

“Forest Society’s Updated Model CE: What’s New & Why”  
Saving Special Places Conference, Alton, NH, 8 April 2017

By Tom Howe, Senior Director of Land Conservation  
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Preparation and distribution of this model  
Conservation Easement Deed language are made possible, in part, by a Justice  
Grant from the N.H. Bar Foundation.

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FOR DIGITAL VERSION OF UPDATED MODEL, ADD NAME & EMAIL TO SIGN-UP  
LIST, OR SEND EMAIL TO [thowe@forestsociety.org](mailto:thowe@forestsociety.org)



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## **I. Introduction**

Agenda & handout overview, presumes familiarity w/ CEs  
Q&A along the way  
Inadequate time to discuss all on agenda  
Cell phones off

## **II. Context**

### **A. Mission Impossible: Drafting for Perpetuity**

Ltd. options for revision: amendment or discretionary consent

Striking rt. balance between broadly stated Purposes/concepts vs. practical, measurable, enforceable stds.

Revising model is deliberate effort to “Pick your battles”

Vetting process: For. Society staff, other land trusts, legal counsel

### **B. Forces for Change**

6 more yrs. of stew. experience, since last revision in 2011

Landowners’ requests, reflecting new technologies, markets, & opportunities for income generation

Best practices per LTA’s “Std. & Practices” & Accreditation

IRS positions, Tax court decisions

Climate change impacts & awareness

### **C. The Big Tradeoff: More Stewardship**

**D. My Goal: Helping You Create/Refine Your Own Model**

Pick & choose what's useful, not all necessarily appropriate

Sign up to get digital version (no need if signed up last yr.)

**III. Key Revisions (see separate handout w/ Examples)**

**A. "Reader-Friendly" Terminology & Format**

BIG IDEA: Making it easier to use doc. reduces risk of problems, as long as not compromising legal integrity of provisions

Table of Contents w/ summary recitals

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**CONSERVATION EASEMENT DEED**

**SUMMARY INFORMATION**

Grantor/Landowner(s) Name(s) & Marital Status:

Mailing Address:

Grantee/Easement Holder's Name:

Mailing Address:

[Executory/Contingent Interest Holder's Name:

Mailing Address:]

Municipality & County Where Premises Located:

Acreage of Area Subject to Conservation Easement:

Survey Title & Recording Information:

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## Terminology

“Grantor” to “Landowner”

“Grantee” to “Easement Holder”

“Property” to “Conservation Area”

“laches and estoppel” replaced

Additional “terms of art”

“Conservation Attributes” for signif. cons. features

“Qualified Person” for licensed forester or approved other person  
for preparing mgt. plan, supervising operations, etc.

Clustering of provisions related to same topic

Res. rt. vs. exception to use limitation?

Format more logical

All provisions about structures and improvements now under “Structures  
& Improvements” use limitation (previously were parallel, e.g. use  
limitation on signs was parallel to use limitation on “Structures &  
Improvements”

Titles for sections reflecting content

Added statement re not to be interpreted for legal meaning

Comment boxes w/ explanation of revs. from 2011, plus drafting guidance

B. **Definitions: “Commercial,” “Forestry,” & “Agriculture”**

(Location: Use Limitation prohibiting commercial activity except forestry & ag)

BIG IDEA: Clarifies key term of CE

“Commercial”

Any activity by any party involving any exchange of value, except  
Landowner’s purchase of services for permitted activities

Eliminates questions re nonprofit vs. for-profit (Maine court case),  
third party vs. Landowner activity, cash vs. barter

Premise: profit motive causes greater risk of excessive activities  
w/ neg. cons. impacts

----- (START OF SAMPLE)

- A. **Commercial Activities, Including Forestry & Agriculture.** There shall not be conducted on, above, or below the Conservation Area any commercial activities, except forestry and agriculture, all as described below, provided that such activities are not detrimental to the Purposes of this Easement, and provided that the productive capacity, including soil productivity, of the Conservation Area to yield forest and/or agricultural products, shall not be significantly impaired by on-site activities.

- i. **Definition of “Commercial.”** For the purposes of this Easement, “commercial” shall refer to the sale of goods or services, or any uses or activities in furtherance thereof,

and the use or activity shall be understood as occurring “on the Conservation Area” if the sale transaction(s) or the transacted goods or services are located on or came from the Conservation Area, regardless of: the form of the sale proceeds (for example, cash vs. bartered goods and/or services); the form/status of the recipient of the consideration (for example: individual vs. corporation, non-profit vs. for-profit corporation, or governmental vs. private entity); and whether the recipient of the consideration is the Landowner or some third party except that any sale of services to the Landowner by a third-party conducting activities on the Conservation Area otherwise permitted by this Easement shall not constitute a commercial activity (for example, a worker hired by the Landowner to cut and haul brush from a field to keep the view open).

------(END OF SAMPLE)

### “Forestry”

BIG IDEA: More comprehensive, clearer distinction from “ag,” more defensible, sets stage for use of *de minimus* provision

Distinguishes activities involving direct use of soils/site conditions (growing, harvesting, etc) vs. processing, storing, marketing activities that do not

In both cases, trees must have come from Cons. Area

(Sep. provisions still warranted to accommodate storing and marketing of “products” resulting from *processing* of trees or tree parts, i.e. “products” isn’t sensible object of first set of activs. “growing, harvesting, etc.”)

Excludes ancillary activities benefiting from forestry or providing supplementary income

Focus on “pure” forestry sets stage for “commercial activities w/ *de minimus* impacts” for importation of trees, parts, or products, or for ancillary activities e.g. sale of hunting rts., dogsled rides on woods rds, x-c ski trails, etc.

Exception for trees highly managed/harvested on short-term rotation, treated as “ag”

------(START OF SAMPLE)

- ii. **Forestry.** Any forestry conducted for commercial purposes shall be performed in accordance with the following Sects. 2.A.ii.a-f.
  - a. **Definition.** For the purposes of this Easement, and to distinguish deliberately this definition from that of the state, municipality, or any other entity, the term

"forestry" shall mean:

- The planting, growing, managing, production, and/or harvesting of trees, or parts of trees (for example: seeds, sap, leaves, and bark), only if said trees are being/were grown in the ground in the Conservation Area's soils and exposed to the natural sunlight, moisture, and other weather conditions of the Conservation Area (for example, pre-commercial, silvicultural activities such as but not limited to thinning, girdling, and other forms of forest stand improvement).
- The processing, storing, and/or marketing for sale of trees, or parts or products thereof (for example: sawlogs, chips, firewood, sawdust, sap and syrup, and bark mulch), only if said trees were grown on the Conservation Area as set forth in the immediately preceding paragraph.

Notwithstanding the above, excepted from "forestry" and included within "agriculture" as defined below are those activities described in the immediately preceding two paragraphs, above, with respect to trees planted, grown and wholly harvested on a predictable, often short-term rotation (for example: ornamental trees for landscaping, Christmas trees, and fast-growing tree species harvested for energy production).

"Forestry" shall not include any activity on or use of the Conservation Area whose principal connection to forestry relies on the fact that said activity or use may: be enhanced by, or otherwise benefit from, property features created or maintained as a result of forestry activities; and/or generate income for the Landowner helpful for maintaining forestry use of the Conservation Area. (Examples of activities or uses which are not part of "forestry" include a paying third party hunting in managed woodlands or receiving a dogsled ride along woods roads. For potential applicability to such non-forestry activities and uses, see Sect. 3.C. "Commercial Activities With *De Minimus* Impacts.")

------(END OF SAMPLE)

"Agriculture"

BIG IDEA: More comprehensive, clearer distinction from "forestry," more defensible, sets stage for use of *de minimus* provision

Lessens potential for other parties to use other "ag" defs. (e.g. state) agst. us once CE in court

Parallel construction to "forestry" def. *to some degree*

Distinguishes activities relevant to plants vs. animals

Unlike forestry, “propagation, planting, ...” activities do NOT require use of soils or other natural, onsite features (OK for greenhouses, egg farms, lab rat production facility)

Intentionally inclusive for evolving nature of ag., technology, etc.  
& avoids pot. unenforceable distinctions

“Processing, storing, marketing” still ltd. to products from Cons.Area

Excludes ancillary activities benefiting from ag or providing supplementary income

Focus on “pure” ag. sets stage for “commercial activities w/ *de minimus* impacts” for importation of ag products for processing, storing, or marketing, or for ancillary activities e.g. agritourism, weddings, leasing for movie set, concert, rental of barn bay for winter boat storage, etc.

------(START OF SAMPLE)

iii. **Agriculture.** Any agriculture conducted for commercial purposes shall be performed in accordance with the following Sects. 2.A.iii.a-b.

a. **Definition.** For the purposes of this Easement, and to distinguish deliberately this definition from that of the state, municipality, or any other entity, the term “agriculture” shall mean:

- The propagation, planting, growing, production, collection, and/or harvesting of plants, fungi, or parts thereof, except for certain trees and activities related thereto which are included within the above definition of “forestry” (examples of said plants, fungi, or parts thereof include: vegetables; fruits; nuts; berries; grains; mushrooms; hay and other fodder grazed by livestock; ornamental flowers and nursery stock; and trees planted, grown, and wholly harvested on a predictable, often short-term rotation including but not limited to ornamental trees for landscaping, Christmas trees, and fast-growing tree species harvested for energy production);
- The breeding, raising, growing, production, boarding, training, exercising, and/or harvesting of animals (for example: livestock, poultry, fish, and pets); and
- The processing, storing, and/or marketing for sale of plants, fungi, animals, and/or parts or products thereof, only if said plants, fungi, and/or animals were grown and/or raised on the Conservation Area, and except for certain trees and activities related thereto which are included within the above definition of “forestry” (examples of said parts or products include: honey, eggs, milk, cheese, meat, fur, manure, animal feed, compost, and baked goods for consumption).



“Agriculture” shall not include an activity on or use of the Conservation Area whose principal connection to agriculture relies on the fact that said activity or use may: be enhanced by, or otherwise benefit from, property features created or maintained as a result of agricultural activities; and/or generate income for the Landowner helpful for maintaining agricultural use of the Conservation Area. (Examples of uses or activities which are not part of agriculture include: a wedding in a scenic hayfield ; vehicular parking for a concert; and the sale of wagon rides, of food not produced from or grown on the Conservation Area, and of handicrafts made with materials not from the Conservation Area. For potential applicability to such non-agricultural uses or activities, see Sect. 3.C. “Commercial Activities With *De Minimus* Impacts,” below).

----- (END OF SAMPLE)

**C. Reserved Right for “Commercial Uses With *De Minimus* Impacts”**

BIG IDEA: Accommodates ltd. uses otherwise prohibited & provides rational process for dealing w/ same, including:

Activities ancillary to forestry or ag., per above

Receipt of govt. subsidies for undertaking, or not undertaking, certain mgt. activities on land.

Explains “impacts” as referring to Cons. Attributes, not financial or other types of impacts

Stds. focused on structures & improvements:

Involving any *de min.* comm. uses:

No significant impairment of Cons. Attributes

No detriment to Purposes

Impervious surfaces count toward max. allowance per Sect. 2.C.

No residency, overnight use is temp. only

No dedicated water supply

Sign max. size (no illumination, unlike signs for other uses)

Renewable energy production must follow stds. in sep. res. rt.

AND

Where *de min.* comm. use is “primary”:

Accessway pervious surface only

750sq.ft. max. cumulative size for yr-rnd structures

E.g. wedding tent thus not subject

Max. height 30 ft.

No power, communications, water, or sewer lines from offsite  
No waste water system except self-contained toilets

Pot. tools for assessing “primary” vs. “secondary”  
    % use of interior floor space  
    % of time used  
    Relative impacts

Anticipate departure/vacancy of primary, permitted use, leaving de  
min. comm. as only use of structure  
    Internal guidance doc.  
    Terms of written approval

----- (START OF SAMPLE)

- A. **Commercial Activities with *De Minimus* Impacts.** Subject to the advance written approval of the Easement Holder, in the Easement Holder’s sole discretion, the Landowner reserves the rights to conduct certain commercial activities on, under, or over the Conservation Area which have *de minimus* negative impacts on the Conservation Attributes and which are not “forestry” or “agriculture” as defined above, and to construct, place, introduce, use, maintain, repair, replace, enlarge, relocate, improve, or rebuild certain structures and improvements in furtherance thereof. “*De minimus*” refers to minimal negative impacts on the Conservation Attributes and/or the Purposes of this Easement. Allowance of certain commercial activities with *de minimus* impacts is intended to provide the Landowner with additional opportunities for generating income that the Landowner could use to support enhanced stewardship of the Conservation Area and/or management of the Conservation Area for forestry, agriculture, or other conservation purposes without significant impairment of Conservation Attributes or detriment to the Purposes of this Easement.
- i. **Structures & Improvements.** Any of said structures and improvements, whether used in whole or in part for commercial activities with *de minimus* impacts, must meet all of the following conditions a.-e., below, in addition to the other, above-referenced requirements of this Sect. 3:
- a. The impervious surfaces of all such structures and improvements shall not exceed the impervious surface limitations described in Sect. 2.C.ii., above, in combination with all other impervious surfaces subject to said impervious surface limits;
  - b. Any such structure or improvement shall not be occupied as a residence, and any overnight use shall be temporary only;
  - c. There shall be no water supply source such as but not limited to a spring or well established or used on or in the Conservation Area if the primary use of said water supply is to serve said commercial activity;

- d. Any sign or outdoor advertising structures in association with commercial activities with *de minimus* impacts and displayed on the Conservation Area shall not have a face exceeding sixteen (16) square feet in size, shall not consist of digital or other electronic displays, and shall not be artificially illuminated; and
- e. Any renewable energy production facility in support of said structure or improvement shall conform to Sect. 3.B., above.

Further, the following additional restrictions f.-j. shall apply only if any said structure or improvement is used primarily for commercial activities with *de minimus* impacts, and that where such activities are not primary, other provisions of this Easement relevant to the primary activity shall control for the entire structure or improvement. For purposes of evaluating what is the primary vs. secondary, tertiary, etc. activity being made of a given structure or improvement relative to this Easement, the Easement Holder may consider measures including but not limited to the extent of interior floor space used for different types of activities, amount of time said structure or improvement is used for different types of activities, and extent of impacts resulting from different types of activities.

- f. Any accessway to any such structure shall consist of pervious surfaces only;
  - g. The cumulative footprint of all such structures which are year-round shall not exceed seven hundred fifty (750) square feet, as measured to the dripline in the case of any roof or other cover extending beyond the base of any such structure;
  - h. The height of any such structure shall not exceed thirty (30) feet as measured from the lowest point of said structure, at grade, to the highest point of the structure;
  - i. There shall be no utility lines running on, under, or above the Conservation Area and serving said structures from sources outside of the Conservation Area, including but not limited to power, communication, water, and sewer lines; and
  - j. There shall be no sewage or other waste water disposal system or components thereof, located on, under, or above the Conservation Area and serving said structures except for self-contained facilities such as but not limited to: outhouses, composting toilets, and temporary, portable toilets.
- i. **Examples.** Commercial activities with potentially *de minimus* impacts might include but shall not be limited to: cross-country skiing, wagon rides, and hunting, for any of which a third party pays a user fee; occasional use of the Conservation Area for a wedding, party, or festival by a paying third party; any event for which entrants must pay a fee; production and sale of maple syrup made with sap not from the Conservation Area; the sale of food not produced from or grown on the Conservation Area and of handicrafts made with materials not from the Conservation Area; rental of an empty stall in a barn for seasonal storage of a boat; sale of minor, surplus

electricity generated by solar panels on the Conservation Area under a “net metering” or other similar pricing scheme; and the Landowner’s receipt of payments or governmental subsidies for undertaking affirmative actions to restore wetlands on the Conservation Area.

- ii. **Approval Process.** Any such activity, including but not limited to associated structures or improvements, shall be permitted only after the Landowner has given to the Easement Holder advance written notice and a proposed plan and/or description of said activity, use, structures, and improvements, and the Easement Holder has provided the Landowner with written approval of same. The Landowner shall provide said notice at least forty-five (45) days prior to the commencement of any such activity or use, of any construction, installation, enlargement, improvement, or relocation of said structure or improvement, or of any site preparations therefor, and shall include in said notice a detailed description, and maps as necessary, of the proposed activity, use, structure, and improvement, including but not limited to their location, function, size, timing, duration, frequency, and intensity, and provisions for the parking of visitors’ vehicles so as not to impair significantly any Conservation Attributes. The Easement Holder shall evaluate the proposal and may approve the same only if the Easement Holder finds, in its sole discretion, that said activity, use, structure, or improvement meet(s) all of the conditions and terms of this Easement. The Easement Holder may choose to limit its approval to a certain time period, and to ownership only by the Landowner who originally requested approval of the use or activity. Within thirty (30) days after Easement Holder’s receipt of such notice and plan, the Easement Holder shall approve or disapprove in writing the proposal, such approval not to be unreasonably withheld, and shall so inform the Landowner. Any disapproval shall specify the reasons therefor. In cases where the proposal, or the impact(s) thereof, is obviously minor, the Easement Holder has the right, in its sole discretion, to waive the requirement that the Landowner’s notice and plan must be submitted in writing.

----- (END OF SAMPLE)

#### **D. Review of Ongoing Activities**

(Location: Part of “Affirmative Rights of Easement Holder”)

BIG IDEA: Addresses problem of activity w/ written approval creating too much neg. impact

Enables E. Holder to modify/revoke prior written approval if impacts of approved activity “significantly impair” Cons. Attributes. Potential causes:

Cumulative impacts not orig. anticipated

Ongoing impacts are newly discovered (e.g. expanded detection and/or better technology by E. Holder)

New impacts emerge

E. Holder pot. subject to breach of CE

Ensure written approval lays out adequate process  
Proceed cautiously w/ good legal counsel

----- (START OF SAMPLE)

- B. **Review of Ongoing Activities.** In furtherance of the exercise of the Easement Holder's stewardship obligations under Sect. 6.A., above, the Easement Holder shall have the right, but not be required, to review and assess all ongoing activities, uses, and associated impacts on the Conservation Area, including but not limited to impacts which may not have been anticipated as of the Easement Holder's written approval then in effect, whether due to the accumulation of impacts over time, or the emergence or detection of impacts for the first time, or otherwise. For any activity or use for which the Easement Holder has already provided specific written approval to the Landowner, if the Easement Holder finds that said activity or use, exceeds what was permitted within said written approval, or that the impacts of said activity or use are significantly impairing Conservation Attributes or are otherwise detrimental to the Purposes of this Easement, the Easement Holder shall have the right to modify or revoke said approval in accordance with the terms of said approval. The Landowner's continuation of any activity or use in excess of what is provided for within said written approval shall not give rise to any claim of prescriptive right or waiver of the terms and conditions of this Easement.

----- (END OF SAMPLE)

**E. Reserved Right for Renewable Energy Production**

BIG IDEA: Creates more routine allowance for renewables, esp. solar, w/in CE area

Definition of "renewable energy" (Vt. Housing & Cons. Bd.)

Case for renewables enhancing Cons. Attributes

Supporting permitted activities

Mitigating impacts of climate change impairing Cons. Attributes

Sizing

Height max. 30' intentionally nixes wind

Gen. premise: wind power has more neg. impacts

Design res. rt. to allow wind (sm. or lge. scale)

Based on production capacity a/o system installation, sum of 3 potential power needs:

Permitted uses of Cons. Area (existing, or simultaneously proposed)

One single-family residence owned by Landowner adjacent to Cons. Area after Landowner demonstrates no reasonable, physically and economically feasible, site for same in adjacent area

Commercial activities w/ *de min.* impacts approved per res. rt., e.g. additional power sold to utility for income generation

If Cons. Area subdivided/sep. conveyed, limits apply to each separate, resulting ownership

No E. Holder monitoring of electron flows after installation

Momentary sale of surplus/incidental power for capacities a or b not viewed as commercial

Max. footprint counts towards impervious surface max. in 2.C.

If later physical expansion (*not* kW capacity) of facility, recalculation of size limit reqd. at that time

----- (START OF SAMPLE)

C. **Renewable Energy Production.**

- i. **Definition.** For the purposes of this Easement, “renewable energy” is energy available for collection or conversion from direct sunlight, wind, running water, organically derived fuels including but not limited to wood and agricultural sources, waste heat, and geothermal sources. Allowance for renewable energy production on the Conservation Area can enhance Conservation Attributes by supporting permitted uses of the Conservation Area and by potentially lessening the need for other energy production facilities which may emit gases that contribute to global warming and thus help mitigate the negative impacts of climate change on the Conservation Attributes; see the United Nations’ Intergovernmental Panel on Climate Change in its Fifth Assessment Report (2014).
- ii. **Sizing.** Any renewable energy production facilities, including but not limited to associated lines, poles, pipes, and other infrastructure for transmitting said energy, shall have a height not exceeding thirty (30) feet as measured from the lowest point of said structure, at grade, to the highest point of the structure. Further, any such facility shall be sized at the time of installation to serve not more than the combined energy needs of:
  - a. Then existing, or otherwise simultaneously proposed, uses and/or activities on the Conservation Area for forestry, agriculture, conservation, habitat management,

outdoor recreation, and outdoor education as permitted by the terms of this Easement; and

- b. One single-family residence with customary ancillary improvements owned by the Landowner as of the proposed time of installation and located adjacent to the Conservation Area, only upon the Landowner's demonstration, to the satisfaction of the Easement Holder, that there is not a reasonable, and physically and economically feasible, site in such adjacent area for meeting said need; and
- c. Commercial activities with *de minimus* impacts as permitted under Sect. 3.C., below.

Under Sects. 3.B.ii.a. and b., above, the momentary sale of surplus or incidental energy generated in excess of the then-current demand, under a "net metering" or similar other type of arrangement, shall not be considered a commercial activity for the purposes of this Easement.

The maximum footprint of all aboveground renewable energy structures on the Conservation Area, as measured to the dripline in the case of any roof or other cover extending beyond the structure's base, shall not exceed the impervious surface limitations described in Sect. 2.C.ii., above, in combination with all other impervious surfaces subject to said impervious surface limits. However, exempted from the immediately referenced calculation is the footprint of any such energy structure mounted on top of some other permitted structure with impervious surface footprint also subject to said square footage limitation (for example, solar panels mounted on the roof of a dairy barn).

[consider adding the following clause for any CE allowing the Landowner to subdivide or separately convey *to other private parties*: "Following any separate conveyance permitted by the terms of this Easement, the aforesaid limit on the size of a permitted renewable energy production facility shall apply to each separately owned parcel or tract resulting from the Landowner's exercise of said right of separate conveyance.]

- iii. **Later Expansion.** Following the initial installation of any approved renewable energy production facility, any later, proposed expansion of the physical size of said facility shall require the Easement Holder's advance approval, and the Landowner's reassessment and recalculation, relative to the above maximum sizing limit, of the entire facility including the proposed expansion as if the entire facility were being constructed for the first time.
- iv. **Approval Process.** At least thirty (30) days prior to the commencement of any construction, installation, or on-site preparation, including but not limited to land clearing, for a renewable energy production facility, the Landowner shall provide the Easement Holder with written notice including details of said facility including but not limited to the scope, size, and location, and method and timing of said

construction/installation. Within thirty (30) days after Easement Holder's receipt of such notice, the Easement Holder shall approve or disapprove in writing the proposed facility, such approval not to be unreasonably withheld, and shall so inform the Landowner. Any disapproval shall specify the reasons therefor.

----- (END OF SAMPLE)

#### **F. Amendment & Discretionary Consent**

(Location: With other administrative provisions, "back end")

BIG IDEA: Defines process & criteria by which Landowner and E. Holder can address unanticipated issues and revise CE periodically to keep document relevant

Merger of two separate provisions, b/c each's reliance on substantially same stds.  
Not bright line between Amend. & Disc. Consent, matter of degree

Current context of IRS concern about any such provision threatening perpetuity

Guidance on dealing with proposal w/ pos. & neg. impacts is that net impact is what E. Holder will consider

----- (START OF SAMPLE)

#### **14. AMENDMENT & DISCRETIONARY CONSENT**

The Landowner and Easement Holder [and Executory Interest Holder] recognize and agree that unforeseen or changed circumstances could arise in which an amendment to certain terms or restrictions of this Easement would be appropriate and desirable, or that some activities may require the discretionary consent of the Easement Holder, as further described below. To this end, the Landowner and Easement Holder [and Executory Interest Holder] have the right to agree to amendments to this Easement, and the Easement Holder may exercise discretionary consent, all in accordance with:

- The provisions and limitations of this Sect. 14;
- The then-current policies of the Easement Holder; and
- Applicable governmental laws, rules, and/or regulations.

Any amendment or exercise of discretionary consent shall:

- Be consistent with the Purposes of this Easement;
- Not significantly impair Conservation Attributes;
- Not affect the qualification of this Easement or the status of the Easement Holder under any applicable laws, including Sects. 170(h) and 501(c)(3) of the Internal Revenue Code of 1986 and regulations promulgated thereunder, as both may be amended, and NH RSA 477:45-47 as may be amended from time to time; and
- Not affect the perpetual duration of this Easement or the perpetual protection of its



Purposes.

Any request by the Landowner for an amendment or for discretionary consent shall be in writing and shall describe the proposed amendment or the activity for which consent is sought in sufficient detail to allow the Easement Holder to judge the consistency of the request and of the proposed activity with the Purposes and other terms and conditions of this Easement. To evaluate and then make a determination on the Landowner's request, the Easement Holder shall have the right to engage independent experts, at the Landowner's sole cost, necessary for the Easement Holder to evaluate the adequacy of the proposal. If a proposed amendment or exercise of discretionary consent has aspects which, in some respects, would be detrimental to the Purposes of this Easement and/or would impair the Conservation Attributes, but, in other respects, enhance said Purposes and/or Conservation Attributes, then the Easement Holder shall evaluate the net effect of such impacts when considering any amendment or exercise of discretionary consent. Nothing in this Sect. 14 shall require the Easement Holder [and Executory Interest Holder] to consider, negotiate, or approve any proposed amendment or request for discretionary consent.

- A. **Amendments.** Any amendment shall be executed by the Landowner and the Easement Holder [and Executory Interest Holder], subject to review by the N.H. Attorney General's Office, Charitable Trusts Division as necessary, and shall be recorded in the Registry of Deeds.
- B. **Discretionary Consent.** If the Landowner and the Easement Holder agree that any activity otherwise prohibited herein or not contemplated by the Easement is desirable, and if the Easement Holder determines, in its sole discretion, that such activity (i) is not detrimental to the Purposes of the Easement and (ii) would not have more than *de minimus* negative impacts on the Conservation Attributes protected hereby, the Easement Holder may then consent to such activity only [after consulting the Executory Interest Holder and] under the conditions and circumstances described herein. The Easement Holder's consent to a proposed use or activity may be limited or restricted in time, locale, or by ownership, and shall be in writing.
- C. Notwithstanding the foregoing, the Landowner and Easement Holder [and Executory Interest Holder] shall have no right or power to agree to any amendment or consent to any activities that would result in the termination of this Easement.

----- (END OF SAMPLE)

#### **G. Subdivision & Separate Conveyance**

##### **i. Std. Exception: To Conservation Entity**

(Location: Part of Use Limitation on "Subdivision & Separate Conveyance")

BIG IDEA: Leaves open-ended opportunity for any portion of CE land to be acquired by conservation agency or group, for potentially better stewardship/cons. outcome.

No limit on number or size  
Likely to be used rarely, but key when can be  
Can limit to enlarging abutting holding

----- (START OF SAMPLE)

**B. Subdivision & Separate Conveyance.** The Conservation Area shall not be subdivided so as to create additional or reconfigured municipally approved lots (including by boundary/lot line adjustment), and none of the lots, tracts, sites, or other divisions of land which together may comprise the Conservation Area shall be conveyed separately from one another. Notwithstanding the foregoing, the conveyance, and any subdivision (including boundary/lot line adjustment) to accomplish the same, of any physical portion of the fee interest in the Conservation Area to a public agency or qualified organization described in Sect. 5. “Benefits & Burdens,” below (hereinafter “Qualified Holder”) [as an addition to an existing, abutting conservation area held in fee by said entity or organization], only under all of the following conditions:

- i. The Landowner obtains advance written approval of such conveyance by the Easement Holder after the latter finds, in its sole discretion, that the proposed conveyance is consistent with the Purposes of this Easement;
- ii. The Landowner ensures the recording of a survey plan of the area being subdivided and/or conveyed;
- iii. The premises so conveyed shall continue to be subject to the terms and conditions of this Easement; any reference to “Landowner” in this Easement shall refer to the owner(s) of each of the resulting tracts, shall apply to the owner(s) of each tract as the time, facts, and circumstances may indicate and require, and shall not create an obligation upon, or require the participation of, the owner(s) of the other tract(s) if the particular matter at issue does not involve the owner(s) of the other tract(s);
- iv. The deed(s) for any conveyance of fee title to a subdivided or separately conveyed portion of the Conservation Area shall contain a specific reference to this Easement and a statement confirming what portion of certain allowable, numerical limits described below, such as but not limited to those for impervious surfaces, certain covered structures, and sand/gravel extraction operations [add reference to any additional restrictions with numerical limits applying to the entirety of the Conservation Area], are applicable and allocated to the conveyed premises relative to the total of such limits applicable to the entire Conservation Area prior to separate conveyance; and
- v. Fee interest in the premises so conveyed shall continue to be held only by a Qualified Holder.

There shall be no limit on the number of times the Landowner may exercise the rights described in this Sect. 2.B. nor on the number of separately conveyable interests or lots resulting therefrom.

----- (END OF SAMPLE)

**ii. Allocation of Numerically Limited Restrictions**

(Location: Part of res. rt. allowing subdivision & separate conveyance)

BIG IDEA: For any rt. to subdivide or separately convey, creates obligation for Landowner to confirm how much of which numerically based rt/restriction goes w/ conveyed vs. retained land. Reduces potential later hassles & confusion among all parties

Rts. to create any more lots

Impervious surface limits

Max. 750 sq. ft. for yr. rnd., covered, recr/educ. structures

Max. area for open sand/gravel extraction activs.

Confirm in Landowner's deed(s) & separate, recorded "Notice of Exercise of Reserved Right in CE" signed by Landowner & E. Holder

Holder may never receive or be able to influence wording in Landowner's outgoing deed(s), hence separate Notice reqd.

----- (START OF SAMPLE)

**Rights to Subdivide and Separately Convey.** The Landowner reserves the rights to subdivide the Conservation Area or any portion thereof, and to convey separately any portion of the Conservation Area from the balance of the Conservation Area, to yield not more than a total of two [2] separate ownerships from what was a single ownership of the entire Conservation Area as of the date of execution of this Easement, subject to all of the following additional conditions:

- i. **Minimum Size.** Each separately owned portion of the Conservation Area resulting from any exercise of this reserved right shall be at least \_\_\_\_[#] contiguous (as defined below) acres in size;

[add here any additional requirements, such as locational constraints]

- [ii. **Contiguity of Resulting Ownership.** Each separately owned portion of the Conservation Area resulting from any exercise of this reserved right shall consist of one contiguous area of land; identically owned land on directly opposite sides of \_\_\_\_\_ Road shall be considered contiguous for the purpose of this restriction, as follows: (then spell out in subsections the geographic specifics about which area along which road is considered to be one and the same with what other area on the opposite side of said road, etc.);]

- iii. **Approval by Easement Holder & Subdivision Plan.** To exercise said rights, the Landowner shall provide written notice to the Easement Holder of the proposed exercise at least thirty (30) days prior to the conveyance of any part of the Conservation Area or the submission of any application for governmental subdivision

approval, whichever occurs first. Said notice shall include the specific details of said exercise and, for subdivision, shall include but not be limited to a draft survey plan prepared by a licensed surveyor, at the Landowner's expense, showing the boundaries of all proposed lots resulting from said subdivision. Within thirty (30) days after the Easement Holder's receipt of such notice, the Easement Holder shall approve or disapprove in writing the proposed exercise, such approval or disapproval not to be unreasonably withheld, and the Easement Holder shall so inform the Landowner. Any disapproval shall specify in detail the reasons therefor. The Landowner shall record at the Registry of Deeds, at Landowner's expense, any final subdivision plan as approved by the relevant permitting authority and by the Easement Holder, and shall promptly thereafter provide a copy of the recorded plan to the Easement Holder.

- iv. **Required Deed Provisions.** In association with any exercise of this reserved right, any Deed conveying title to a subdivided or separately conveyed portion of the Conservation Area shall contain:
  - a. A specific reference to this Easement; and
  - b. A statement that, pursuant to this Sect. 3.\_\_\_, neither the premises retained by the grantor nor those conveyed to the grantee may be further subdivided or separately conveyed by the grantor or the grantee or any successors or assigns of either of them.
  - [b. If, after the conveyance, the right to further subdivide or separately convey any portion of the Conservation Area pursuant to this Sect. 3.\_\_\_ remains (i.e., upon the first such subdivision or separate conveyance, there remains one additional right of subdivision or separate conveyance allowed to create a second and third ownership), a statement whether the remaining right to subdivide or separately convey pursuant to this Sect. 3.\_\_\_ is (a) retained by the grantor of the Deed, in which case the Deed shall recite that the conveyed premises cannot be further subdivided or separately conveyed pursuant to this Sect. 3.\_\_\_ by the grantee or the grantee's successors and assigns, or (b) conveyed to the grantee of the Deed, in which case the retained premises of the grantor cannot be further subdivided or separately conveyed pursuant to this Sect. 3.\_\_\_ by the grantor or the grantor's successors and assigns; or
  - c. If, after the conveyance, no right to further subdivide or separately convey any portion of the Conservation Area pursuant to this Sect. 3.\_\_\_ remains, a statement that, pursuant to this Sect. 3.\_\_\_, neither the premises retained by the grantor nor those conveyed to the grantee may be further subdivided or separately conveyed by the grantor or the grantee or any successors or assigns of either of them.]
- v. **Required Notice of Exercise and Remaining Status of Reserved Right.** Notwithstanding, and in addition to, the deed provisions required in Sect. 3.\_\_\_.iv above, in association with any exercise of the reserved right hereunder, the Landowner and Easement Holder shall join in signing and recording at the Registry

of Deeds a “Notice of Exercise of Reserved Right in Conservation Easement” contemporaneously with any deed or other recordable instrument of conveyance to be recorded by the Landowner. The Notice shall reference the affected deeds, recite the applicability of this Sect. 3.\_\_\_, and confirm, following the conveyance referred to therein, that this reserved right will have been exercised in full as of that time. [The Notice shall reference the affected deeds, recite the applicability of this Sect. 3.\_\_\_, and confirm whether, following the conveyance(s) referred to therein, this reserved right will have been exercised in part or in full as of that time. If a single right to subdivide or separately convey remains, the Notice shall identify the portion of the Conservation Area to which the remaining, unexercised right is appurtenant.]

- vi. Following any exercise of the above rights to subdivide and separately convey, any reference to “Landowner” in this Easement shall refer to the owner(s) of each of the resulting tracts, shall apply to the owner(s) of each tract as the time, facts, and circumstances may indicate and require, and shall not create an obligation upon, or require the participation of, the owner(s) of the other tract(s) if the particular matter at issue does not involve the owner(s) of the other tract(s).

[Then revise Sect. 4. “SUBSEQUENT TRANSFER, TAXES, & MAINTENANCE” by adding “and, if any Notice required by Sect. 3. \_\_.v., above, has been recorded, to all such Notices” to the end of the first sentence.]

----- (END OF SAMPLE)

## **H. Impervious Surface Limit**

(Location: Part of Use Limitation on “Structures & Improvements”)

BIG IDEA: Creates overall cap on development, as \_\_\_% of Cons. Area (e.g. greenhouses covering “farm”)

Tailor \_\_\_%age to property, w/ default 2% per watershed & infiltration analysis

Exempted:     ag. covers/surfaces not yr-rnd.  
                  Rdways existing, or senior rts. to construct new rds.

----- (START OF SAMPLE)

- ii. **Impervious Surfaces.** Any structure and/or improvement permitted by this Sect. 2.C. shall not cause the total impervious surface coverage of the Conservation Area to exceed \_\_\_\_ square feet, as measured to the dripline in the case of any roof or other cover extending beyond the base of any structure or improvement; for the purpose of this restriction, impervious surfaces shall include but not be limited to buildings, structures, facilities, paved roads, improvements, covers, and shades, but shall specifically exclude: impervious surfaces and covers for agricultural purposes which are not in place year-round; and roadways or other improvements established on the Conservation Area by third parties exercising lawful rights obtained prior to the date

of this Easement;

----- (END OF SAMPLE)

## **I. Extinguishment & Condemnation**

(Location: With other administrative provisions, “back end”)

BIG IDEA: Important choices available to E. Holder for maximizing its share of any extinguishment/condemnation proceeds, esp. if/when big \$ involved. Revisions provide better process in case Landowner’s initially claimed deduction and appraisal get revised by audit. Language added providing for allocation of CE share among E. Holder & Exec. Int. Holders and grant funders needing recovery of investment.

Alternative language provided for three options:

- i. Landowner will provide IRS-qualified apprsl to E. Holder *after* CE closing (most common)
- ii. Landowner has provided IRS-qualified apprsl. to E. Holder by CE closing
- iii. No deduction to be claimed (e.g. Landowner is town, or nonprofit)

Determinant for type of provision to use ***used to be*** whether Landowner was going to claim ded. or not, but E. Holder may never know final outcome esp. if IRS audit or tax court case ensues

Refresher: IRS reqd. methodology (for any deductible CE) for allocating proceeds betw. Landowner & E. Holder if any exting./condemn.:

FMV of unrest. fee a/o exting/condemn. (\$100) is prorated betw. Landowner & E. Holder per FMV of their respective interests a/o CE creation (restr. fee \$20 (**40%**) + CE \$30 (**60%**) = unrest. fee \$50), so Landowner gets \$40 (40% x \$100) and E. Holder gets \$60 (60% x \$100).

Otherwise (no ded.), parties simply split \$100 proceeds per FMV of respective interests a/o exting/condemn.:

FMV Landowner’s restr. fee = \$30 (decreased, in relative terms, over yrs)  
FMV E. Holder’s CE = \$70 (increased, in relative terms, over yrs)

Optional, additional provision is provided (for first & second scenarios, when Landowner will claim ded.) for parties to split proceeds based only on FMV’s at time of condemnation ***as long as*** E. Holder’s share using that approach yields higher \$ than reliance on calculation using FMV’s a/o CE closing.

So if optional provision had been included in CE in this example, where Landowner did claim ded., E. Holder would get \$70, or \$10 more (and Landowner \$10 less) **Is in E. Holder's int. to include this option in any CE for which Landowner intends to claim ded., if Landowner will accept it.**

Additional provision is provided when grant funder/Exec. Int. Holder (e.g. LCHIP) requires recovery of investment in case of any exting/condemn. (whether Landowner claims ded. or not)

Options for E. Holder & Exec. Int. Holder to split CE proceeds based on respective contributions to:

Purchase price, or  
FMV, or  
Total project value

In case of bargain sale, E. Holder may need to negotiate w/ Landowner over which gets share of value attributable to donated portion of CE value; default wording in model favors E. Holder.

Little known: For scenarios i. & ii. (IRS ded. to be claimed), IRS allows parties to use some appraisal *other than* Landowner's IRS-qualified appraisal for arriving at split of proceeds a/o CE creation...although not often done, could be to E. Holder's big \$ advantage to use another legit. apprsl. (e.g. one to USPAP stds., where no enhancement done, yielding higher value for CE & thus bigger % of proceeds for E. Holder than reliance on IRS apprsl.) Pursue this option only w/ care & good counsel!

## **J. Sand & Gravel Extraction**

(Location: In Use Limitations)

BIG IDEA: More detailed restrictions, prompted by Accreditation stds.

Creates overall cap on size of exposed operations, as \_\_\_% of Cons. Area  
Tailor \_\_\_%age to property

Optional language for identification of "Extractive Zones" a/o CE creation vs. later

----- (START OF SAMPLE)

- E. **Mining/Extraction.** There shall be no mining, quarrying, excavation, or removal (hereinafter referred to as "Extractive Activities") of surface or subsurface materials, including but not limited to hydrocarbons, rocks, minerals, gravel, sand, topsoil, or other similar materials (hereinafter referred to as "Extractive Materials"), on, under, or from the Conservation Area, unless Extractive Activities will have a limited and localized impact on the Conservation Area, shall not be irretrievably destructive of the Conservation Attributes, shall not be detrimental to the Purposes of this Easement, and all of the following additional conditions are met:

- i. Said Extractive Activities shall be undertaken in furtherance of improvements made pursuant to and consistent with Sects. 2.A.ii. "Forestry," 2.A.iii. "Agriculture," 2.C. "Structures & Improvements," and 2.D. "Soil Disturbance..." and in accordance with relevant BMPs;
- ii. No Extractive Materials shall be removed from the Conservation Area, except with advance written approval of the Easement Holder after Easement Holder has determined, in its sole discretion, that said removal is not detrimental to the Purposes of this Easement nor significantly impairing of Conservation Attributes;
- iii. Said Extractive Activities shall be limited to specific Extraction Zone(s) approved in accordance with Sect. 2.E.viii., below, with opportunity for said Zone(s), once initially established, to be relocated from time to time by mutual agreement of the Landowner and Easement Holder, but only after a finding by the Easement Holder in its sole discretion that the proposed new location and configuration of said Zone(s) are no more detrimental to the Purposes of this Easement, nor more impairing of Conservation Attributes, than the established Zone(s) proposed to be relocated, and, further, only if said relocation does not convey impermissible private benefit;

OR [Said Extractive Activities shall be limited to the "\_\_\_\_[name of Zone]" as shown on the Survey Plan [or map entitled "\_\_\_\_" in the Baseline Documentation Report], with opportunity for said Zone(s) to be relocated from time to time by mutual agreement of the Landowner and Easement Holder, but only after a finding by the Easement Holder in its sole discretion that the proposed new location and configuration of said Zone(s) are no more detrimental to the Purposes of this Easement, nor more impairing of Conservation Attributes, than the established Zone(s) proposed to be relocated, and, further, only if said relocation does not convey impermissible private benefit;]

- iv. The maximum cumulative footprint of the Extraction Zones with exposed soil at any one time shall not exceed \_\_\_\_\_(#) square feet;
- v. Said Extractive Activities shall not significantly diminish the Conservation Area's productive capacity, including but not limited to soil productivity, to yield forest and/or agricultural products, nor the Conservation Area's potential future uses for forestry, agriculture, conservation, habitat management, outdoor recreation [and outdoor education];
- vi. Said Extractive Activities shall not significantly impair significant natural communities, or significant plant and animal species or their habitats, identified as Conservation Attributes, and with such determination of impairment, in the sole discretion of the Easement Holder, to be based upon information from the New Hampshire Natural Heritage Bureau, the New Hampshire Fish and Game Department, or the agency then recognized by the State of New Hampshire as having



responsibility for the identification and/or conservation of such communities, species, and/or habitats; and

- vii. Following the cessation of Extractive Activity within the entirety of any given Extraction Zone on the Conservation Area, the Landowner shall restore such Zone to a natural condition in conformance with all governmental laws, ordinances, rules, and regulations, including but not limited to the requirements of U.S. Treasury Regulation 1.170A-14(g)(4)(i), as may be amended from time to time;
- viii. At least forty-five (45) days prior to the initial commencement or site preparation for Extractive Activities in any Extraction Zone, or to the designation of a new Extractive Zone [for Zone(s) already defined at time of CE creation, delete immediately preceding phrase "...or to the designation...Zone"], or to the relocation of an existing Extraction Zone, the Landowner shall give the Easement Holder written notice of the commencement of said activities or of said desire to designate or [for Zone already defined at time of CE creation, delete "designate or"] relocate. Said notice shall include a detailed description of the proposed activities (hereinafter the "Extraction Plan") including but not limited to: the type(s) and volume(s) of said Extractive Materials to be mined, quarried, and/or excavated; the source locations of said Materials within the Conservation Area; the proposed uses and related locations of said Materials within the Conservation Area; the size, location, and configuration of the initial or [for Zone already defined at time of CE creation, delete "initial or"] relocated Extraction Zone; the timing, duration, and frequency of said Extractive Activities; and a plan for restoring the Extraction Zone following the cessation of Extractive Activity. The Easement Holder shall evaluate the Landowner's Extraction Plan proposal and may approve the same only if the Easement Holder finds, in its sole discretion, that the proposed Extraction Plan meets all of the above conditions in this Sect. 2.E. "Mining/Extraction," as well as all other relevant provisions of this Easement. Within thirty (30) days after Easement Holder's receipt of the Extraction Plan, the Easement Holder shall approve or disapprove in writing the proposed Extraction Plan, such approval not to be unreasonably withheld, and shall so inform the Landowner. Any disapproval shall specify the reasons therefor. All Extractive Activities shall be conducted in accordance with the terms and parameters of the approved Extraction Plan. Once an Extraction Plan has been approved by the Easement Holder, the Landowner does not need to notify the Easement Holder of individual instances of Extraction Activities within approved Extraction Zone(s) so long as the Extractive Activities are conducted in accordance with the parameters of the approved Extraction Plan.

----- (END OF SAMPLE)

#### **K. Proceedings Involving Other Parties**

(Location: With other administrative provisions, "back end")

BIG IDEA: If Landowner engages in activities w/ other parties potentially affecting E. Holder's interest, Landowner must enable E. Holder to participate

----- (START OF SAMPLE)

## **9. PROCEEDINGS INVOLVING OTHER PARTIES**

In the event of any legal or administrative proceeding or dispute relating to the Conservation Area and which involves the Landowner and a party or parties other than the Easement Holder, the Landowner shall provide to the Easement Holder prompt notice and, upon the Easement Holder's request, copies of any and all documents relating to any such proceeding or dispute. Further, the Landowner shall give the Easement Holder the opportunity to participate in the defense, settlement, or resolution of any such proceeding or dispute, and no such settlement or resolution shall be agreed to without the prior written consent of the Easement Holder, which consent shall not be unreasonably withheld, conditioned, or delayed.

----- (END OF SAMPLE)

### **L. Third-Party Violations**

(Location: Part of "Causes Beyond Landowner's Control" in Breach sect.)

BIG IDEA: Creates greater incentive for Landowner to resolve encroachments, esp. once notified of problem by E. Holder

Most common type of CE violation for For. Society

----- (START OF SAMPLE)

- i. **Third Parties.** The Landowner is responsible for the acts and omissions of other parties acting on the Landowner's behalf or direction, acting as the Landowner's tenant, or acting with the Landowner's permission, and of other parties encroaching with the Landowner's knowledge, and the Easement Holder shall have the right to enforce against the Landowner for events or circumstances inconsistent with this Easement resulting from such acts or omissions. However, as to the acts or omissions of third parties other than the aforesaid parties, the Easement Holder shall not have a right to enforce against the Landowner unless the Landowner is complicit in said acts or omissions, fails to cooperate with the Easement Holder in all respects to halt or abate the event or circumstance of non-compliance resulting from such acts or omissions, or fails to report such acts or omissions to the Easement Holder as provided for in Sect. 8.A. "Notification of Breach & Demand for Action."

----- (END OF SAMPLE)

### **M. Year-Round, Covered, Recreational or Educational Structures**

(Location: Part of Use Limitation on "Structures & Improvements")

BIG IDEA: Creates concise criteria for allowing modest structures

As for all structures/improvements:

Not detrimental to Purposes

Not significantly impairing of Cons. Attributes

(New std.) Scope & scale not inconsistent w/ site, nor w/ customary use of structure

Overnight use is temp. only

Footprint max. 500sq.ft. per structure, 750 overall

Accessway must be pervious

Height max. 30'

No power, commun., water, sewer lines from offsite

No waste water system except self-contained toilets

On-site water supply viewed as customary/ancillary

----- (START OF SAMPLE)

- iii. **Year-Round Covered Recreational or Educational Structures.** In the case of any year-round, recreational or educational structure which is covered (for example: a cabin, lean-to, gazebo, pavilion, tent, yurt, studio, hunting blind, and child's play house), said structure shall meet all of the following additional conditions:
- a. Any overnight use of said structure shall be temporary only;
  - b. The footprint of each such structure, as measured to the dripline in the case of any roof or other cover extending beyond the structure's base, shall not exceed five hundred (500) square feet in size, and the cumulative total footprint of all such structures across the entire Conservation Area shall not exceed seven hundred fifty (750) square feet in size;
  - c. Any accessway to any such structure shall consist of pervious surfaces only;
  - d. The height of any such structure shall not exceed thirty (30) feet as measured from the lowest point of said structure, at grade, to the highest point of the structure;
  - e. There shall be no utility lines, including but not limited to power, communication, water, and sewer lines with associated poles, pipes, and other structures, running on, under, or above the Conservation Area and serving said recreational or educational structures from sources outside of the Conservation Area;
  - f. There shall be no system for disposing of human waste on or under the Conservation Area and serving said structures except for self-contained facilities such as but not limited to: outhouses, composting toilets, and temporary, portable toilets;

- g. A water supply whose source is the Conservation Area and which serves said structures, such as but not limited to a spring, well, and associated pipeline and pump, would be considered a customary, ancillary improvement to such structure and is subject to the Easement Holder's approval as provided for in Sect. 2.C.vi., below, as well as to other provisions of this Easement;

----- (END OF SAMPLE)

#### **N. Structures & Improvements Requiring Approval**

(Location: Part of Use Limitation on "Structures & Improvements")

BIG IDEA: Spells out what types of structures/improvements require advance written approval from E. Holder

Construction, enlargement, or relocation of following requires advance written approval:

- Water control structures
- Water supply facility
- Recr/educ. >300 sq. ft.
- Any other str/impr. >1,000 sq. ft.

----- (START OF SAMPLE)

- vi. **Advance Approval.** Notwithstanding the above, prior to the Landowner's construction, placement, introduction, enlargement, or relocation of any of the following structures or improvements on the Conservation Area, including site preparation therefor, the Landowner must obtain advance written approval of same from the Easement Holder:
  - a. Any bridge, pond, or impoundment of surface waters by a dam, levee, or other water control structure;
  - b. The construction, installation, and/or development of any water supply facility in the Conservation Area, including but not limited to a spring, well, and associated pipeline and pump;
  - c. Any outdoor recreational or outdoor educational structure or improvement with a footprint exceeding three hundred (300) square feet, as measured to the dripline in the case of any roof or other cover extending beyond the base of any structure or improvement; and
  - d. Any other structure or improvement with a footprint exceeding one thousand (1,000) square feet, as measured to the dripline in the case of any roof or other cover extending beyond the base of any structure or improvement.

At least thirty (30) days prior to the commencement of any such construction, installation, or on-site preparation therefor including but not limited to land clearing,

the Landowner shall provide the Easement Holder with written notice containing the details of said structure or improvement including but not limited to scope, size, and location, and method and timing of said construction/installation. Within thirty (30) days after Easement Holder's receipt of such notice, the Easement Holder shall approve or disapprove in writing the proposed structure or improvement, such approval not to be unreasonably withheld, and shall so inform the Landowner. Any disapproval shall specify the reasons therefor.

----- (END OF SAMPLE)

#### **IV. Conclusion, Evaluation Forms**

FOR DIGITAL VERSION OF UPDATED MODEL, ADD NAME & EMAIL TO SIGN-UP LIST, OR SEND EMAIL TO [thowe@forestsociety.org](mailto:thowe@forestsociety.org)