition on certain types of structures had a significant presence in the data (34%). Many of the conservation easements specified the type of structures that were prohibited, using what appeared to be “boilerplate” language. Also present was the prohibition of subdividing the easement and the land not encumbered thereto (27%); however, certain conservation easements within the prohibition of subdivision clause permitted the leasing of the land in a manner that was not determined to be detrimental to the easement’s purpose.

An interesting restriction that appeared was the prohibition against the use of the encumbered area by the unrestricted portion of the land for the purpose of satisfying open space and zoning requirements (6%). While development restrictions constituted a large portion of the prohibitive uses, the major categories that conservation easement protected against were the use of the natural resources and the storage and disposal of materials onto the easement's property.

The disturbance of the conservation easement was prohibited within 37% of the easements. The easements were populated with a bevy of different type of disturbances such as channeling (4%); draining (5%); filling (27%); diking (5%); and leveling (22%) while a portion of the conservation easements describe not to disturb federal and state endangered species (21%), natural habitats (23%), topography (27%), soil surfaces (23%), wetlands (5%) and surface and subsurface water systems (9%).

In addition to not disturbing natural habitats and wildlife, a significant proportion of the conservations easements held restrictions on natural resource extraction. Most notably, mining (27%), excavation (27%), and quarrying (24%). A portion of the conservation easements (26%) went into further detail on the type of natural resources that cannot be extracted from the site.

Together with the no disturbance and extraction clauses was a stipulation on the prohibition of dumping (32%) and introducing harmful materials (25%) and debris (12%), refuse (7%) and trash (9%). A small proportion of the conservation easements had specific clauses (3%) that imposed a ban on an assortment of pesticides and other chemicals.

Regarding the management plan of the conservation easement, it appeared to be an important condition that the scenic quality of the easement was maintained during all land management activities. Stipulated in the land management clauses, (19%) of the conservation easements required that any activities that impaired the scenic qualities of the easement shall be prohibited. A lot of those scenic qualities are mentioned in the agreement such as views of the property from surrounding public waterways, roads, trails or great ponds.

While 13% of the conservation easements had specific sections within the agreement that permitted certain types of recreational activities, 15% of conservation easements had a clause that prohibited certain types of recreational activities. The most common use restriction in regard to recreation activities was camping (12%) and fishing (4%). While the use limitations laid out the types of activities, structures and uses that are allowed or permitted on the conservation easement, the reserved rights section further delineates the expectations and use rights allotted to the grantor and grantee.

### Reserved Rights

The purpose of the reserved rights section is to demonstrate clearly what the grantor, grantee and any other party who have an interest in the conservation easement are permitted and prohibited to do. Typically, a conservation easement divides each parties' rights into different sections so as not to misconstrue the intention of the easement.

### *Rights of the Grantor*

Conservation easements typically have extensive sections dedicated to the reserved rights of the grantor. The reason for this is because that individual agreed to relinquish certain property rights by granting the easement, while, deciding it was in their best interest to hold on to certain rights so that they have more control over the land. These rights are negotiated during the acquisition phase of the conservation easement.

There are a few reoccurring rights that are included in conservation easement agreements. As mentioned previously, when the grantor executes a conservation easement, they essentially give up their right to develop the property, subject to the content of the reserved rights section. The reserved rights section guarantees that some of those use and development rights are maintained.

The analysis depicted a diverse sample of reserved rights assigned to the grantor on the encumbered land. Specifically, the re-occurring attributes that came up during this portion of the content analysis were an assortment of various access rights (10%); right to permit a certain use by third party (9%); right to permit archaeological investigations (10%); conservation and recreation use (11%); construction of a building or shed (10%); right to subdivide (4%); construct and maintain recreational trails (11%); conduct forestry (20%) and agricultural (12%) activities; conduct any use the is not specifically prohibited (9%); post against certain public activities (24%); maintain and repair any existing utilities that cross into the encumbered land to serve the unrestricted area of the property (17%); retention of water rights, and the requirement that notification must be made by the

grantor to the grantee before the exercise of any of the stipulated rights (25%). For more detail on the grantor's reserved rights, please reference Appendix B.

### *Rights of the Grantee*

While the grantor's reserved rights are more diverse, the grantees are more limited because of the role the grantee has in the conservation easement agreement. According to the analysis, 34% of the conservation easements have specific provisions that gives the right to access the encumbered property to determine compliance (24%), conduct enforcement (24%) and monitor and manage (15%) the easement. In addition to access rights, a significant proportion of the easements specifically permitted the easement holder to install signs (19%) that achieve the purpose of the conservation easement.

Other noteworthy rights that the analysis discovered was the ability for the grantee to post against certain uses (3%), ability to transfer the easement to a third party (4%) and the requirement that the grantor must be notified when any work is to be done by the grantee (5%).

### *Score Analysis*

The purpose of the score analysis was to determine how receptive conservation easements were to adapt to future changes. The variables selected were attributes that provided the easement with the most flexibility to change while not compromising the integrity of the purpose and monitoring and enforcement

capabilities of the easement holder. **Table 2** illustrate adaptability score by showing the variables used in the analysis, the percentage present and the Likert scale score.

**Table 2. Adaptability Score**

Variable	n (%)
Additional Easement	137/281 (49%)
Amendment	40/281 (14%)
Arbitration	109/281 (39%)
Termination or Condemnation	143/281 (51%)
Warranty Deed	185/281 (66%)
Breach of Easement	140/281 (50%)
Notification	135/281 (48%)
Severability	120/281 (43%)
Grantee determine compliance	68/281 (24%)
Grantee enforcement	83/281 (30%)
Grantee monitor & management	44/281 (16%)
Create maintain use & protect	72/281 (26%)
Grantee posted against	10/281 (4%)
Transfer to 3rd Party	14/281 (5%)
Commercial Activity	76/281 (27%)
Ancillary uses	76/281 (27%)
May disturb if necessary to achieve conservation easement purpose	49/281 (17%)
Management plans	70/281 (25%)
Non-Commercial Activity	39/281 (14%)
Recreation Use	36/281 (13%)
Composite score mean $\pm$ SD (min, max)	5.9 $\pm$ 4.8 (0,18)
Likert scale	
1 (lowest)	133/281 (47%)
2	97/281 (35%)
3	43/281 (15%)
4 (highest)	8/281 (3%)

The variables selected were included in the adaptability score because they represent a healthy mix of attributes that contribute towards the preservation, development, use, and administrative facilitation that a conservation easement

needs in order to have the tools to adapt to future changes. There was no perfect score (i.e. score = 20). The mean score was low at 5.9, and ranged from 0 (the lowest) to 18 (the highest). Most of the easements (83%) scored 2 or less on the Likert scale, indicating they are not prepared to adapt to future change. Only 18% received a score of 3 or higher.

### Charitable Trusts Unit Analysis

The last part of the analysis investigated the documents provided by the Attorney General's Charitable Trusts Unit. The documents consisted of decisions made by the agency in their review of actual and proposed conservation easements amendments. The reason why the Charitable Trusts Unit (CTU) has the right to review a proposed conservation easement amendment and decide whether to bring an action is because the State of New Hampshire pursuant to RSA 7:19-32, classifies a conservation easement as a charitable trust. As a result of that classification, the CTU has jurisdiction over any proposed amendment to a conservation easement in order to ensure that its purpose is not compromised and that the easement holder is meeting their fiduciary obligation to uphold the original intent.

In total, there were 78 documents that were analyzed (72 letter determining whether or not to consider to take an action and 6 court cases). **Table 3** depicts the county in which the proposed amendment to conservation easements were located.

**Table 3. Charitable Trusts Unit Documents**

	<b>n (%)</b>
<b>County</b>	72/78 (92%)
Belknap	2/78 (3%)
Carroll	2/78 (3%)
Cheshire	9/78 (12%)
Coos	2/78 (2%)
Grafton	7/78 (9%)
Hillsborough	6/78 (8%)
Merrimack	7/78 (9%)
Rockingham	16/78 (21%)
<b>Stafford</b>	<b>10/78 (13%)</b>
Sullivan	1/78 (1%)
Unknown	10/78 (13%)

As **Table 4** illustrates, only 10 conservation easement applications from Stafford County were sent for review to the CTU. The easement holders who submitted their proposal for approval consisted of municipalities and land preservation organizations.

**Table 4. Easement Holders Applying for an Amendment**

<b>Easement Holder</b>	<b>n</b>	<b>%</b>
Stafford Rivers Conservancy / South East Land Trust	3	30
City of Rochester	1	10
Town of Milton	1	10
Town of Barrington	2	20
Bear-Paw Regional Greenway	1	10
Town of Lee	1	10
Society for the Protection of NH Forests	1	10

Since the sample size of the letters from the CTU to easement holders from Stafford County were minimal, the scope was expanded to include all the letters

that were provided by the CTU. **Table 5** illustrates the conclusion of the letters, whether to take an action, approve with conditions, or not to pursue litigation. Overwhelmingly, the letters concluded that the CTU didn't object to the proposed amendments. Only in a few instances did the CTU need more information to come to a decision, while in only one case did the amendment petition for cy pres.

**Table 5: Letters from the Charitable Trusts Unit**

<b>Letters' Conclusion</b>	<b>n (%)</b>
Conditional	1/78 (1%)
required to review plan showing land swap	1/78 (1%)
Determination of granting consent	1/78 (1%)
Judicial decision	1/78 (1%)
Petition for Cy Pres	1/78 (1%)
Vacate Stay	1/78 (1%)
Need more information to review	2/78 (3%)
No Action	52/78 (67%)
No objection to potential amendment	6/78 (8%)
Action Taken	0/78 (0%)

Focusing back to Strafford County specifically, the types of amendment requested, see **Table 6**, ranged from administrative changes such as updating scrivener's errors to improving and strengthen the easement's language to adding more acreage to the easement, conducting a land swap or adding and extinguishing an interest holder's rights. It was not uncommon for there to be multiple changes in an amendment request.

**Table 6: Type of Amendment Requested**

<b>Amendment Requested</b>	<b>n</b>	<b>%</b>
Purpose of Amendment	10	100
Addition to Easement	4	40
<i>acreage</i>	3	30
<i>reserved rights</i>	1	10
<i>add &amp; maintain permeable parking area on new acreage</i>	1	10
<i>strengthen easement language</i>	1	10
Address court settlement over right-of-way	1	10
Clarification	2	20
<i>ambiguous language</i>	1	10
<i>correct legal description language</i>	1	10
Extinguish existing rights	1	10
Land swap	1	10
Remove land from existing easement to mitigate traffic impact	1	10
Technical corrections	2	20
Unknown	1	10
Updating provisions	2	20

Interestingly, there was no letters that identified an amendment as high risk—see **Table 7**. Many of the amendments were low risk and were approved. The more risk amendments needed to provide more information to the CTU to determine whether the amendment would cause a breach of trust or not before they received approval.

**Table 7: Amendment Risk**

<b>Risk Rating</b>	<b>n (%)</b>
low risk	44/78 (56%)
more risk	11/78 (14%)
unknown	1/78 (1%)

Ultimately, the ‘more risk’ amendments were approved after furnishing the required

information. After reviewing all the letters, it appeared that most of the amendments proposed were to clarify, improve or strengthen the easement and there were no nefarious attempts to extinguish any of the conservation easements. It appeared

that there was good communication between the Charitable Trusts Unit and the easement holder during all of the amendment petitions. As shown above, the intention of the easement holders was to improve the conservation easements instead of weakening or terminating them. As a result, the approval process appeared to have gone smoothly. Another critical factor that appeared to have facilitated the process was the issuance of the amendment guidelines by the Charitable Trusts Unit. The issuance of the guidelines by the CTU appears to have done the conservation field and themselves a huge service in reducing the amount of time and resources to review a proposed amendment. Interestingly, most amendments proposed were classified as low risk; however, if those easements had had an amendment provision in the agreement, they would not have had to seek CTU approval, rather the easement holders would have only had to notify the CTU that an amendment was added to the conservation easement's text, which ultimately saves a consider amount of time and money.

## Chapter 6: Discussion, Limitations and Conclusion

### Discussion

Conservation easements located in Strafford County are predominately established for the purpose of preserving open space, outdoor recreation, scenic enjoyment for the general public and to protect water resources. Yet, within the agreements themselves, only 13% of the easements enumerated the type of recreational activities permitted on the easement. This is both contradicting and confusing and may create unintended conflict between the easement holder the property owner and the easement users. Holders that possess conservation

easements intended to accommodate recreational activities should review those easements to determine the intention of the grantor and identify ambiguous or contradictory text that unintentionally impedes recreational opportunities so as to prevent disputes over the type of recreational uses permitted within the easement. Moreover, failure to clarify the permitted recreation activities might be a missed opportunity to promote those uses to the general public. This may make it difficult to find funding opportunities either through grants to help develop accommodations for a particular type of recreational use or through donors who enjoy participating in a specific recreational activity.

In regard to the underlying title to the easement, only 66% of the conservation easements were identified as using a warranty deed while 8% of the conservation easements used a quitclaim deed to convey the interest of land. That leaves 28% of the conservation easements using an unknown type of deed to convey the title. It is quite possible the reason for this absence is due to the fact that it wasn't identified during the coding analysis but in actuality it was specified in the text. Regardless, those easement holders with quitclaim titles need to determine whether or not the title of the underlying fee interest is clear of any other encumbrances or title disputes in order to ascertain if other actions are necessary to protect the conservation easement from dissolving in the case of a title dispute.

It is encouraging to see that 51% of the conservation easements included a notification clause in their agreement. This promotes transparency between the easement holder and owner in fee in the instance that any activities may have the potential to impact the easement. Communication and relationship cultivation

between the easement holder and the fee owner is critical in managing the easement effectively. Without a solid relationship between all involved parties to the easement, the easement may encounter additional unnecessary impediments that obstruct its management, thereby hindering the upkeep of the conservation easement and neutralizing the purpose of its establishment. This is especially true when the underlying fee is assigned to another entity. While it's reasonable to assume that the new owner of the fee has prior knowledge and is amenable to the conservation easement on their property, their perspective and intentions are still unknown until the easement holder meets and interacts with them. It is important for the easement holder to strive to cultivate a relationship with the fee interest owner because by doing so the parties of interest create the opportunity to establish expectations by which reduces the probability of entering an unnecessary situation that drains resources on enforcement or litigation proceedings.

While there was no identified provision in any of the analyzed conservation easements that directed parties of interest to meet after assignment or transfer, it would be beneficial for future easements to include such a clause in their text that stipulates a mandatory meeting between all parties to the easement. This provides the opportunity to clarify each of the entities' responsibility, rights and obligations to the easement. Moreover, the meeting would act as a foundation to develop a relationship between both the easement holder or the owner in fee.

Overall, based on the criteria selected for the adaptation analysis, conservation easements in Stafford County, New Hampshire are less prepared to adjust to future changes. On the whole, 83% of the analyzed easements scored

below a 3. A few possible explanations are in play here: older conservation easements tended to be less comprehensive and descriptive in their direction of management. This may be a result of their earlier novelty and inexperience in drafting such an agreement by not knowing what to include therein. As the years progressed, conservation easement became more extensive as they and the land preservation field as a whole evolved in the state. Accordingly, the population of outdated and misplaced ultra-specific language of conservation easements removes the opportunity to apply interpretive measures in response to future changes. Consequently, the lack of foresight and direction by the grantor by using boilerplate language rather than crafting a well-thought out text, along with the incorporation of onerous rights obtained by the grantor may effectively reduce the versatility and vitality of the conservation easement.

While only 14% of the conservation easements incorporated an amendment provision in their agreements, it has been demonstrated that the Charitable Trusts Unit is satisfied with the idea of amending existing conservation easements to include an amendment clause of their own in order to make changes as unforeseen conditions arise. This step will help assuage the CTU review process since this clause's intention is to be used periodically, evolving to exogenous circumstances affecting the well-being of the conservation easement. The challenge for future easement holders will be knowing how to use amendment clause to facilitate the evolution the conservation easement to adapt to the pressures of external conditions without compromising the integrity of the original purpose of the conservation easement.

## Limitations

There were few limitations with this analysis. Specifically, the data collection and analysis was a lengthy and cumbersome process. When the JPEG images were converted into PDFs, segments of the text became unreadable. As with any content analysis, there is a possibility of human error with only one coder. It is possible some content was missed through use of queries to code sub-nodes.

## Conclusion

A majority of the easements in Stafford County can be characterized as encouraging open space, natural resource and habitat protection. A combination of all four of these uses should be incorporated in the purpose of any future conservation easement so as to promote passive use and accommodates ancillary development while preserving the land and natural resources. In order to raise more money for the easement holder, more passive commercial uses should be allowed to occur on the encumbered land. Furthermore, to obtain additional funds land trusts and other easement holding organizations should explore developing innovative approaches without jeopardizing either its charitable or non-profit status. The goal is to maximize the versatility of the conservation easement without degrading both its ecological characteristics and the grantor's original intent. This should also hold true during the drafting process when a conservation easement is being created.

In regard to the development of the easement's text, drafters should consider including an amendment provision into the agreement in order to facilitate the process of modifying the agreement to meet future land use and environment

changes. As they are currently construction, many of the easements are less prepared to adapt to future land use changes because they do not have an amendment provision. Considering this, according to the documents provided by the Charitable Trusts Unit, easement holders have sought approval to allow for the inclusion of an amendment provision in order for the conservation easement to become more flexible in responding to future changes and held to less oversight by the CTU. According to the documents provided by the CTU, it appeared that easement holders are working in close collaboration with the Charitable Trusts Unit during the amendment process which should continue to occur.

In closing, the state legislator should consider creating a database that would keep track of all conservation easements in the state. The database would track the status and management activities conducted on each conservation easement along with issues and challenges that are experienced. The database could also be used to check-in with easement holders and discuss options for them if they continue to fail to meet their responsibility to properly manage their conservation easements. This type of monitoring and data collection is already being conducted by the Conservation Land Stewardship Program with conservation easements the state has an interest in. Admittedly, this type of data collection and reporting would potentially increase cost for land trust organizations, but regardless, it would improve transparency with public, and hold accountable the state and easement holders.

## Appendix A.

### Use Limitations

	n (%)
<b><i>Permitted Use</i></b>	<b><i>148/281 (53%)</i></b>
Access	9/281 (3%)
public access	6/281 (2%)
to dwelling unit	1/281 (0%)
Alienability	3/281 (1%)
right to sell portion of land	3/281 (1%)
Commercial Activity	76/281 (27%)
Agriculture	65/281 (23%)
collection of fees	1/281 (0%)
equine	3/281 (1%)
Forestry	71/281 (25%)
may lease to third party	4/281 (1%)
recreation	2/281 (1%)
sale of power from alternative energy sources	1/281 (0%)
sale of products on property	4/281 (1%)
wild life habitat	1/281 (0%)
Development Uses	96/281 (34%)
additional easements	2/281 (1%)
ancillary uses	76/281 (27%)
construction of camp	2/281 (1%)
construction of house	1/281 (0%)
leasable	2/281 (1%)
may disturb if necessary to achieve purpose	49/281 (17%)
notification of development	7/281 (2%)
permitted to use for meeting open space or zoning requirements	1/281 (0%)
reconstruction of existing uses	1/281 (0%)
renewable energy structures	1/281 (0%)
signs that advertise purpose	66/281 (23%)
subdivision	3/281 (1%)
Domestic & Personal Use Activity - agriculture & forestry	63/281 (22%)
Management Plans	70/281 (25%)
agriculture management plan	41/281 (15%)

forest management plan	56/281 (20%)
NRCS conservation plan	4/281 (1%)
property management	5/281 (2%)
stewardship plan	13/281 (5%)
Non-Commercial Activity	39/281 (14%)
agriculture	1/281 (0%)
forestry	7/281 (2%)
handicap accommodation	1/281 (0%)
notify holder of disturbances	5/281 (2%)
on-site storage	11/281 (4%)
outdoor recreation	2/281 (1%)
remove dead-diseased trees- vegetation or pub safety	5/281 (2%)
renewable energy production	1/281 (0%)
restore & kept in natural state	4/281 (1%)
temp or seasonal outdoor activity	1/281 (0%)
vehicles	7/281 (2%)
water	10/281 (4%)
Recreation Use	36/281 (13%)
Biking	4/281 (1%)
bird watching	3/281 (1%)
camping	4/281 (1%)
cross-country	18/281 (6%)
fishing	20/281 (7%)
hiking	17/281 (6%)
horseback riding	9/281 (3%)
hunting	18/281 (6%)
motorized recreation	13/281 (5%)
snowmobiling	2/281 (1%)
snowshoeing	7/281 (2%)
wildlife observation	11/281 (4%)
Transferability	2/281 (1%)
<b>Restrictions</b>	<b>153/281 (54%)</b>
Commercial & Industrial	76/281 (27%)
Agriculture	4/281 (1%)
Animal Husbandry	1/281 (0%)
Commercial Activity	75/281 (27%)
Forestry	5/281 (2%)
Industrial Activity	74/281 (26%)
Residential	14/281 (5%)

Access	41/281 (15%)
public	3/281 (1%)
right of way easements without approval from grantee	37/281 (13%)
vehicle	1/281 (0%)
Alienation	14/281 (5%)
all tracts must be sold together	3/281 (1%)
development rights un-transferable	5/281 (2%)
right of first refusal	1/281 (0%)
subject to other easements	1/281 (0%)
water rights	2/281 (1%)
Commercial signs	1/281 (0%)
Development or Use	109/281 (39%)
impervious surface cover restrictions	15/281 (5%)
livestock exclusion from water resource	1/281 (0%)
meet zoning or open recs	18/281 (6%)
prohibitive structures	98/281 (35%)
aircraft landing strip	13/281 (5%)
aquaculture ponds	1/281 (0%)
asphalt	4/281 (1%)
billboards	2/281 (1%)
bridge	3/281 (1%)
building	1/281 (0%)
commercial campground	3/281 (1%)
culvert	2/281 (1%)
dam	4/281 (1%)
dock or boat landing	10/281 (4%)
dwelling	10/281 (4%)
feed lots	1/281 (0%)
fence	5/281 (2%)
golf course	2/281 (1%)
gravel pit	2/281 (1%)
hotel or motel	2/281 (1%)
junkyard	2/281 (1%)
mobile home	15/281 (5%)
oil storage	2/281 (1%)
plantations	1/281 (0%)
race track	2/281 (1%)
renewable energy	1/281 (0%)

roads	6/281 (2%)
satellite dish	1/281 (0%)
septic system	8/281 (3%)
shed	3/281 (1%)
shrub nurseries	1/281 (0%)
signs	3/281 (1%)
storage yard	1/281 (0%)
swimming pool	13/281 (5%)
telecommunication tower	4/281 (1%)
tennis court	12/281 (4%)
tower	11/281 (4%)
trails	2/281 (1%)
tree farms	1/281 (0%)
underground storage tanks	2/281 (1%)
utilities	2/281 (1%)
vineyards	1/281 (0%)
waste or transfer station	2/281 (1%)
separate parcel	7/281 (2%)
subdivision (SUB)	76/281 (27%)
additional deed restriction	3/281 (1%)
unsustainable water withdrawal	6/281 (2%)
use determination	1/281 (0%)
utilities	1/281 (0%)
Vehicles	21/281 (7%)
aircraft	1/281 (0%)
all-terrain vehicles	2/281 (1%)
camp tailor	1/281 (0%)
camper	1/281 (0%)
dune buggies	1/281 (0%)
mechanized vehicles	2/281 (1%)
motorcycles	1/281 (0%)
mountain bike	2/281 (1%)
Disposal Resource Extraction (MINING)	92/281 (33%)
agriculture	9/281 (3%)
drilling	2/281 (1%)
excavation	11/281 (4%)
grazing	5/281 (2%)
haying	4/281 (1%)
mining	13/281 (5%)
mowing	4/281 (1%)

Notification	1/281 (0%)
plants	0/281 (0%)
quarrying	10/281 (4%)
removal from property	75/281 (27%)
gravel	74/281 (26%)
minerals	70/281 (25%)
other similar materials	8/281 (3%)
rocks	10/281 (4%)
sand	12/281 (4%)
topsoil	12/281 (4%)
water	2/281 (1%)
seed harvesting	2/281 (1%)
shrubs	0/281 (0%)
trees or wood products	18/281 (6%)
<b>Disturbances (FILLING)</b>	<b>103/281 (37%)</b>
channeling	11/281 (4%)
diking	14/281 (5%)
ditching	4/281 (1%)
draining	14/281 (5%)
dredging	9/281 (3%)
fed & state endangered species	58/281 (21%)
state protected species	1/281 (0%)
filling	76/281 (27%)
fires	3/281 (1%)
impounding	12/281 (4%)
leveling	22/281 (8%)
natural habitat	64/281 (23%)
natural water course	2/281 (1%)
no disturbance area	2/281 (1%)
ponds	5/281 (2%)
pumping	12/281 (4%)
soil surface	61/281 (22%)
surface & subsurface water system	25/281 (9%)
subsurface water system	3/281 (1%)
surface water system	3/281 (1%)
topography	75/281 (27%)
wetlands	15/281 (5%)
<b>Dumping (DUMPING)</b>	<b>91/281 (32%)</b>
boundary walls	2/281 (1%)
manmade and environ haz	88/281 (31%)

ash	2/281 (1%)
burial	67/281 (24%)
burning	58/281 (21%)
debris	36/281 (13%)
dumping	83/281 (30%)
hazardous materials	71/281 (25%)
injection	68/281 (24%)
refuse	21/281 (7%)
snow storage	13/281 (5%)
trash	25/281 (9%)
underground storage tanks	2/281 (1%)
vehicle parts	28/281 (10%)
Introduction (pest)	11/281 (4%)
biocides	1/281 (0%)
bug zappers	1/281 (0%)
fertilizers	4/281 (1%)
fungicides	4/281 (1%)
grazing of animals	2/281 (1%)
herbicides	4/281 (1%)
insecticides	3/281 (1%)
non-native animals	1/281 (0%)
pesticides	5/281 (2%)
plants	2/281 (1%)
rodenticides	1/281 (0%)
shrubs	1/281 (0%)
toxic agents	1/281 (0%)
trees	1/281 (0%)
Management Activities	55/281 (20%)
impaired scenic quality	55/281 (20%)
Recreation Activity	42/281 (15%)
camping	35/281 (12%)
commercial rec	2/281 (1%)
fire arm range	1/281 (0%)
fishing	11/281 (4%)
horseback riding	1/281 (0%)
hunting	2/281 (1%)
rec vehicles	1/281 (0%)
sporting clay-skeet shooting	1/281 (0%)

## Appendix B

### Reserved Rights

	<b>n (%)</b>
<b>Grantee</b>	<b>118/281 (42%)</b>
3rd Party Easement Recognition	6/281 (2%)
Access	96/281 (34%)
Control Access During Events	2/281 (1%)
Determine Compliance	68/281 (24%)
Enforcement	65/281 (23%)
Monitor & Mngt.	44/281 (16%)
Parking	1/281 (0%)
Permit Public Access	7/281 (2%)
Scientific or Ed Purpose	4/281 (1%)
Use Vehicles	6/281 (2%)
Amend Agreement	2/281 (1%)
Arbitration Course	1/281 (0%)
Assign	3/281 (1%)
Authorize Economic Use of Land	2/281 (1%)
Compensation	2/281 (1%)
Create Maintain Use & Protect	72/281 (26%)
Agriculture	2/281 (1%)
Alterations	7/281 (2%)
Bridge	1/281 (0%)
Defend Grantor	1/281 (0%)
Driveway Maintenance	1/281 (0%)
Easement Area	1/281 (0%)
Fields	4/281 (1%)
Habitat Mngt.	5/281 (2%)
Open Space	1/281 (0%)
Parking Lot	1/281 (0%)
Pay No Taxes	6/281 (2%)
Review & Approve Construction Projects	1/281 (0%)
Right to Repair Damages	7/281 (2%)
Scenic View	3/281 (1%)
Signs	54/281 (19%)
Stone Walls	1/281 (0%)
Trail Creation and Maintenance	7/281 (2%)

Tree Farm	1/281 (0%)
Water Resources or aquifers	2/281 (1%)
Discretionary Consent	3/281 (1%)
Easement Creation	1/281 (0%)
Enforcement	4/281 (1%)
Hold Harmless	2/281 (1%)
Indemnification	5/281 (2%)
Notification	13/281 (5%)
Permissible Construction	1/281 (0%)
Posted Against	10/281 (4%)
Conservation Interest	1/281 (0%)
Public Interest	9/281 (3%)
Sell Land	2/281 (1%)
Transfer to 3rd Party	14/281 (5%)
Water Rights or Usage	1/281 (0%)
<b>Grantor</b>	<b>164/281 (57%)</b>
3rd Party Permission	24/281 (9%)
3rd Party Easement	6/281 (2%)
Recognition	
Access Ways for Fores, Ag, or WL Mgmt	1/281 (0%)
Agriculture	2/281 (1%)
Bicycles	2/281 (1%)
Camping	2/281 (1%)
CC Skiing	2/281 (1%)
Education	1/281 (0%)
Enforcement	1/281 (0%)
fishing	5/281 (2%)
Hiking	1/281 (0%)
Horses	0/281 (0%)
hunting	4/281 (1%)
passive rec	2/281 (1%)
Pub Access	7/281 (2%)
Snowmobile	3/281 (1%)
Trail Construction	1/281 (0%)
Vehicles	0/281 (0%)
Access	28/281 (10%)
Agriculture buildings	1/281 (0%)
create additional pub access	1/281 (0%)
Dock or Boat Landing	2/281 (1%)
Drainage	2/281 (1%)

Driveway	2/281 (1%)
Excluded Property	1/281 (0%)
Forestry Purposes	2/281 (1%)
Granting Permission	2/281 (1%)
No Access on unrestricted land	2/281 (1%)
Parking	1/281 (0%)
Passive Rec Uses	2/281 (1%)
Residence	1/281 (0%)
Right of Way	7/281 (2%)
Temp Construct Easement	1/281 (0%)
Vehicle	1/281 (0%)
Assignability - does not pass to heirs	1/281 (0%)
Create Maintain & Use	152/281 (54%)
Add Easements	2/281 (1%)
Agriculture	33/281 (12%)
Any Use not Prohibit in CE	27/281 (10%)
Archaeological Investigations	27/281 (10%)
Carry Out Home Occupation	2/281 (1%)
Cemetery	3/281 (1%)
Compost Materials	11/281 (4%)
Dam	2/281 (1%)
Development	92/281 (33%)
Alternative Energy	5/281 (2%)
Facilities	
Boardwalks	1/281 (0%)
Bridge	4/281 (1%)
Build House with	3/281 (1%)
Improvements and Appurtenances	
Building or Shed	28/281 (10%)
Camp Sites	2/281 (1%)
Conservation & Rec	31/281 (11%)
Purposes	
conservation of plant and animal species	1/281 (0%)
Conservation of	1/281 (0%)
Scenic Qualities	
protection natural areas	2/281 (1%)
protection of historic or cultural features	1/281 (0%)

Activities	Reclamation	1/281 (0%)
Activities	Recreational	27/281 (10%)
	Remove Invasive	2/281 (1%)
	Tent	1/281 (0%)
	Culverts	4/281 (1%)
	Design Restrictions	14/281 (5%)
	Dock or Boat Landing	6/281 (2%)
	Driveway	5/281 (2%)
	Right to Pave with nonpermeable materials	1/281 (0%)
	Educational Activities	2/281 (1%)
	Fence	6/281 (2%)
	Kiosks	3/281 (1%)
	Obtain Permits	4/281 (1%)
	Parking Area	7/281 (2%)
	Repair Damages	3/281 (1%)
	Road	8/281 (3%)
	Subdivide	19/281 (7%)
	Trail	32/281 (11%)
Rights	Transfer Development	3/281 (1%)
	Yes	1/281 (0%)
	Development Area	1/281 (0%)
	Driveway	6/281 (2%)
	Ecological Value	4/281 (1%)
	Environmental Credit	1/281 (0%)
	Equine Activities	4/281 (1%)
	Existing Saw Mill	2/281 (1%)
	Field	6/281 (2%)
	Fish	10/281 (4%)
	Forestry	59/281 (21%)
	Host Events	3/281 (1%)
	Hunt	10/281 (4%)
	Land Conservation & Scientific or Mngt	10/281 (4%)
	Habitat Mngt	1/281 (0%)
	Nat Res Mngt	1/281 (0%)
Features	Removal of Nat	4/281 (1%)
	Stabilize Bank of River	1/281 (0%)

Maintain House and Appurt.	2/281 (1%)
Motor Vehicle Use	10/281 (4%)
No Property Tax	2/281 (1%)
Old Farm Equipment	1/281 (0%)
Post against	68/281 (24%)
Protect Land	2/281 (1%)
Raising & Boarding Draft Animals	1/281 (0%)
Right to Use CE	2/281 (1%)
Road	13/281 (5%)
Sell or alienate	19/281 (7%)
Scenic Area	9/281 (3%)
Septic System	14/281 (5%)
Signs	13/281 (5%)
Subsurface elements	14/281 (5%)
Target Shooting	1/281 (0%)
Utilities	47/281 (17%)
Water Rights or Usage	62/281 (22%)
Prohibit Private & Commercial	2/281 (1%)
Well	23/281 (8%)
Windmill	3/281 (1%)
Easement Compliance and Enforcement	1/281 (0%)
Hold Harmless	1/281 (0%)
Lease Property	4/281 (1%)
Notification	70/281 (25%)
Rights Extinguished upon Conveyance	2/281 (1%)

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