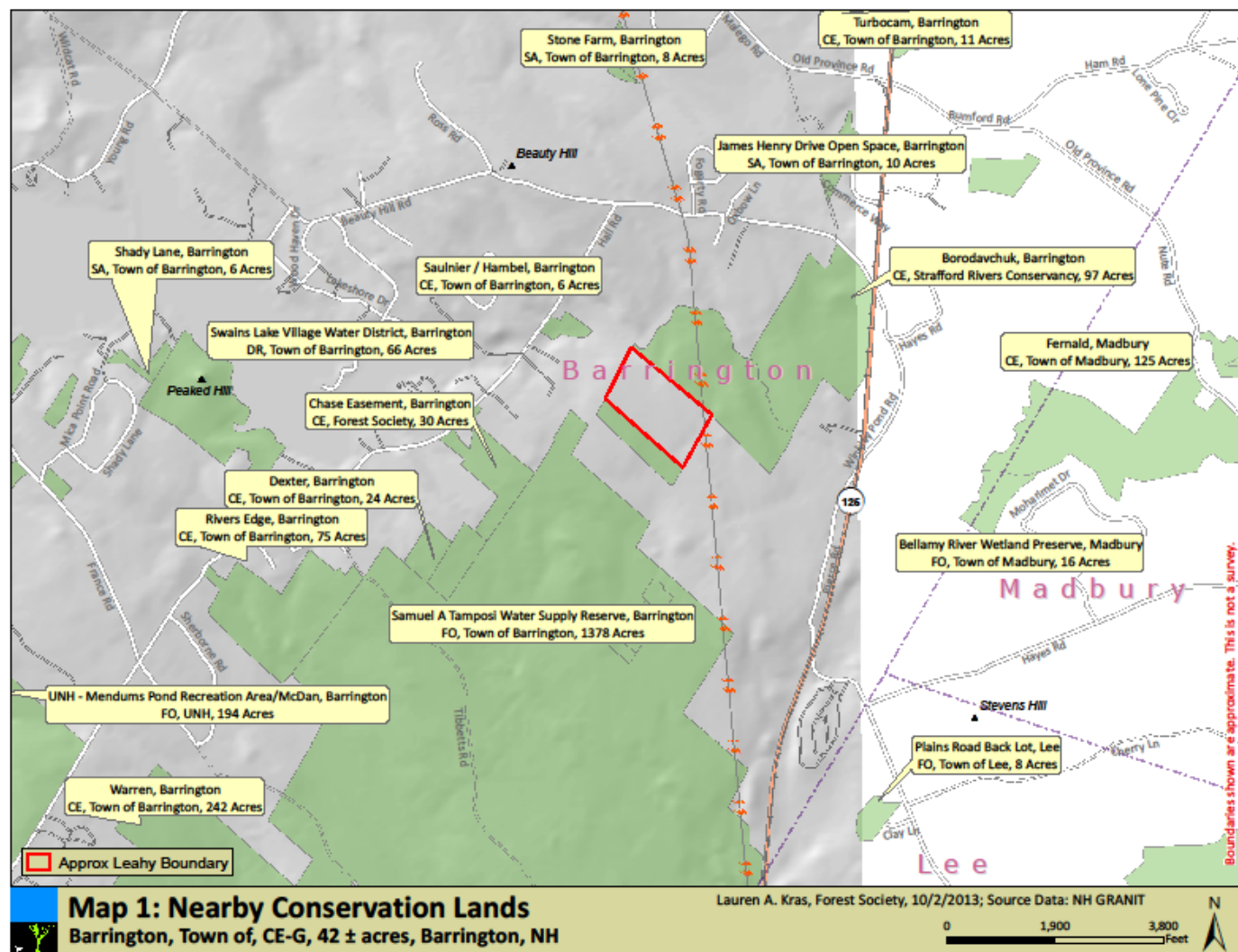


# Amending Conservation Easements in New Hampshire



Second Connecticut Lake from Magalloway Fire Tower

# Low Risk Amendments



# Practical Tips for “Low Risk” Amendments

- Additions without other modifications are considered low risk amendments
- Required to send notice to AG, but don't expect a response
- Can landowner subdivide additional parcel from original CE?
- “AS AMENDED HEREBY, and WITH THIS ADDITION TO the Conservation Easement Property, in all other respects said Conservation Easement Deed is hereby ratified and reconfirmed, and shall in all other respects remain unchanged and in full force and effect.”

# “More Risk” Amendments

- Clarify **ambiguous terms**
- **Relocate** a reserved right
- Add **new reserved rights** in exchange for the reduction or termination of others
- **Improve enforceability** by removing restrictions that provide no conservation benefit



# "More Risk" Amendment Case Study

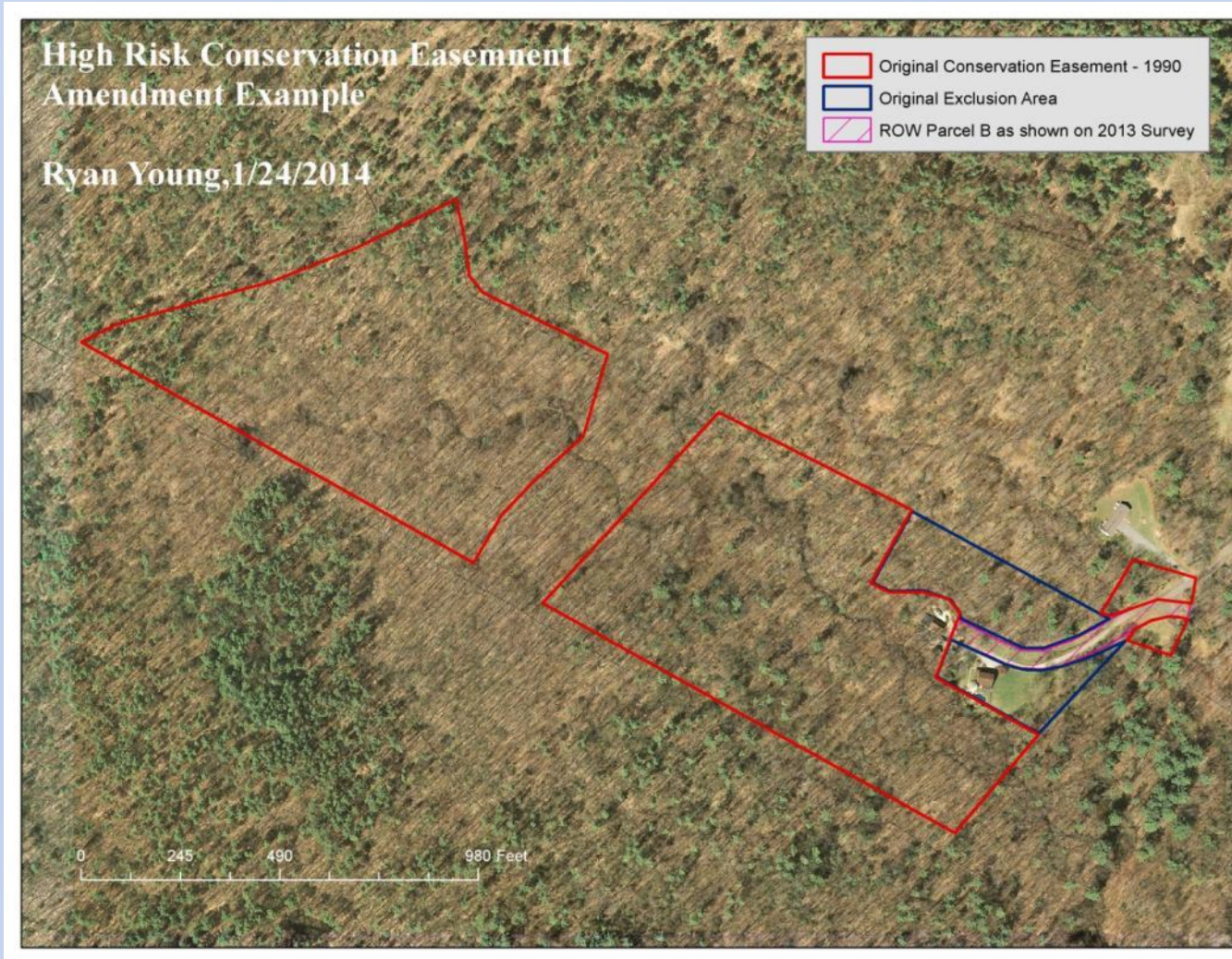
The Restrictions are as follows:

- a. No buildings or other structures of any kind, temporary or permanent, including billboards or other means of advertisement, mobile homes and trailers shall be erected or maintained except as hereinafter provided;
- b. No commercial use shall be made except as hereinafter provided;
- c. No stones shall be removed from existing walls;
- d. No industrial or mining use shall be made.
- e. No subdivision of the Property shall be made.
- f. No trail, road, dam, fence, bridge, culvert, fireplace or other structure in addition to those now in existence shall be constructed except if deemed necessary by concurrence of Grantors and Grantee to safeguard the character of the Property,

nor shall any changes in the natural topography be made by fill, dumping, excavation or removal except as hereinafter provided;

- g. No clear-cutting, cutting of den trees, Christmas trees, or picking of wildflowers shall be done; no cutting or selective removal of timber or flora shall be engaged in except as hereinafter provided;
- h. No dumping of trash, ashes, sawdust or other materials shall be engaged in;
- i. No burning or fires of any kind shall be made;
- j. No motorized vehicles of any kind shall be used, except as hereinafter provided;
- k. No hunting or trapping of animals shall be done;
- l. No permission shall be granted to anyone to do any acts forbidden by the foregoing provisions.

# “High Risk” Amendment Case Study













# High Risk Conservation Easement Amendment Example

Ryan Young, 1/24/2014

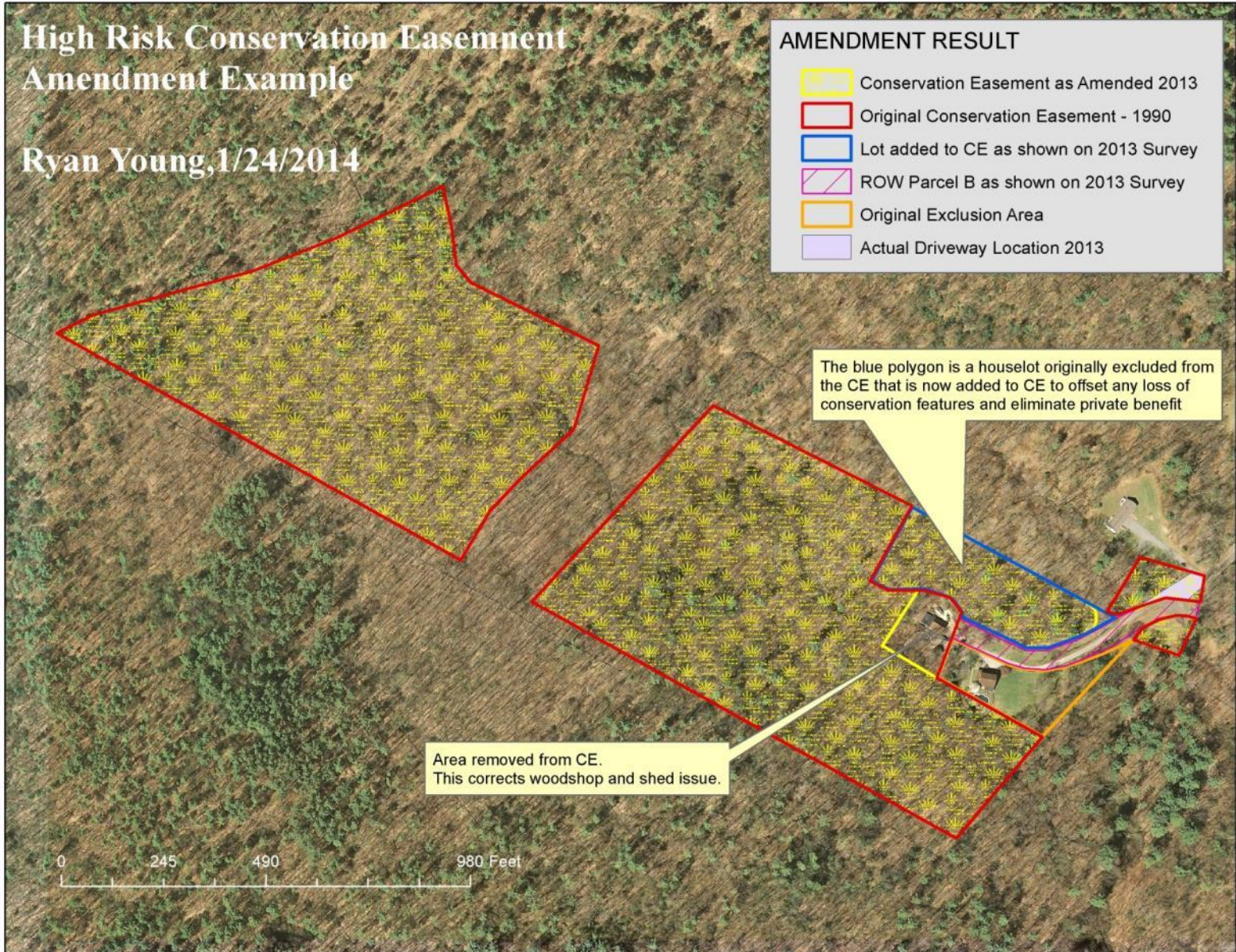
## AMENDMENT RESULT

- Conservation Easement as Amended 2013
- Original Conservation Easement - 1990
- Lot added to CE as shown on 2013 Survey
- ROW Parcel B as shown on 2013 Survey
- Original Exclusion Area
- Actual Driveway Location 2013

The blue polygon is a houselot originally excluded from the CE that is now added to CE to offset any loss of conservation features and eliminate private benefit

Area removed from CE.  
This corrects woodshop and shed issue.

0 245 490 980 Feet



# Amendment Policy

“Our policy is to hold and enforce conservation easements as written. Amendments to conservation easements will be authorized only under exceptional circumstances and then only under all of the conditions below...”

- In no case will an amendment be allowed that will **adversely affect the qualification** of the easement or the organization’s **qualification as a charitable organization**
- Issues of **private benefit** or inurement will be taken into account when considering amendments to easements, as required by IRS regulations
- The amendment has a **net beneficial** or neutral effect on the relevant **conservation attributes** protected by the easement
- The modifications are consistent with the **documented intent** and/or restrictions **of the grantor**
- The amendment complies with all applicable federal, state and local laws
- The modifications are **consistent with the purposes and intent of the original easement**
- The Amendment is **acceptable** to the **New Hampshire AG, Charitable Trusts Division**
- The Amendment will be acceptable to the organization’s **Board of Trustees** in its absolute discretion



# Policy Considerations

- Does the amendment set an **unfavorable precedent** for future amendments?
- Does the amendment have any adverse impact upon the **public confidence** in your organization?
- Is the modification **monitorable and enforceable**?
- Is additional **stewardship endowment** required?
- Would you accept a modification by which additional land outside the current easement Property is protected in exchange for modification of easement terms *on* the current Property?

# Other Considerations

- Staff time and opportunity cost
- Who will pay for your expenses?
  - Time
  - Legal
  - Surveying
  - Title
  - Baseline





# Practical Tips

- Always initiate title work for any amendment
- Must have EI holder sign, even if did not sign onto CE
- Follow policy for land protection project – disclosures for financial/tax advice, appraisal information and 8283.
- Update your baseline with a complete Current Conditions Report
- Is there an amendment provision in CE?

# Tips for Working with the AG

- Specifically address the “seven principles” in your letter to AG
- Specifically address how the amendment complies with your policy
- The AG will require your board to approve the amendment before they will approve it





# 990

- Deed restrictions count in definitions
- Must report additions, condemnations, boundary line adjustments and assingments
- See Schedule D instructions



# Discretionary Consent





# Goal & Challenge

- **Goal:** Landowner wants to engage in agrotourism
- **Challenge:** Permitted agriculture narrowly described in easement

# Short-Term Solution

- **Discretionary Consent Guidelines**

- Key Limitations:

- De minimus effect on conservation purposes
    - Ancillary to agriculture or forestry uses
    - Vegetation or soil impacts temporary
    - No parking lot or parking area
    - Permitted for 1-2 years for current landowner



# Short-Term Solution (cont.)

- **Discretionary Consent Guidelines**
  - Review Process:
    - Submit request in writing 90 days prior
    - Details regarding size, location, and frequency
    - Approval letter considerations

# Long-Term Solutions

- Discretionary consent provision
- Reserved right for agrotourism
- Define agriculture to include agrotourism



# Example: Discretionary Consent



# Amendment vs Discretionary Consent

