



Permanently
Protecting
Water Supply Lands
with
Conservation
Easements



**Society for the Protection of
New Hampshire Forests**

Sarah Thorne, Special Projects Director

October, 1997

Funded with a grant from the
Nonpoint Source Pollution Program, (Section 319)
US Environmental Protection Agency,
New Hampshire Department of Environmental Services

Table of Contents

Introduction	2
Acquisition as a Source Water Protection Strategy	3
The Conservation Easement Alternative	3
When to Use	4
Background to Model Easements	5
Where to Use Conservation Easements	6
Costs of Contamination vs. Costs of Acquisition	8
Funding Sources	11
Making Easements Last: Responsibilities of Easement Holders	12

Appendices

A. Conservation Easement: Questions and Answers	14
B. Known Public Drinking Water Supply Conservation Easements	17
C. Surface Water Model Conservation Easement	18
D. Groundwater Model Conservation Easement	28
E. Reviewers of Model Conservation Easements	38
F. Advisory Committee	40
G. Bibliography	41

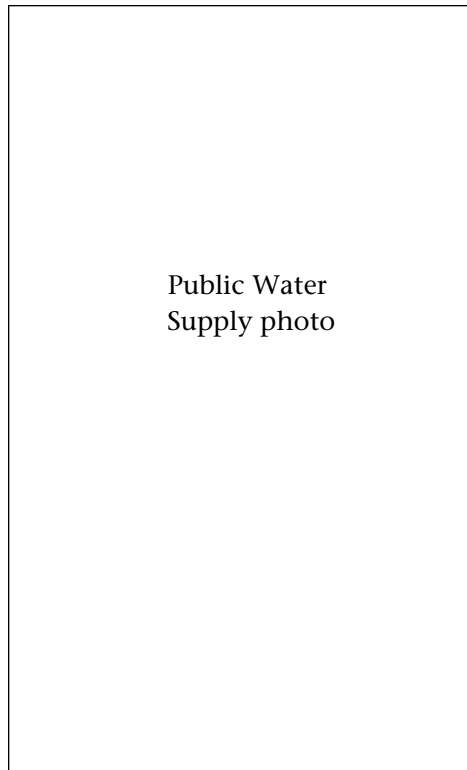
For more information, please contact:

Society for the Protection of New Hampshire Forests
54 Portsmouth Street • Concord, NH 03301 • 603/224-9945

Introduction

Many communities are fortunate that their water supply lands — including wellhead areas, land overlying high yield aquifers, and reservoir watersheds — are relatively undeveloped and free of pollution. But, these valuable lands are rapidly being converted to uses that portend costly clean-ups or require expensive treatment and regulation.

Communities have the option of permanently protecting these critical lands from development and misuse by acquiring the land or conservation easements on the land. By doing so, they can prevent contamination, and avoid substantial expenses, health threats, supply interruptions and enforcement problems.



Public Water
Supply photo

FORESTS ARE THE IDEAL PRE-TREATMENT
FOR PUBLIC DRINKING WATER.

Conservation easements are permanent contracts which protect land from development and mismanagement. Their potential to protect extensive water supply lands has only recently been recognized by a handful of water suppliers who have used them where full ownership is not feasible.

Because of the new opportunities which easements offer, a model water supply protection conservation easement project was undertaken by the **Society for the Protection of New Hampshire Forests** .

The project was funded by the U.S. Environmental Protection Agency through the New Hampshire Department of Environmental Services' 319 Non-point Source Pollution Grant Program.

This report contains the model easements and guidance on how, when and where to use them. We gratefully acknowledge the assistance of the project advisory committee (see Appendix F), easement reviewers, and the staff of the New Hampshire Department of Environmental Services.

Acquisition as a Source Water Protection Strategy

The most secure means of protecting drinking water is to acquire the land or controlling interests in the land at the source. Acquisition of conservation easements can be used in conjunction with regulation, education, and best management practices. It should be based upon a community water supply protection planning process (*see sidebar on page 4*). Acquisition has the advantage of being the method of protection that is most permanent and gives the water supplier the greatest degree of control.

Because acquisition can be expensive up front, it often is not used to protect water sources. However, land acquisition can look very attractive when compared to the full costs of contamination and alternate protection methods over the life of the water source.

Types of acquisition can include permanent ownership of all property rights; permanent ownership of partial property rights such as conservation easements or development rights; long term leases; and water extraction rights. The focus of this report is on conservation easements.

Land acquisition can look very attractive when compared to the full costs of contamination and regulations over the life of the water source.

The Conservation Easement Alternative

A conservation easement is a permanent legal agreement between a land-owner and a public agency or private, non-profit conservation organization. It allows the land to be used for purposes that uphold the conservation values of the property and remain in the hands of the private owner. Residential, industrial, and commercial development and subdivision, plus other activities damaging to the land and water resources, are not allowed. These restrictions are binding on all future owners of the property and are enforced by the agency or conservation organization which holds the easement. (*See Appendix A for general information about easements and the book by Diehl in bibliography.*)

Conservation easements have been in common use in New Hampshire and many other states for over 20 years. Private land conservation organizations and public agencies, along with the landowners who have granted them, have used conservation easements to protect a diverse array of natural resources. Typically these resources include scenic vistas, productive farmland, unusual wildlife habitat, wetlands and shoreline, and large tracts of forestland. As yet, conservation easements have been used explicitly to protect drinking water supply lands in only a few cases (*see Appendix B*).

Conservation easements can be an effective tool to protect public drinking water supplies from contamination. They prohibit incompatible land uses in close proximity to the water source, thus helping assure high water quality and a plentiful supply far into the future. Like land acquisition, easement acquisition is a permanent means of water supply protection.

When to Use

Water Supply Land Protection Plan

1. Organize a community drinking water supply task force
2. Review available documents and maps
3. Delineate important water supply lands on maps
4. Assess other natural resource values on water supply lands
5. Consider impact of state and local regulations on these lands
6. Review land ownership, assessed values and uses of these lands
7. Identify and assess potential threats to these lands/ waters
8. Establish priorities, protection methods and funding sources
9. Develop landowner contact strategy
10. Implement plan

In many cases, a water supplier will want to acquire full ownership of water source lands. This is especially true for wellhead or intake facilities and the sanitary radius for the well.

However, a conservation easement can be an excellent alternative to full ownership in many situations. *For example:*

- Many private landowners are unwilling to convey full ownership of their land. They may be emotionally attached to their land. It may have been in their family for many years. They may rely on their land to make a living. They may be uneasy about having a public agency or private water company as a neighbor.

These same owners, however, may be willing to convey a conservation easement which will protect the water supply and allow them to continue their traditional uses and enjoyment of their property.

- A (non-water supplying) public agency or conservation organization may want to own and manage their land for purposes compatible with furnishing drinking water (e.g. habitat protection, hunting, hiking, forestry, research and education) but may not want to relinquish ownership.
- A water supplier may not want to own more land itself or take it off the tax rolls (if it is a government agency). Perhaps there is strong sentiment in town against more government ownership of land. Land under conservation easement stays on the tax rolls. Conservation easement land qualifies for Current Use tax assessment according to New Hampshire RSA 79-B.
- A water supplier may not be able to afford to buy the land but might be able to afford the easement. Depending on the development value of the land, an

easement could be worth only 10% of the land value if the land is in a remote area or it could be worth 95% in an urbanizing area.

- A water system-owned wellhead or reservoir needs additional buffering, but full ownership of additional land is unnecessary.
- Regulations may not provide enough protection for specific properties or long-term security for the supply due to the granting of zoning variances and special exceptions, lack of enforcement, or zoning amendments.
- Adequate regulations may not be politically feasible.

Background to Model Easements

The Society for the Protection of New Hampshire Forests has developed two model conservation easements for use in protecting significant water supply lands. Copies of these easements are included in Appendices C and D.

They consist of:

- model conservation easement for use primarily by water suppliers to protect watersheds for surface drinking water supplies;
- model conservation easement for use primarily by water suppliers to protect *wellhead protection areas* or *high-yield aquifers* for drinking water supplies;

The conservation easements were developed to give water suppliers and land conservation organizations a powerful tool to protect sources of drinking water. The provisions of these easements are more rigorous than most conservation easements in common use by conservation organizations. Because of the detailed provisions and perpetual monitoring responsibilities associated with these easements, water suppliers or sophisticated conservation organizations are the most appropriate recipients.

These water supply models draw heavily upon the standard conservation easement used by the Society for the Protection of New Hampshire Forests. The Society is the leading private easement holder in New Hampshire, with 252 easements protecting 46,112 acres. In addition, substantial text was used from the model conservation easement developed by the Land Trust Alliance, a national land conservation organizations (*see Barrett in bibliography*).

A conservation easement can be an excellent alternative to full ownership in many situations.

The easement provisions relating to water supply protection and extraction are newly created as a result of this project. Project research included the review of existing regulations, scientific studies, statutory definitions, protective easements, best management practices, and watershed management policies. A bibliography of these sources is found in Appendix G.

The draft easements were reviewed at various stages by three types of experts: water supply public officials, scientists and planners; land conservation professionals; and attorneys. A list of the reviewers is found in Appendix E. The Society continues to welcome comments and reports of how these easements are used.

Where to Use Conservation Easements

Conservation easements are valuable protection tools on the following types of drinking water supply lands:

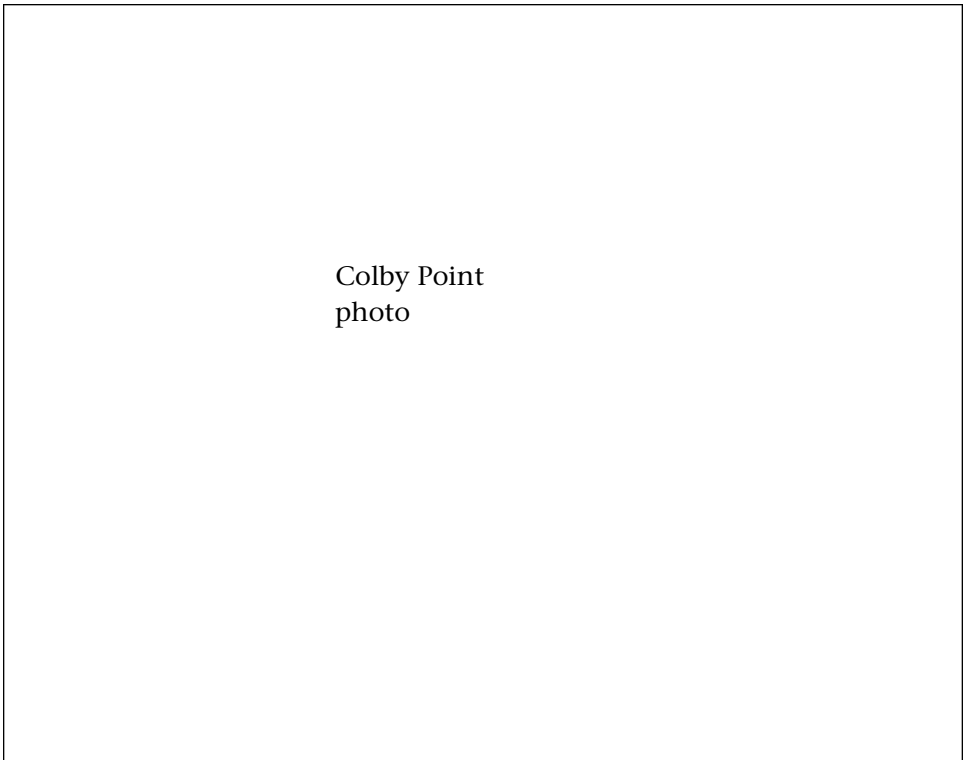
- on lands within reservoir watersheds for public drinking water supplies, especially within 4000 feet or so of the intake and along reservoir shore lines and tributaries;
- on lands overlying high yield aquifers (especially those mapped by the U.S. Geological Survey with transmissivities over 1000 sq. ft. per day) or bedrock aquifers identified in the New Hampshire Bedrock Aquifer Assessment by USGS;
- on lands contributing water to wells or designated “wellhead protection areas” and/or
- particularly on steep slopes, highly erodible soils, and poorly drained soils within the above areas.

These conservation easements give water suppliers and other land conservation organizations a powerful tool to protect sources of drinking water.

As with any legal document, expert legal counsel should be retained by all parties. Outside New Hampshire, consistency with state statutes should be considered. In addition, the models should be carefully adapted, as appropriate, to suit the hydrology, soils, topography and other natural resource characteristics of the land in question. If there are pre-existing uses that could be problematic, they need to be addressed.

Permanently Protecting Water Supply Lands with Conservation Easements

The model surface water easement purposefully has not been drafted to cover uses on the reservoir itself. Restrictions such as these, particularly when of a recreational or transient nature, could better be dealt with through local ordinances or management contracts. These can be adapted to respond to changing needs and problems, unlike an easement, which is perpetual.



A CONSERVATION EASEMENT HELD BY THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS PROTECTS THIS 23 ACRE SHORELINE FOREST. THE NEW LONDON-SPRINGFIELD WATER PRECINCT HAS INSTALLED 6 WELLS BELOW GRADE ON THE PROPERTY. THE WATER MAIN SNAKES UNOBTUSIVELY ALONG THE PRE-EXISTING WOODS ROAD. THIS IS A WIN-WIN-WIN OUTCOME FOR THE LANDOWNER, THE LAND TRUST AND THE WATER SUPPLIER.

Costs of Contamination vs. Costs of Acquisition

Understanding the risks and costs of contamination is important in evaluating whether or not to invest in alternative prevention strategies. Conducting such a risk analysis was not part of this project. However, some limited information on the costs and occurrence of contamination was gathered.

In New Hampshire, 37 public water supply wells have been contaminated with industrial chemicals and 75 public wells with the gasoline additive MTBE. (*DES Guide to Groundwater Protection, 1996*). The costs of contamination in New Hampshire have not been collected in a central data base, and in many instances, have not been totaled for individual sites.

Sites for which cost information could be gathered for this project are listed in Table 1. below.

Cleaning up the contamination was on average 27 times as costly as basic regulatory and education measures would have been.

Table 1. Contamination Costs for Selected Public Water Supplies

WATER SYSTEM	YEAR	CUSTOMERS	CONTAMINANTS	TOTAL COSTS
Seabrook well #1	1989	7000-14,000	VOCs	\$500,000
Merrimack well #61985	1985	10-20,000	VOCs DNAPL	\$1,000,000
Milford (Savage, Keyes wells)	1983-4	3-6000	VOCs DNAPL	\$26,000,000
Peterborough south well	1982		PCBs, VOCs DNAPL	\$7,400,000

The EPA has conducted a study entitled "Benefits and Costs of Prevention: Case Studies of Community Wellhead Protection," Nov. 1995. In it, they compared the costs of contamination for 6 wells with the costs of wellhead protection measures which could have prevented the contamination. Their findings were that the average cost of contamination per well was \$933,092. The average cost of wellhead protection measures (not including acquisition) would have been \$34,740. Cleaning up the contamination was on average 27 times as costly as basic regulatory and education measures would have been. This study did not estimate the cost of acquisition as a protection strategy.

The State of Maine commissioned a study entitled, "The Costs of No Wellhead Protection in Maine," November, 1993, by Emery & Garrett

Groundwater, Inc. Of 47 large public wells in Maine, 7 had been shut down due to contamination. The average cost of contamination for 6 of these sites was \$806,000. This figure is similar to that in the EPA study and in keeping with the limited cost data from New Hampshire.

Each protection alternative — education, best management practices, land use regulation, and acquisition — has a cost. Costs vary considerably, depending in part on the potential threats and the cooperation of landowners and the enforcement officials. This project did not compare costs for the various protection alternatives. Each alternative would need to be assessed for the degree of risk that it removes, the up-front costs, and recurring costs.

In the table below are listed various assumptions for the costs of acquisition to protect hypothetical source water protection areas (SWPAs). The costs could represent the acquisition of either easements or full ownership. In urban areas with higher land values, it is likely that much of the SWPA is already developed and thus unavailable for acquisition. In these areas, it is assumed that less than the full SWPA would be purchased.

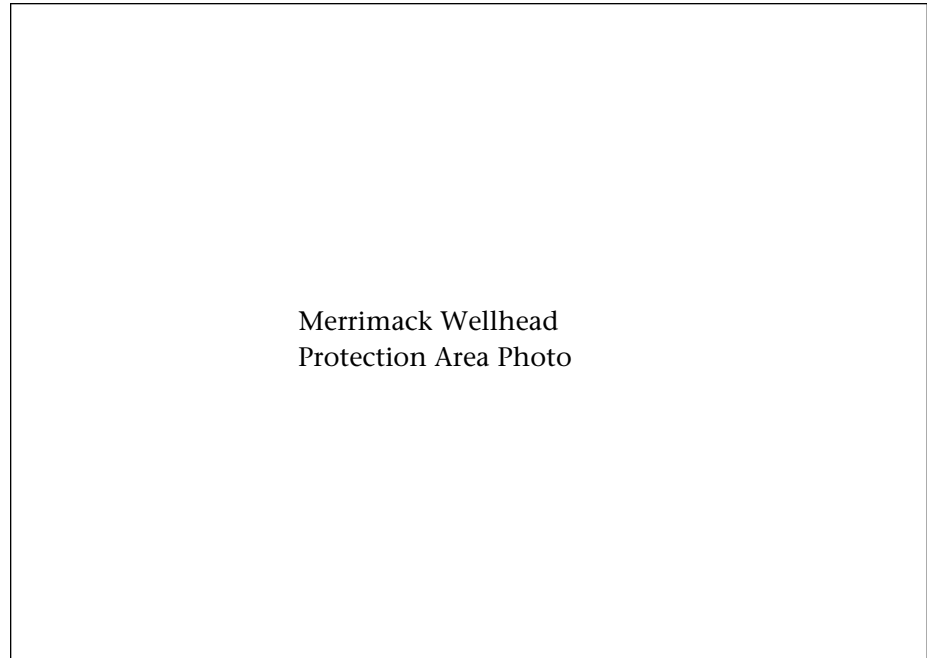
The first example represents a well in a rural area serving a small population. The SWPA is undeveloped, remote from main roads and is available for acquisition. The second example is in a suburbanizing area that is partially developed and has higher land values. Only half of the SWPA is available for acquisition. The third example represents a high yielding well in an urban area. Here the cost of protecting only one quarter of the area is \$1.25 million.

The costs of land acquisition compare quite favorably with the costs of contamination in the less urban locations of this EPA study.

Table 2. Acquisition Costs to Protect Hypothetical Source Water Protection Areas

	Rural Area	Suburbanizing Area	Urban Area
ACREAGE OF SWPA	250	250	250
Cost per acre	\$500	\$5,000	\$20,000
% of SWPA	100	50	25
Acquired Cost	\$125,000	\$625,000	\$1,250,000

These examples illustrate the importance of acquiring land, whenever possible, before an area becomes urbanized. An acquisition program with limited funds may be even more cost-effective if it concentrates on protecting



IN MANY URBAN AREAS, WELLHEAD PROTECTION AREAS (INSIDE BOLD LINE) HAVE ALREADY BEEN DEVELOPED WITH HOMES AND INDUSTRIES USING TOXIC SUBSTANCES.

Many water supply lands also possess significant natural resource values other than drinking water – for example, wildlife habitat, productive forests or farms, scenic lands, and recreational lands.

new water supplies in areas that are less fragmented by development and subdivision. In addition, administrative costs can be minimized when the average parcel size is larger. The costs of acquisition compare quite favorably with the costs of contamination in the less urban locations.

It is important to consider the time period when comparing the potential risks and costs of contamination with the costs of protection alternatives. Potential savings from acquisition are large if the time period for comparison is the life of the wellfield. With sufficient protection and management, wellfield life should be indefinite (until the next ice age!). Alternatively, without sufficient protection, contamination could be a recurring cost—whether every 50 or 150 years.

A true comparison of costs of acquisition and contamination is not possible due to the very short-lived experience that we have with modern contaminants and water supply technologies. Contamination rates may go down over time from any one source, but the usage and number of sources may go up. Handling and storage procedures may improve but the toxicity of chemicals or pathogens may become more serious. Each water supplier needs to assess their own situation to select the properties for which acquisition is a good investment.

Funding Sources.....

The same sources of funding employed for land acquisition can be used for conservation easement acquisition. Multiple sources of funding and financing can be applied to a particular acquisition or to create a revolving acquisition fund. Potential funding sources include:

- annual appropriations
- general obligation bonds (e.g. repaid by state or local taxes)
- revenue bonds (e.g. repaid by fees or water rates)
- direct water rates
- hook-up fees for new water consumers
- permit or impact fees for new developments
- Drinking Water State Revolving Fund
- private donations of cash or easements
- bargain sales of easements
- real estate transfer taxes
- government or foundation grants (e.g. for special habitat, recreation lands)

A Drinking Water State Revolving Fund has been set up for each state by the EPA. States are adding their own funds to the federal allocations and the funds should be self-perpetuating within the next decade. Loans and grants will be made for drinking water infrastructure, treatment plants and source protection activities. In conjunction with EPA's new emphasis on "source water protection," land and conservation easement acquisition integral to water sources qualify for loans. These loans are at much lower interest rates than most water suppliers could otherwise secure and can significantly lower overall acquisition costs.

Many water supply lands also possess significant natural resource values other than drinking water—for example, wildlife habitat, productive forests or farms, scenic lands, and recreational lands. By focusing on these values and forming coalitions with advocates for these other resources, additional funds can be mobilized. In some situations, raising \$1 million for water supply protection alone may be unfeasible, but a partnership of interests raising money for a recreation/water supply area may succeed. This may be particularly true in more urban areas where there is a high demand for recreation lands.

By working in partnership, water suppliers, conservationists and recreationists can secure more funds from more sources than any of these parties would on

By working in partnership, water suppliers, conservationists, and recreationists can secure more funds from more sources than any of these parties would on their own.

their own. Particularly when private conservation organizations are involved, landowners may be willing to make donations or partial donations of their conservation easements or land. Significant income and estate tax advantages can provide additional incentives for landowners to make donations of cash or conservation easements.

Monadnock
photo

A 500 ACRE WATERSHED ON THE SIDE OF MOUNT MONADNOCK FEEDS THE TOWN OF TROY'S RESERVOIR IN SOUTHWESTERN NEW HAMPSHIRE. 92% OF THE WATERSHED HAS BEEN PERMANENTLY PROTECTED FOR CLEAN WATER, SCENIC BEAUTY, FOREST PRODUCTS AND NON-MOTORIZED RECREATION.

Making Easements Last: Responsibilities of Easement Holders.....

Water supply protection conservation easements contain more restrictions than many general, "all purpose" easements. Therefore, preparing for the perpetual stewardship of these easements is particularly important. Easement holders need to have the professional and financial resources necessary to properly draft, monitor and enforce their conservation easements. Easement holders could include the municipality, state, county, water authority or other branch of government. They could also include private non-profit organizations such as watershed associations and land trusts which have land and natural resource conservation as part of their missions. In some states, private water companies may also be able to hold conservation easements. Potential easement holders should seek legal advice to determine whether their state's statutes (or IRS regulations in the case of donated easements)

place any constraints on their ability to receive and enforce conservation easements.

An excellent guide to easement stewardship already exists (*see publication by Lind in bibliography*). In addition to annual monitoring visits, holders of water supply protection easements should also plan for these stewardship activities:

- collect comprehensive water quality and yield information to document the baseline condition
- monitor water quality parameters periodically
- monitor water table levels in wells and surrounding surface water bodies
- meet/communicate frequently with easement landowners and land managers to review easement terms, management plans, best management practices
- educate and monitor recreational users
- educate water consumers.

Conservation easements are usually set up to be perpetual. Limited term easements should be used only with great caution. Even if a water supply might be abandoned, a strong argument can be made in favor of perpetual land protection. It is likely that there are other significant natural resource values associated with the water supply land that merit perpetual protection. In addition, a water supply that is abandoned today might be a desperately needed resource in the future. If the easement is perpetual, the land will always be there to yield clean water.

To provide further protection, a back-up easement holder can be named in the easement document. If the primary holder is dissolved or fails to enforce the easement, the back-up holder can step in to uphold the easement.

As with land ownership, conservation easement “ownership” entails significant, long term responsibilities for the easement holder. However, for the right landowner and the right land, conservation easements may be the most cost-effective and secure means of protecting the water supply.

For more information, contact:

Society for the Protection of New Hampshire Forests
54 Portsmouth Street
Concord, New Hampshire 03301
(603)224-9945

APPENDIX A

Conservation Easement Questions and Answers

A conservation easement (sometimes called a conservation restriction) is a practical way for private landowners to protect environmentally significant land while retaining their ownership.

Easements provide permanent protection from land use that could damage or destroy its scenic, recreational, ecological, and natural resource values.

Generally, easements are donated to a non-profit conservation organization or public agency, which enforces the restrictions in perpetuity. Each easement is tailored to fit the natural characteristics of the land, the personal needs of the owners, and the objectives of the organization or agency.

Land ownership and conservation easements

As a landowner, you have certain rights to use and modify the land and natural resources of your property. In the past, some of these rights — such as mining and timber cutting — have been used, taxed, or transferred separately from the land itself. A conservation easement is based on this principle of separating land ownership rights.

A conservation easement is a legal agreement between a landowner (the grantor) and a conservation organization or agency (the grantee). The agreement separates the rights to exercise more intensive uses — such as construction, subdivision, and mining — from other rights of ownership. These “development rights” are then transferred to the grantee through the conservation easement deed. The grantee agrees to hold but not use the development rights and to ensure that they are not used by anyone else. Conservation easements are granted in perpetuity and apply to the land regardless of who may own it in the future.

Land under easement is still privately owned and managed. Typically, it is used for agriculture, forestry, wildlife habitat, scenic views, watershed protection, recreation, and education. Working together, the landowner and the grantee determine the appropriate land uses, which are then detailed in the easement deed.

What uses are prohibited on conservation easement land?

Most easements prohibit commercial, industrial, and mining uses of the land. These include: changing the topography, such as dredging and filling in wetlands or along shorelines; disturbing the habitat of rare or endangered species of plants or animals; erecting outdoor advertising structures such as billboards; removing topsoil and other surface or sub-surface materials; and constructing residential, commercial, or industrial buildings. (Some limited development of new homes can be negotiated in certain cases.)

What uses are permitted?

Agricultural and forestry activities are permitted and encouraged on most easement-protected land. These include: managing the land to improve wildlife habitat; changing the topography for farming or forestry; and building structures such as culverts, bridges, signs, barns, sheds, fences and dams, when necessary for farming and forestry.

Who accepts and enforces conservation easements?

According to New Hampshire state law (RSA 477:45-47), easements can be accepted and enforced by certain conservation organizations and government agencies. Most often, easements are donated, but they can occasionally be sold for full or partial value. This value is determined through a qualified appraisal.

Private, non-profit groups such as the Society for the Protection of New Hampshire Forests, the Audubon Society, The Nature Conservancy, and local land trusts, are equipped to receive and enforce conservation easements. Public agencies such as town conservation commissions, county conservation districts, the Department of Fish and Game, and the Division of Parks and Recreation also hold easements.

Does granting a conservation easement give the public the right to enter my property?

Not unless you allow it. Most easements let the landowner decide whether or not to allow public access. Sometimes a land-owner gives the public the right to cross the property as part of the easement agreement. This right is usually granted when part of the land traditionally has been used as a public trail or access point to a public pond or lake.

Does the easement restrict my ability to sell, devise, or give my land in the future?

Land protected by easement can be sold, given, or otherwise transferred at any time. Such transfers will not affect the integrity or enforceability of the easement. This is one of the key benefits to protecting land through a conservation easement.

Are there financial benefits to donating a conservation easement?

Income taxes: Donation of development rights through an easement constitutes a charitable gift, which may be deductible for federal income tax purposes. The value of the gift, determined through a qualified appraisal, is equal to the difference between the fair market value of the property before and after the easement is donated. To be deductible, an easement must meet certain minimum conservation objectives established by the federal government.

Estate taxes: State and federal inheritance taxes on unrestricted land are often so high that the heirs are forced to sell some or all of the land just to pay these taxes. Because an easement reduces the value of the property and therefore the value of the landowner's estate, the inheritance taxes are also reduced. Thus, an easement may enable heirs to keep land that they otherwise would have to sell.

Gift taxes: When a landowner gives land to a family member, the gift is subject to federal gift taxes if its value exceeds the maximum tax-free amount.

Lowering the value of the land through an easement may allow the owner to give more land in any one year without creating a gift tax, or it may help reduce the amount of tax owed.

Property taxes: Most property protected under a conservation easement qualifies for reduced taxation under current use or conservation restriction assessment, and landowners are usually encouraged to apply. Landowners whose property is already enrolled in current use will rarely see any further reduction in property taxes as the result of granting a conservation easement.

How are conservation easements enforced?

The grantee organization or agency must monitor easement-protected land at least once a year to determine that the restrictions have not been violated. Careful monitoring records and photographs are maintained by the grantee.

If the grantee discovers a violation during monitoring, the organization immediately notifies the landowner and takes steps to halt the violation and rectify any damages. Specific procedures for this enforcement are outlined in the easement document. Often, another organization will be given “back-up” or executory interest in the easement to prevent violations if the grantee becomes unable to carry out its responsibilities.

Who has granted easements on their land?

Nationwide, concerned landowners have granted easements on more than two million acres of land. In New Hampshire alone, more than 500 landowners have donated or sold easements on their land since 1970. They include farmers, forestland owners, and rural residents who hold their land for recreational or conservation purposes. People who grant easements share a desire to protect and enhance the natural and scenic resources of the state.

Society for the Protection of New Hampshire Forests

As part of its New Hampshire land protection program, the Society pioneered the use of conservation easements in the early 1970s. Today, the Society holds an interest in more than 350 easements protecting more than 54,000 acres in every corner of the state. Our land protection specialists are trained and experienced in negotiating easements, and have worked with legal experts to develop draft documents to assist you.

For more information, please call or write:

Society for the Protection of New Hampshire Forests
54 Portsmouth Street
Concord, New Hampshire 03301
(603)224-9945 Fax: (603)228-0423
E-mail: rconroy@spnhf.org

APPENDIX B

Known Public Drinking Water Supply Conservation Easements

<u>Grantee</u>	<u>Contact Person</u>
South Florida Water Management District (FL)	Fred Davis (800) 432-2045
Minnesota Board of Water and Soil Resources	Tim Fredbo (612) 297-5615
Orange Water and Sewer Authority (N.C.)	Edward Holland (919) 968-4421
The Nature Conservancy (Greenville, S.C.)	
Mashpee Water District (MA)	B. Jean Thomas (508) 477-6767
Town of Belchertown (MA)	Joel Lerner (617) 727-1552
City of Dover (New Hampshire)	William Boulanger (603) 743-6078
City of New York	David Tobias (914) 742-2086
Auburn Water District (ME)	Norm Lamie (207) 784-6469
Providence Water (RI)	Rich Blodgett (401) 828-1660
Metropolitan District Commission (MA)	Robert O'Connor (617) 727-5294
Town of Hancock (New Hampshire)	Meade Cadot (603) 525-3394
Society for the Protection of New Hampshire Forests (603)224-9945	Sarah Thorne

(Known to be in effect as of 8/97)

APPENDIX C

Surface Water Model Conservation Easement Deed

I [Name of Grantor(s)], single/husband and wife, of/with a principal place of business at [street name and number], Town/City of _____, County of _____, State of New Hampshire, (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns), for consideration paid, with WARRANTY covenants, grant[s] in perpetuity to

the Town /City of _____, situated in the County of _____, State of New Hampshire, [acting through its Conservation Commission pursuant to New Hampshire RSA 36-A:4]

[or Clean Water Land Trust, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at _____ County of _____, State of New Hampshire, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code,]

(hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns,)

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon/being unimproved land situated on [street name] in the Town/City of _____, County of _____, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof. Grantee acquires this Conservation Easement pursuant to New Hampshire Revised Statutes Annotated 477:45-47.

I. DEFINITIONS

1. Agricultural management activities shall include the production, growing, cultivation and harvesting of floricultural products, horticultural products, fruits and vegetables, Christmas trees, sod, grass and forage crops; the raising of dairy animals, bees, exotic game animals, poultry, horses and other livestock, fish and aquacultural products; the storage, processing and retail sale of agricultural products produced principally on the Property; and the conservation of soil and water resources.
2. Biosolids shall mean all treated wastes from the bodies of humans, including treated sewage sludge or compost.
3. Commercial activities shall mean the wholesale or retail marketing, sale, storage, transportation, transmission or advertising of products or services for a fee or other compensation intended to generate a net profit.
4. Community water supply shall mean any water supply which is piped for human consumption which serves at least 15 connections used by year-round residents or regularly serves at least 25 year-round residents, or as this definition may be updated by the New Hampshire Department of Environmental Services or successor agency.
5. Forest management activities shall mean the growing, stocking, thinning, cutting, harvesting, removal or sale of forest trees and other native forest plants and animals, and the conservation of soil and water resources.
6. Groundwater shall mean water below the land surface in the saturated zone (where pore spaces between gravel, rocks, etc. are filled with water).
7. Industrial activities shall mean the manufacturing, assembling or processing of materials.

Appendix C: Surface Water Model Conservation Easement Deed

8. Pesticides shall mean herbicides, insecticides, fungicides, rodenticides, biocides and other similar substances that destroy, repel or control pests.

9. Primary Watershed Zone shall comprise the following areas: [tailor to property]

a) land within the _____ community water supply watershed and within 400 feet of the mean high water mark of the reservoir; and/or

b) land within 250 feet of the mean high water mark of a tributary which feeds directly into the reservoir without first emptying into another tributary; and/or

c) land within 100 feet of the mean high water mark of other surface waters which are indirect tributaries to the reservoir, including wetlands, flowages or streams that normally flow year round, but not including intermittent streams.

Said zone, and the provisions which apply to the zone contained herein, shall become inoperative when a community water supply reservoir is inactivated and the Grantee determines that there is no current or anticipated future use for the reservoir as a community water supply.

10. Surface water shall mean streams, lakes, ponds, marshes, water courses and other bodies of water as defined in RSA 485-A:2.

11. Sustainable yield shall mean that rate of annual water withdrawal for the community water supply that can be replenished naturally from the watershed on an annual basis, without significant ecological impacts.

II. PURPOSES

It is the purpose of this Easement to assure that the Property will be retained forever in its open space, [undeveloped] condition and to prevent any use of the Property that will impair or interfere with the following aspects of the Property worthy of conservation:

1. Water Quality and Supply. The perpetual protection of the quality and sustainable yield of surface water and groundwater resources on and under the Property to:

a) safeguard present and future community drinking water supplies, and [describe the watershed and/or reservoir that are located on the Property and water supply values of the Property]

b) safeguard the environmental values of the property which are dependent on water quality and quantity.

[describe the water-related environmental and ecological values of the Property]

This purpose yields a substantial public benefit and is consistent with [the water supply protection goals and /or land conservation policy stated in the Town/City of _____'s Master Plan or zoning ordinance _____(quote reference)] and with New Hampshire RSA 481:1, which states, in part, "The general court declares and determines that the water of New Hampshire whether located above or below ground constitutes a limited and, therefore, precious and invaluable public resource which should be protected, conserved and managed in the interest of present and future generations"; and

[choose additional sections as appropriate and add qualitative descriptions of the Property's conservation values and rationale for protecting each]

2. Habitat. The protection of the biological integrity of the unusual natural habitat, biological communities and/or ecosystem; and

3. Open Space. The preservation and conservation of open spaces, [particularly the ____ acres of productive farm and/or forest land, and the wetlands and frontage on _____(waterbodies)_____,] of which the Property consists. This purpose is consistent with the clearly delineated open space conservation goals as stated in [the (date)

Master Plan of __ (Town/City) , and with] New Hampshire RSA 79-A, which states, "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape and conserving the land, water, forest, agricultural and wildlife resources"; and

4. (Other). The preservation of the (historic/recreational/scenic /cultural) values which occur on the Property. (describe)

All of these purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h). These specific conservation values are further described in a baseline documentation report on file with the Grantee.

III. PROHIBITED USES AND ACTIVITIES

Any activity on or use of the Property inconsistent with the purpose(s) of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited. Grantor will not perform or give permission to or allow others to perform the following acts on the Property:

1. Industrial and Commercial Activities. No industrial or commercial activities shall be allowed on the Property except for activities permitted in Section IV and approved by Grantee.

2. Subdivision. The Property shall not be subdivided or otherwise divided into separate ownerships on the ground and none of the individual tracts which together comprise the Property shall be conveyed separately from one another, excepting:

a) any subdivision as may be necessary to accommodate and convey ownership of a parcel containing a present or future reservoir and/or associated community drinking water facilities to the Grantee or other community water supplier approved by the Grantee; and/or

b) any subdivision as may be necessary to convey an interest in land to a conservation organization within the meaning of Section 170(h)(3) of the U.S. Internal Revenue Code of 1986, as amended, or to a public conservation agency.

The design of the subdivision must receive the prior written approval of the Grantee in order to be carried out. Grantee's approval or denial will be based upon the proposal's consistency with the purposes of this Easement. All other provisions of this Easement shall remain in effect on any parcels so subdivided and all subsequent owners of the newly created parcels must meet the qualifications stipulated above.

3. Improvements. No dwelling, any portion of a septic system, billboard, tennis court, swimming pool, dock, aircraft landing strip, or mobile home shall be permanently or temporarily constructed, placed, or introduced onto, above, or below ground on the Property. No other structures or improvements shall be allowed, including but not limited to utilities, dams, roads, storage tanks, and towers, except for those accessory to activities permitted in Section IV and approved by the Grantee.

[Address any existing structures and tailor to property.]

4. Land Surface Alterations. No removal, filling, or other disturbances or erosion of the soil surface, above or below the water table, or any changes in topography, surface or subsurface water systems, wetlands or wetland habitat shall be allowed, except as necessary in conjunction with permitted activities approved by the Grantee and specified in Section IV below, provided that any surface so altered will be recontoured, stabilized and re-vegetated in a timely fashion, with consideration given to weather conditions favorable to re-vegetation.

5. Resource Extraction. The following resource extraction activities are prohibited:

a) In the Primary Watershed Zone there shall be no mining, quarrying, excavation or extraction of groundwater, surface-water, rocks, minerals, gravel, sand, topsoil, or other similar materials , except as necessary in conjunc-

Appendix C: Surface Water Model Conservation Easement Deed

tion with permitted activities approved by the Grantee and specified in Section IV Paragraph 1 below.

b) Outside the Primary Watershed Zone, the resource extraction activities described in Section III.5.a) also shall not be allowed, except as necessary in conjunction with permitted on-site activities approved by the Grantee and specified in Section IV Paragraphs 1-3 below.

c) In no case may minerals be removed from the Property. Following any permitted extraction, the land surface must be recontoured, revegetated and stabilized in a timely manner, with consideration to weather conditions favorable to re-vegetation.

6. Waste Disposal. There shall be no dumping, discharge, injection, burning, or burial of waste generated off the Property, including snow; nor of synthetic or manufactured materials or materials then known to be environmentally hazardous, whether generated on or off the Property, including but not limited to refuse, vehicle parts or bodies, or other hazardous materials.

7. Storage Tanks. No underground or above ground tanks for the storage of gaseous or liquid petroleum products shall be installed, placed or allowed to remain on the Property, except:

a) in the Primary Watershed Zone, above ground fuel tanks with adequate spill containment that are used in conjunction with water supply activities as permitted in Section IV Paragraph 1 below; and

b) outside the Primary Watershed Zone, above ground fuel tanks with adequate spill containment that are in active use in conjunction with on-site activities as permitted in Section IV Paragraphs 1-2 below and approved by Grantee.

8. Hazardous Substances. No substances which constitute a hazard to public health or the environment shall be transported, used, stored, applied or disposed of in any manner or to any extent on or under the Property, except as necessary in conjunction with on-site activities as permitted in Section IV and approved by Grantee.

9. Impervious Surfaces. No more than 3% of the Property shall be covered by buildings or other impervious materials. Within the Primary Watershed Zone, the location of any impervious surfaces must receive the prior review and approval of Grantee.

10. Water Quality Degradation. Surface water and groundwater quality shall be preserved and in no event shall be polluted or degraded by activities on the Property such that the surface or groundwater quality on the Property reaches or violates water quality standards set for public drinking water by the New Hampshire Department of Environmental Services, or such agency with the statutory authority to regulate public water supplies at the time.

11. Unsustainable Water Withdrawal. The quantity of surface water withdrawn from the Property shall not exceed the sustainable yield.

12. Rare Species Harm. Activities shall not harm state or federally recognized rare, threatened or endangered species based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having statutory responsibility for the conservation of such species.

13. Recreational Uses .

a) In the Primary Watershed Zone, no horses or other livestock, docks, trails, camping, fires, all-terrain vehicles, snowmobiles, motorized watercraft or other motorized recreational vehicles shall be allowed.

b) No camping is allowed anywhere in the reservoir watershed.

14. Agricultural Activities. In the Primary Watershed Zone no agricultural management activities or uses are allowed.

15. Forest Management Activities. In the Primary Watershed Zone, no forestry road building is allowed; no clearcutting, land conversion, or removal of forest vegetation which results in a stand with a residual basal area of less than 40 square feet per acre are allowed; and ground cover, shrubs, and a balance of tree age classes must be maintained to minimize erosion.

16. Detrimental Uses. Notwithstanding the foregoing provisions with regard to specific prohibited uses and activities, but in addition thereto, no activity or use shall be initiated or maintained or allowed to be initiated or maintained which is detrimental or threatens to become detrimental to the conservation purposes of this Easement and the protection of the quality and quantity of the present or potential community water supply.

IV. PERMITTED USES AND ACTIVITIES

Grantor reserves to him or herself all rights accruing from his/her ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved and permitted to Grantor:

1. Community Drinking Water Supply.

[Rights and terms of any withdrawal of community drinking water should be specified in a separate document.]

At Grantor's option, surface water may be withdrawn by Grantee or Grantee's designee on a sustainable yield basis and exported from the property if used for a community drinking water supply, as defined herein. For the purposes hereof, permitted activities in conjunction with the provision of a public drinking water supply shall be defined as the installation, maintenance, monitoring and replacement of reservoirs, dams, treatment facilities, a water distribution system, pump stations, and ancillary improvements such as roads, signs, utilities, security facilities; and the extraction and export of surface water from the Property, all for the purpose of serving community drinking water supply needs. Said activities may be conducted provided that:

a) design of facilities and extraction rates are in accordance with a "Water Extraction Plan" which must be approved in advance of implementation and in writing by the Grantee. Said Plan shall include but not be limited to:

- i) delineation and description of surface (reservoir) watershed boundaries and Primary Watershed Zone;
- ii) reservoir storage capacity, pumping or withdrawal and recharge rates;
- iii) anticipated changes in groundwater tables, surface water levels, associated wetland water levels, and in-stream flows on and off the Property as a result of drinking water withdrawals;
- iv) monitoring and reporting practices;
- v) potential impacts on the biological communities of which the Property is a part (due to facilities as well as water withdrawal);
- vi) facilities design and location;
- vii) provisions to minimize disturbance to the conservation values of the Property during and after installation and operation of the water supply facilities.

2. Agriculture and Forestry. Agricultural and forest management activities are allowed on the Property as defined herein. Necessary ancillary improvements which serve on-site forest and agricultural management activities, such as forest and farm roads, utilities, wells, irrigation pumps, ponds, equipment sheds, fences, culverts and bridges, may be constructed on the Property. Agricultural and forest management may be conducted on the property provided that:

a) within the Primary Watershed Zone, no agricultural activities or improvements shall be allowed; no pesticides, biosolids, manure, septage, wood ash, fertilizers or similar materials shall be applied unless the Grantee determines that such applications are necessary to safeguard the community water supply; and

b) forest and agricultural activities shall promote the overall conservation of viable populations of native plant and animal species; and

Appendix C: Surface Water Model Conservation Easement Deed

c) as long as the Property lies within the watershed of an active community surface or ground water supply, forest management activities in which more than the equivalent of 15 cords of wood are cut in any calendar year shall be conducted in accordance with a written "Forest Management Plan" prepared by a professional forester; and agricultural activities, (allowed only outside the Primary Watershed Zone) are conducted in accordance with a written "Farm Management Plan."

The preparation of said plans are the responsibility of the Grantor. Said plans shall be submitted to and ruled upon by Grantee (see Sec. V), in advance of implementation and updated at least every ten years or on such timetable as may be mutually agreed upon in writing by Grantor and Grantee. Said plans shall include:

- i) natural resource inventory of the Property (including special plant and animal habitat; wildlife; soils; forest types, stocking and stand histories; steep slopes, floodplains, wetlands and other surface waters);
- ii) watershed boundaries and Primary Watershed Zone;
- iii) current or potential reservoir and water supply facilities and location(s);
- iv) proposed transportation, storage, use, disposal, timetable and application rates of specific pesticides, fertilizers, septage, manure, biosolids, and other similar soil amendments;
- v) log landing and forestry and farm road design and layout;
- vi) proposed buffer zones, cover cropping, erosion controls and other methods to protect surface waters;
- vii) forest management and harvesting methods and goals;
- viii) location, uses, and types of ancillary improvements; vehicle use; time of year or conditions for operations; conversion of forest to cleared land; exposure of bare soils; creation of impervious areas;
- ix) habitat and scenic impacts;
- x) proposed resource extraction, land alterations, and forest or agricultural by-product on-site disposal; and

d) forest management activities shall be supervised by a professional forester; and

e) forest and agricultural management activities must be conducted, to the extent possible, in accordance with current scientifically-based practices as recommended by state or federal natural resource agencies such as the Natural Resource Conservation Service and with "Best Management Practices" as set forth in the following publications or as these publications may be specifically updated or superseded:

- i) "Manual of Best Management Practices for Agriculture in New Hampshire," New Hampshire Department of Agriculture, June 1993; and
- ii) "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire," Department of Resources and Economic Development, 1996; and
- iii) "Pesticide Management Guidelines for Groundwater Protection," UNew Hampshire Cooperative Extension, November 1992; and
- iv) "Buffers for Wetlands and Surface Waters: A Guidebook for New Hampshire Municipalities," Audubon Society of New Hampshire, New Hampshire Office of State Planning, UNew Hampshire Cooperative Extension, Natural Resource Conservation Service, November, 1995; and
- v) "Manual of Best Management Practices: Biosolids," UNew Hampshire Cooperative Extension, 1995; and
- vi) "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials," May, 1994, New Hampshire Department of Environmental Services; and
- vii) "Good Forestry in the Granite State," Forest Sustainability Standards Work Team, Society for the Protection of New Hampshire Forests, 1997.

[f] (optional) management activities shall not significantly impair the scenic quality of the Property as viewed from public waters, roads or trails.]

3. Outdoor Recreation. Outdoor recreation is allowed provided that:

a) in the Primary Watershed Zone, no trails or other recreational improvements may be created or maintained and only non-motorized, dispersed pedestrian recreation is allowed.

b) on the remainder of the Property, construction, maintenance, signing and use of trails for transitory outdoor recreational purposes such as hiking, bicycle riding, snowmobiling and cross-country skiing are allowed. Necessary ancillary improvements such as trail-head parking, steps, bridges, waterbars, and culverts (but not buildings or campgrounds) are permitted provided that the location, design, use and maintenance plans for any such trails must be approved in advance and in writing by the Grantee.

4. Detrimental Uses. Notwithstanding the foregoing provisions with regard to specific permitted uses and activities, but in addition thereto, no activity or use shall be initiated or maintained or allowed to be initiated or maintained which is detrimental or threatens to become detrimental to the conservation purposes of this Easement and the protection of the quality and quantity of the present or potential community water supply.

V. GRANTEE APPROVAL FOR PERMITTED USES AND ACTIVITIES

The Grantor hereby covenants and agrees that Grantor shall not commence any use or activity which requires prior written approval (see Sec. III.2; Sec. III.9 Sec. IV.1; Sec. IV.2; Sec IV.3), or any other potentially detrimental uses, without having obtained Grantee's approval according to the procedures set forth hereunder:

1. The Grantor shall notify the Grantee in writing of any proposed plan, use or activity which requires Grantee approval under the terms of this Easement and shall submit to the Grantee, at least 30 days in advance, plans and such other information as the Grantee may require.

2. The Grantee shall approve any or all elements of such proposed plan, use or activity, with or without conditions, only upon a written finding from Grantee to Grantor that (a) the proposed plan, use or activity is consistent with the terms of this Easement and (b) that such plan, use or activity shall not defeat or derogate from the purposes of this Easement. If the Grantee does not approve any or all elements of the proposed activity or use, it shall provide written notice and explanation thereof to the Grantor. Such approval or denial shall be made within sixty (60) days of receiving Grantor's written notice requesting approval of said proposed activity.

3. In the absence of a response from the grantee within the 60 day period, Grantee understands that Grantor may proceed with the proposed activity if it is consistent with this Easement. However, lack of approval or denial by Grantee within the aforesaid 60 day period does not preclude Grantee from denying the use or activity as inconsistent with this Easement at a later date.

VI. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

1. The Grantor agrees to notify the Grantee in writing 10 days before the transfer of title to the Property or any division of ownership thereof permitted hereby.

2. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

3. Any instrument transferring an interest in the Property, including deeds, mortgages, and leases, shall reference the existence of and recording book and page number for this Easement.

VII. BENEFITS, BURDENS, AND ACCESS

1. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

2. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby, or to take

any and all actions with respect to the Property as may be necessary or appropriate with or without order of court, to remedy or abate any violation.

3. This Easement hereby conveyed does not grant to the general public access or any rights to enter the Property.

VIII. BREACH OF EASEMENT

1. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured.

2. If Grantors fail to cure the violation within thirty (30) days after receipt of the notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty day period, fail to begin curing such violation within the thirty day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

3. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including, without limitation, legal fees, court costs, reasonable Grantee expenses, costs of restoration and damage to conservation values. Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

4. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this section without prior notice to Grantors or without waiting for the period provided for cure to expire.

5. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, vandalism, natural disasters such as fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

6. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Easement.

7. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement.

IX. NOTICES

All notices, requests and other communications, required or permitted to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

X. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remain-

der of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

SEPARATE PARCEL

The Grantor agrees that for the purpose of determining compliance with any present or future bylaw, order, ordinance, or regulation (within this paragraph referred to as "legal requirements") of the municipality or the State of New Hampshire, the Property shall be deemed a separate parcel of land and shall not be taken into account in determining whether any land of the Grantor, other than the Property, complies with any said legal requirements. The Property shall not be taken into account to satisfy in whole or in part any of said legal requirements or any area, density, setback or other dimensional standard applicable to other land of Grantor.

XII. MERGER

The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assign shall be deemed to eliminate the Easement, or any portion thereof, granted hereunder under the doctrine of "merger" or any other legal doctrine.

XIII. AMENDMENT

Grantor and Grantee may mutually agree to amend the provisions of this Easement provided that any amendment shall be wholly consistent with the purposes of this Easement, shall not affect its area or perpetual duration, and shall result in an enhancement of the conservation values of the Property.

XIV. CONDEMNATION OR TERMINATION

1. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with Section XIV(2).

2. This Easement constitutes a real property interest immediately vested in Grantee, which for the purposes of this section, the parties stipulate to have a fair market value determined by multiplying (i) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (ii) the ratio of the value of the Easement at the time of this grant to the value of the Property without deduction for the value of the Easement, at the time of this grant.

3. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in this connection shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be in proportion to the ratio set forth in Section XIV.2. (or other language for non-tax deductible transaction)

4. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

XV. EXECUTORY INTEREST

If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended, or to be authorized to acquire and hold conservation easements under New Hampshire statute, then Grantee's rights and obligations under this Easement shall become immediately vested in _____ (designate back-up Grantee). If _____ (back-up Grantee) is no longer in existence at the time the rights and obligations under this Easement would otherwise vest in it, or if

Appendix C: Surface Water Model Conservation Easement Deed

_____ (back-up Grantee) is not qualified as provided for an assignment pursuant to Section VII.1 or if it shall refuse such rights and obligations, then the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to applicable New Hampshire law.

XVI. ARBITRATION OF DISPUTES

1. Any dispute arising under this Easement may, upon mutual agreement of Grantee and Grantor, be submitted to arbitration in accordance with New Hampshire RSA 542.

2. The Grantor and the Grantee shall each choose an arbitrator within 30 days of written notice from either party. The arbitrators so chosen shall in turn choose a third arbitrator within 30 days of the selection of the second arbitrator.

3. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable which they may postpone only for good cause shown.

4. A decision by two of the three arbitrators, made as soon as practicable after submission of the dispute, shall be binding upon the parties and shall be enforceable as part of this Easement, but shall not affect its perpetuity. The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF , Grantor and Grantee hereunto set our hands this ____ day of _____, 199__ .

Grantor: _____
Name of Grantor

The State of New Hampshire County of _____

Personally appeared _____ and _____ this _____ day of _____, 199__ , who acknowledged the foregoing to be his/her/their voluntary act and deed.
Before me, _____

Justice of the Peace/Notary Public
My commission expires: _____

Grantee: Town/City of _____

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire County of _____

Personally appeared _____,
[Title] of the Town/City of _____ this _____ day of _____, 199__, and
acknowledged the foregoing deed.

Before me, _____
Justice of the Peace/Notary Public
My commission expires: _____

APPENDIX D

Groundwater Model Conservation Easement Deed

I [Name of Grantor(s)], single/husband and wife, of/with a principal place of business at [street name and number], Town/City of _____, County of _____, State of New Hampshire, (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

for consideration paid, with WARRANTY covenants, grant[s] in perpetuity to the Town /City of _____, situated in the County of _____, State of New Hampshire, [acting through its Conservation Commission pursuant to New Hampshire RSA 36-A:4]

[or Clean Water Land Trust, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at _____ County of _____, State of New Hampshire, having been determined by the Internal Revenue Service to be an income tax exempt, publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to the United States Internal Revenue Code,]

(hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns,)

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") being unimproved land situated on [street name] in the Town/City of _____, County of _____, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof. Grantee acquires this Conservation Easement pursuant to New Hampshire Revised Statutes Annotated 477:45-47.

I. DEFINITIONS

1. Agricultural management activities shall include the production, growing, cultivation and harvesting of floricultural products, horticultural products, fruits and vegetables, Christmas trees, sod, grass and forage crops; the raising of dairy animals, bees, exotic game animals, poultry, horses and other livestock, fish and aquacultural products; the storage, processing and retail sale of agricultural products produced principally on the property; and the conservation of soil and water resources.
2. Aquifer shall mean a geologic formation, group of formations or part of a formation that contains sufficient saturated permeable materials (sand, gravel, fractured bedrock, etc.) to yield significant quantities of water to wells and springs.
3. Biosolids shall mean all treated wastes from the bodies of humans, including treated sewage sludge or compost.
4. Commercial activities shall mean the wholesale or retail marketing, sale, storage, transportation, transmission or advertising of products or services for a fee or other compensation intended to generate a net profit.
5. Community water supply shall mean any water supply which is piped for human consumption which serves at least 15 connections used by year-round residents or regularly serves at least 25 year-round residents, or as this definition may be updated by the New Hampshire Department of Environmental Services or successor agency.
6. Forest management activities shall mean the growing, stocking, thinning, cutting, harvesting, removal or sale of forest trees and other native forest plants and animals, and the conservation of soil and water resources.
7. Groundwater shall mean water below the land surface in the saturated zone (where the pore spaces between gravel, rock, etc. are filled with water).

8. Industrial activities shall mean the manufacturing, assembling or processing of materials.

9. Pesticides shall mean herbicides, insecticides, fungicides, rodenticides, biocides and other similar substances that destroy, repel or control pests.

10. Surface water shall mean streams, lakes, ponds, marshes, water courses and other bodies of water as defined in RSA 485 A:2.

11. Sanitary zone shall mean land within a 400 foot radius of any community water supply wellhead or such distance as specified in the New Hampshire Drinking Water Regulations, Env-WS 310, or as they may be updated. Said zone, and the provisions which apply to the zone herein, shall become inoperative during periods when the well is inactivated and Grantee determines that there is no current or anticipated future use for the well as a community water supply. If the well is reactivated or a new one installed, then provisions for the sanitary zone contained herein shall apply.

12. Sustainable yield shall mean that rate of annual water withdrawal that can be replenished from the aquifer on an annual basis, based on well recovery rates.

II. PURPOSES

It is the purpose of this Easement to assure that the Property will be retained forever in its open space, [undeveloped] condition and to prevent any use of the Property that will impair or interfere with the following aspects of the Property worthy of conservation:

1. Water Quality and Supply. The perpetual protection of the quality and sustainable yield of groundwater and surface water resources under and on the Property to:

a) safeguard present and future community drinking water supplies, [including the stratified drift [or bedrock] aquifer which underlies the Property, and/or the land area on the Property which contributes water to a community well,] and

[describe the groundwater resource as identified by the US Geological Survey or other federal or state sources, hydrological characteristics and and water supply values of the Property]

b) safeguard the environmental values of the property which are dependent on water quality and quantity. [describe the water-related environmental and ecological values of the property]

This purpose yields a substantial public benefit and is consistent with [the water supply protection goals and /or land conservation policy stated in the Town/City of _____'s Master Plan or zoning ordinance_____(quote reference) and with] New Hampshire RSA 485-C, the "Groundwater Protection Act." which states, in part, "The natural quality of the groundwater resource shall be preserved and protected in order that groundwater may be used for drinking water supply. Ambient groundwater quality standards shall meet drinking water standards..." and with RSA 402, which states, in part, "...an adequate supply of water is indispensable to the health, welfare, and safety of the people of the State, and is essential to the ecological balance of the natural environment of the State and that the water resources of the state are subject to an ever-increasing demand for new and competing uses; that, therefore, the general court declares and determines that the waters of New Hampshire whether occurring above or below ground constitute a precious, finite and invaluable public resource which should be protected, conserved, and managed in the interest of present and future generations..." and

[choose additional sections as appropriate and add qualitative descriptions of the Property's conservation values and rationale for protecting each]

2. Habitat. The protection of the biological integrity of the unusual natural habitat, biological communities and/or ecosystem of _____; and

3. Open Space. The preservation and conservation of open spaces, [particularly the ____ acres of productive farm and/or forest land , and the wetlands and frontage on _____(waterbodies)_____,] of which the Property consists. This purpose is consistent with the clearly delineated open space conservation goals as stated in [the (date) Master Plan of _____(Town/City), and with] New Hampshire RSA 79-A, which states, "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."; and

4. (Other). The preservation of the public (recreational, scenic, educational, cultural or historic) values which occur on the Property. (describe)

All of these purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h). These specific conservation values are further described in a baseline documentation report on file with the Grantee.

III. PROHIBITED USES AND ACTIVITIES

Any activity on or use of the Property inconsistent with the purpose(s) of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited. Grantor will not perform or give permission to or allow others to perform the following acts on the Property:

1. Industrial and Commercial Activities. No industrial or commercial activities shall be allowed on the Property except as permitted in Section IV and approved by Grantee.

2. Subdivision. The Property shall not be subdivided or otherwise divided on the ground into separate ownerships and none of the individual tracts which together comprise the Property shall be conveyed separately from one another, excepting:

a) any subdivision as may be necessary to accommodate and convey ownership of a present or future wellhead and community drinking water facility zone to Grantee or other community water supplier approved by the Grantee; or

b) any subdivision as may be necessary to convey an interest in land to a conservation organization within the meaning of Section 170(h)(3) of the U.S. Internal Revenue Code of 1986, as amended, or to a public conservation agency.

The design of the subdivision must receive the prior written approval of the Grantee. Approval will be based on the proposal's consistency with the purposes of this Easement. All other provisions of this Easement shall remain in effect on any parcels so subdivided and all subsequent owners of the newly created parcels must meet the qualifications stipulated above.

3. Improvements. No dwelling, any portion of a residential septic system, billboard, tennis court, swimming pool, dock, aircraft landing strip, or mobile home shall be permanently or temporarily constructed, placed, or introduced onto, above, or below ground on the Property. No other structures or improvements shall be allowed, including but not limited to utilities, roads, storage tanks, dams, and towers, except for those accessory to permitted activities approved by the Grantee and specified in Section IV below.

[Address any existing structures or improvements, tailor to property.]

4. Land Surface Alterations. No removal, filling, or other disturbances or erosion of the soil surface, above or below the water table, or any changes in topography, surface or subsurface water systems, wetlands or wetland habitat shall be allowed, except as necessary in conjunction with permitted on-site activities approved by the Grantee and specified in Section IV below, and provided that:

a) a minimum distance of five (5) feet must be maintained between any altered land surface and the historical high groundwater table elevation, except in cases of pond creation in conjunction with permitted on-site activities approved by the Grantee and specified in Section IV. ; and

Appendix D: Groundwater Model Conservation Easement Deed

b) any surface so altered will be recontoured, stabilized and re-vegetated promptly, with consideration to weather conditions favorable to revegetation.

5. Resource Extraction.

a) In the Sanitary zone, there shall be no mining, quarrying, excavation or extraction of ground or surface water or minerals such as rocks, gravel, sand, topsoil or other similar materials except as permitted in Section IV, Paragraph 1 below.

b) In areas on the Property outside the Sanitary Zone, the resource extraction activities described in Section III.5.a) above are prohibited except in conjunction with permitted on-site activities approved by the Grantee and specified in Section IV, Paragraphs 1-3 below. In no case may minerals be removed from the Property.

c) A minimum distance of five (5) feet must be maintained between the altered land surface and the historical high groundwater table elevation, except in cases of pond creation in conjunction with permitted on-site activities approved by the Grantee and specified in Section IV.

d) Following any permitted resource extraction, the land surface must be recontoured, stabilized and re-vegetated promptly.

6. Waste Disposal. On the Property, there shall be no dumping, discharge, injection, burning, storage, or burial of waste generated off the Property, including snow; nor of synthetic or manufactured materials or materials then known to be environmentally hazardous, whether generated on or off the Property, including but not limited to refuse, vehicle parts or bodies, or other hazardous materials.

7. Storage Tanks. No underground or above ground tanks for the storage of gaseous or liquid petroleum products shall be installed, placed or allowed to remain on the Property, except for above ground fuel tanks with adequate spill containment that are in active use in conjunction with on-site activities as permitted in Section IV and approved by Grantee.

8. Hazardous Substances. No substances which constitute a hazard to public health or the environment shall be transported, used, stored, applied or disposed of in any manner or to any extent on or under the Property, except as necessary in conjunction with on-site activities permitted in Section IV and approved by Grantee.

9. Impervious Surfaces. No more than 3% of the Property shall be covered by buildings or other impervious materials. The location of impervious surfaces within the Sanitary Zone must receive the prior review and approval of Grantee.

10. Water Quality. Degradation Surface water and groundwater quality shall be preserved and in no event shall be polluted or degraded by activities on the Property so that the surface or groundwater quality on the Property reaches or violates water quality standards set for public drinking water by the New Hampshire Department of Environmental Services, or such agency with the statutory authority to regulate public water supplies at the time.

11. Unsustainable Water Withdrawal. The sustainable yield of groundwater, as recharged from surface water and infiltration of precipitation shall not be exceeded by on-site water withdrawal.

12. Rare Species Harm. Activities shall not harm state or federally recognized rare, threatened or endangered species based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having statutory responsibility for the conservation of such species.

13. Detrimental Uses. Notwithstanding the foregoing provisions with regard to specific prohibited uses and activities, but in addition thereto, no activity or use shall be initiated or maintained or allowed to be initiated or maintained which is detrimental or threatens to become detrimental to the conservation purposes of this easement and the protection of the quality and quantity of the present or potential community water supply.

IV. PERMITTED USES AND ACTIVITIES

Grantor reserves to him or herself all rights accruing from his/her ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved and permitted to Grantor:

1. Community Drinking Water Supply.

[Rights and terms of any withdrawal of community drinking water from the Property should be specified in a separate document.]

At Grantor's option, groundwater may be withdrawn by Grantee or Grantee's designee on a sustainable yield basis and exported from the property if used for a community drinking water supply as defined herein. For the purposes hereof, permitted activities in conjunction with the provision of a community drinking water supply shall be defined as the installation, maintenance, monitoring and replacement of water supply wells, monitoring wells, drinking water treatment facilities, a water distribution system, pump stations, and ancillary improvements such as roads, signs, utilities, security facilities; and the extraction and exportation of groundwater from the Property, all for the purpose of serving public drinking water supply needs. (Nothing in this section shall constitute a requirement that the Grantor must export water for a public supply.) Said activities may be conducted provided that:

a) design of facilities and extraction rates are in accordance with a "Water Extraction Plan" which must be approved in advance of implementation and in writing by the Grantee. Said Plan shall include but not be limited to:

- i) groundwater resource location, description, wellhead locations, wellhead protection zone, wellhead protection area
- ii) proposed sustainable yield pumping and recharge rates,
- iii) monitoring and reporting practices,
- iv) facilities design, location and construction impacts
- v) well capping procedures, and
- vi) anticipated changes in groundwater tables and surface water levels and associated wetlands and in-stream flows on and off the Property as a result of drinking water withdrawals, potential impacts on the associated biological communities, and provisions to minimize disturbance to the conservation values of the Property during and after installation and operation of the water supply facilities.

2. Agriculture and Forestry. Agricultural and forest management activities are allowed on the Property as defined herein. Necessary ancillary improvements which serve on-site forest and agricultural management activities, such as forest and farm roads, utilities, wells, irrigation pumps, ponds, equipment sheds, barns, fences, culverts and bridges, may be constructed on the Property. Agricultural and forest management activities may be conducted on the property provided that:

a) within the Sanitary Zone, no pesticides, biosolids, septage, manure, or similar soil amendments shall be used, stored or disposed of; no livestock or other domestic animals shall be kept or grazed; no new ponds or forestry or farm roads will be created; and no buildings shall be erected; and

b) forest and agricultural management activities shall promote the overall conservation of viable populations of native plant and animal species; and

c) as long as the Property contributes to an active community water supply well, forest management activities in which more than the equivalent of 15 cords of wood are cut in any calendar year shall be conducted in accordance with a written "Forest Management Plan" prepared by a professional forester, and agricultural management shall be conducted in accordance with a written "Farm Management Plan."

The preparation of said plans are the responsibility of the Grantor. Said plans shall be submitted to Grantee for approval (see Sec. V) in advance of implementation and updated at least once every ten years or on such

Appendix D: Groundwater Model Conservation Easement Deed

timetable as may be mutually agreed upon in writing by Grantor and Grantee. Said plans shall include:

- i) natural resource inventory of the Property (including special plant and animal habitat; wildlife; soils; forest types, stocking and stand histories; water resources, location of steep slopes, floodplains, highly permeable or erodible soils, wetlands, and other surface waters);
- ii) aquifer location, description (based on existing information);
- iii) current or proposed wellhead and ancillary facilities and location(s), Sanitary Zone location;
- iv) proposed transportation, storage, use, disposal, timetable and application rates of specific pesticides, fertilizers, biosolids, septage, manure, and other similar soil amendments;
- v) log landing and forestry and farm road design and layout;
- vi) proposed buffer zones, cover cropping, erosion control and other methods to protect ground and surface waters;
- vii) forest management and harvesting methods and goals;
- viii) location, uses, and types of ancillary improvements; vehicle use; time of year or conditions for operations; conversion of forest to cleared land; exposure of bare soils; creation of impervious areas;
- ix) habitat and scenic impacts;
- x) proposed resource extraction or forest or agricultural by-product disposal; and

d) forest management activities shall be supervised by a professional forester; and

e) forest and agricultural management activities must be conducted, to the extent possible, in accordance with current scientifically based practices as recommended by state or federal natural resource agencies such as the Natural Resource Conservation Service and in accordance with "Best Management Practices" as set forth in the following publications or as these publications may be specifically updated or superseded:

- i) "Manual of Best Management Practices for Agriculture in New Hampshire," New Hampshire Department of Agriculture, June 1993; and
- ii) "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" Department of Resources and Economic Development, 1996; and
- iii) "Pesticide Management Guidelines for Groundwater Protection," UNew Hampshire Cooperative Extension, November 1992; and
- iv) "Buffers for Wetlands and Surface Waters: A Guidebook for New Hampshire Municipalities," Audubon Society of New Hampshire, New Hampshire Office of State Planning, UNew Hampshire Cooperative Extension, Natural Resource Conservation Service, November, 1995; and
- v) "Best Management Practices: Biosolids," UNew Hampshire Cooperative Extension, 1995; and
- vi) "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials," May, 1994, New Hampshire Department of Environmental Services; and
- vii) "Good Forestry in the Granite State," Forest Sustainability Standards Work Team, Society for the Protection of New Hampshire Forests, 1997.

[f] (optional) management activities shall not significantly impair the scenic quality of the Property as viewed from public waters, roads or trails.]

3. Outdoor Recreation. Outdoor recreation is allowed provided that:

- a) In the Sanitary Zone, no camping is allowed, no trails or other recreational improvements may be created or maintained and only non-motorized, dispersed pedestrian recreation is allowed, and
- b) in areas on the Property outside the Sanitary Zone, construction, maintenance, signing and use of trails for transitory outdoor recreational purposes such as hiking, bicycle riding, snowmobiling and cross-country skiing are allowed. Necessary ancillary improvements such as trail-head parking, steps, bridges, waterbars, and culverts (but not buildings or campgrounds) are permitted provided that the location, design, use and maintenance plans for any such trails must be approved in advance and in writing by the Grantee.

4. Detrimental Uses. Notwithstanding the foregoing provisions with regard to specific permitted uses and activ-

ities, but in addition thereto, no activity or use shall be initiated or maintained or allowed to be initiated or maintained which is detrimental or threatens to become detrimental to the conservation purposes of this Easement and the protection of the quality and quantity of the present or potential community water supply.

V. GRANTEE APPROVAL FOR PERMITTED USES AND ACTIVITIES

The Grantor hereby covenants and agrees that Grantor shall not commence any use or activity which requires prior written approval (see Sec. III.3; Sec. III.9; Sec. IV.1; Sec. IV.2 ; Sec. IV.3) or any other potentially detrimental uses, without having obtained Grantee's written approval according to the procedures set forth hereunder:

1. The Grantor shall notify the Grantee in writing of any proposed plan, use or activity which requires Grantee approval under the terms of this Conservation Easement and shall submit to the Grantee, at least 30 days in advance, plans and such other information as the Grantee may require.
2. The Grantee shall approve any or all elements of such proposed plan, use or activity, with or without conditions, only upon a written finding from Grantee to Grantor that (a) the proposed plan, use or activity is consistent with the terms of this Easement and (b) that such plan, use or activity shall not defeat or derogate from the purposes of this Easement. If the Grantee does not approve any or all elements of the proposed activity or use, it shall provide written notice and explanation thereof to the Grantor. Such approval or denial shall be made within sixty (60) days of receiving Grantor's written notice requesting approval of said proposed activity.
3. In the absence of a response from the Grantee within the 60 day period, Grantee understands that Grantor may proceed with the proposed activity if it is consistent with this Easement. However, lack of approval or denial by Grantee within the aforesaid 60 day period does not preclude Grantee from denying the use or activity as inconsistent with this Easement at a later date.

VI. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

1. The Grantor agrees to notify the Grantee in writing 10 days before the transfer of title to the Property or any division of ownership thereof permitted hereby.
2. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.
3. Any instrument transferring an interest in the Property, including deeds, mortgages, and leases, shall reference the existence of and recording book and page number for this Easement.

VII. BENEFITS, BURDENS, AND ACCESS

1. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.
2. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby, or to take any and all actions with respect to the Property as may be necessary or appropriate with or without order of court, to remedy or abate any violation.
3. This Easement hereby conveyed does not grant to the general public access or any rights to enter the Property.

VIII. BREACH OF EASEMENT

1. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured.
2. If Grantors fail to cure the violation within thirty (30) days after receipt of the notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty day period, fail to begin curing such violation within the thirty day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
3. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including, without limitation, legal fees, court costs, reasonable Grantee expenses, costs of restoration and damage to conservation values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
4. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this section without prior notice to Grantors or without waiting for the period provided for cure to expire.
5. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, vandalism, natural disasters such as fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
6. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Easement.
7. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement.

IX. NOTICES

All notices, requests and other communications, required or permitted to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

X. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

XI. SEPARATE PARCEL

The Grantor agrees that for the purpose of determining compliance with any present or future bylaw, order, ordinance, or regulation (within this paragraph referred to as "legal requirements") of the municipality or the State of New Hampshire, the Property shall be deemed a separate parcel of land and shall not be taken into account in determining whether any land of the Grantor, other than the Property, complies with any said legal

requirements. The Property shall not be taken into account to satisfy in whole or in part any of said legal requirements or any area, density, setback or other dimensional standard applicable to other land of Grantor.

XII. MERGER

The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assign shall be deemed to eliminate the Easement, or any portion thereof, granted hereunder under the doctrine of "merger" or any other legal doctrine.

XIII. AMENDMENT

Grantor and Grantee may mutually agree to amend the provisions of this Easement provided that any amendment shall be wholly consistent with the purposes of this Easement, shall not affect its area or perpetual duration, and shall result in an enhancement of the conservation values of the Property.

XIV. CONDEMNATION OR TERMINATION

1. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with paragraph XIV(2).

2. This Easement constitutes a real property interest immediately vested in Grantee, which for the purposes of this section, the parties stipulate to have a fair market value determined by multiplying (i) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (ii) the ratio of the value of the Easement at the time of this grant to the value of the Property without deduction for the value of the Easement, at the time of this grant.

3. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in this connection shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be in proportion to the ratio set forth in Section XIV.2. (or other language for non-tax deductible transaction)

4. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

XV. EXECUTORY INTEREST

If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended, or to be authorized to acquire and hold conservation easements under New Hampshire statute, then Grantee's rights and obligations under this Easement shall become immediately vested in _____ (designate back-up Grantee). If _____ (back-up Grantee) is no longer in existence at the time the rights and obligations under this Easement would otherwise vest in it, or if _____ (back-up Grantee) is not qualified as provided for an assignment pursuant to Section VII.1 or if it shall refuse such rights and obligations, then the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to applicable New Hampshire law.

XVI. ARBITRATION OF DISPUTES

1. Any dispute arising under this Easement may, upon mutual agreement of Grantee and Grantor, be submitted to arbitration in accordance with New Hampshire RSA 542.

Appendix D: Groundwater Model Conservation Easement Deed

- 2. The Grantor and the Grantee shall each choose an arbitrator within 30 days of written notice from either party. The arbitrators so chosen shall in turn choose a third arbitrator within 30 days of the selection of the second arbitrator.
- 3. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable which they may postpone only for good cause shown.
- 4. A decision by two of the three arbitrators, made as soon as practicable after submission of the dispute, shall be binding upon the parties and shall be enforceable as part of this Easement, but may not affect its perpetuity.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF , Grantor and Grantee hereunto set our hands this ____ day of _____ 199__ .

Grantor: _____
Name of Grantor

The State of New Hampshire County of _____

Personally appeared _____ and _____ this ____ day of _____, 199__, who acknowledged the foregoing to be his/her/their voluntary act and deed.

Before me, _____
Justice of the Peace/Notary Public My commission expires:

Grantee: Town/City of _____

By: _____
Title: _____ Duly Authorized
Date:

The State of New Hampshire County of _____
Personally appeared _____, [Title] of the Town/City of _____ this ____ day of _____, 199__, and acknowledged the foregoing deed.

Before me, _____ Justice of the Peace/Notary Public
My commission expires:

APPENDIX E

Reviewers of Model Conservation Easements

Scott Abrahamson, Esq.
Land Use & Real Estate
NY City Department of Environmental
Protection and Natural Resources
Ben Nesin Lab
Route 28
Shokanm NY 12481

Peter Baker, Chair
Conservation Commission
40 Buttonwood Drive
Hollis, New Hampshire 03049

John Barto
Barto and Puffer
6 Loudon Road
Concord, New Hampshire 03301

Mary Ellen Boelhower
Sylvia Bates
Beth McGuinn
Tom Howe
Society for the Protection of
New Hampshire Forests
54 Portsmouth Street
Concord, New Hampshire 03301-5400

Tom Buob, Educator
University of New Hampshire
Cooperative Extension
Grafton County Courthouse
RR 1 Box 65F
No. Haverhill, New Hampshire 03774

Meade Cadot, Director
Harris Center for Conservation Education
RFD 1 Box 733
Hancock, New Hampshire 03449

Rich Chormann
Water Management Bureau
New Hampshire Department of Environment
Services
PO Box 95
Concord, New Hampshire 03302-0095

Ginny DiFrancesco
Grafton County Conservation District
RR 1 Box 65F
No. Haverhill, New Hampshire 03777

Mary Jo Feuerbach
Groundwater Program
US Environmental Protection Agency
JFK Federal Building
Boston, MA 02203-0001

Dick Flanders
Margaret Watkins
Non-Point Source Program
New Hampshire Department of Environmental
Services
PO Box 95
Concord, New Hampshire 03302-0095

David Funk
Conservation Commission
123 Mill Road
Durham, New Hampshire 03824

David Harrigan, Esq.
Sulloway & Hollis
9 Capital Street
PO Box 1256
Concord, New Hampshire 03302-1256

Appendix E: Reviewers of Model Conservation Easements

Douglas Heath
Hydrogeologist CNew Hampshire
USEPA Region 1
JFK Federal Building
Boston, MA 02203-2211

Peter Helm
LCIP Coordinator
New Hampshire Office of State Planning
2 1/2 Beacon Street
Concord, New Hampshire 03301

Natalie Landry
Shoreline Protection
New Hampshire Department of Environmental
Services
PO Box 95
Concord, New Hampshire 03302-0095

Francesca Latawicz
Principal Planner
New Hampshire Office of State Planning
2 1/2 Beacon Street
Concord, New Hampshire 03301

David MacDonald
Maine Coast Heritage Trust
67 Park Row
Brunswick, ME 04011

Frank Mitchell
University of New Hampshire
Cooperative Extension
Water Resource Program
55 College Rd /Pettee Hall
Durham, New Hampshire 03824

Richard Moore
US Geological Survey
361 Commerce Way
Pembroke, New Hampshire 03275-3781

Nancy Phillips
Water Task Force
Town of Hollis
183 Dow Road
Hollis, New Hampshire 033049

Sarah Pillsbury
Source Water Coordinator, Water Division
New Hampshire Department of Environmental
Services
PO Box 95
Concord, New Hampshire 03302-0095

Kenneth Stern, P.E.
Chief Water Resources Engineer
New Hampshire Department of Environmental
Services
P.O. Box 2008
Concord, New Hampshire 03302-2008

Michael J. Walls, Esq.
Assistant Attorney General
Office of Attorney General
State House Annex
Concord, New Hampshire 03301

Eric Williams
Non-Point Source Program
New Hampshire Department of Environmental
Services
PO Box 95
Concord, New Hampshire 03302-0095

APPENDIX F: Advisory Committee

Francesca Latawiec
Principal Planner
New Hampshire Office of State Planning
2 1/2 Beacon St.
Concord, New Hampshire 03301
603-271-2155

Frank Mitchell
UNew Hampshire Cooperative Extension Water Resources Program
Pettee Hall
55 College Rd.
Durham, New Hampshire 03824-3599
603-862-1067

Sarah Pillsbury
Water Supply and Pollution Control Div.
Department of Environmental Services
P.O. Box 95
Concord, New Hampshire 03302-0095
603-271-1168

APPENDIX G: Bibliography

"Conservation Easement Deed, Generic Document Master," Trust for New Hampshire Lands, November 13, 1991.

"Conservation Easement, Georgia-Pacific Corporation et als, to St. Johns River Water Management District ," Putnam County, Florida, August 9, 1995

"Conservation Easement," Brandywine Conservancy, Chadds Ford, Pennsylvania,, undated.

"Conservation Easement," City of Greenville, South Carolina to The Nature Conservancy, County of Greenville, SC Registry of Deeds Book 1516 Page 503-513, May 24, 1993.

"Drinking Water Handbook for Public Officials," US Environmental Protection Agency, December, 1992.

"Economic Implications of Groundwater Contamination to Companies and Cities," Freshwater Founaction, date unknown.

"Final Water Committee Report to the Selectmen," Town of Hollis, N.H., November 12, 1990.

"Groundwater Protection Act," Chapter 344 Revised Statutes Annotated 485-B, State of New Hampshire, 1991.

"Hollis Master Plan," Town of Hollis, N.H., 1991.

"Hollis Water Resources Management and Protection Plan," Town of Hollis Planning Board, Hollis, N.H., Adopted February 6, 1990.

"Perpetual Conservation Easement State of Minnesota, Board of Water and Soil Resources," (model) St. Paul, Minnesota, April 1994.

"The Watershed Protection Approach: 1993/94 Activity Report," US Environmental Protection Agency, November, 1994.

"Watershed Protection Easement," Olivia Newlin Jones to Orange Water and Sewer Authority, County of Orange, NC Registry of Deeds, Book 965 Page 328-330, February 21, 1992.

"Well Siting Criteria, Env-Ws 378, 1992" NH Department of Environmental Services, Concord, NH, 1992.

"Zoning Ordinance," Town of Durham, NH, Adopted February 5, 1990.

Barrett, Thomas S. and Stephan Nagel, "Model Conservation Easement and Historic Preservation Easement, 1996," Land Trust Alliance , Washington, DC, 1996.

Chase, V.P, Deming, L.S., and Latawiec, F., "Buffers for Wetlands and Surface Waters: A Guidebook for New Hampshire Municipalities," Audubon Society of New Hampshire, Concord, NH, 1995.

Cullen, J. B., "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire," N.H. Department of Resources and Economic Development, Concord, NH, 1996.

Diehl, Janet and Thomas S. Barrett, "The Conservation Easement Handbook," Trust for Public Lands, Land Trust Alliance, 1988.

Francis, Sharon, "How Clean New Hampshire's Waters," NH Natural Resources Forum, November, 1983.

Francis, Sharon, "Tools for Community Water Supply Protection," Water Resources Action Project, 1985.

Kittredge, David, Jr. and Michael L. Parker, "Massachusetts Best Management Practices Timber Harvesting Water Quality Handbook," Cooperative Extension, University of Massachusetts, April, 1989.

Korzendorfer, B.A. and Horn, M.A., "Estimated Use of Water in the New England States, 1990," U.S. Geological Survey, Water-Resources Investigations Report 94-4252, 1995.

Lind, Brenda, "The Conservation Easement Stewardship Guide," Land Trust Alliance, Washington, DC, and Trust for New Hampshire Lands, 1991.

Massachusetts Audubon Society, "Mapping Aquifers and Recharge Areas," November 1985.

Massachusetts Dept. of Environmental Quality Engineering, "Proposed Amendments to 310 CMR 22.00 Massachusetts Drinking Water Regulations," Boston, MA, December 22, 1995.

Medalie, Laura and Moore, Richard Bridge, "Ground-Water Resources in New Hampshire: Stratified-Drift Aquifers," US Geological Survey, Water Resources Investigations Report 95-4100, Bow, NH, 1995.

Moore, Richard B., "Geohydrology and Water Quality of Stratified-Drift Aquifers in the Exeter, Lamprey, and Oyster River Basins, Southeastern New Hampshire," US Geological Survey, Survey Water-Resources Investigations Report 88-4128, Bow, NH, 1990.

Moore, Richard B., Carole D. Johnson and Ellen M. Douglas, "Geohydrology and Water Quality of Stratified-Drift Aquifers in the Lower Connecticut River Basin, Southwestern New Hampshire," U.S. Geological Survey, Water-Resources Investigations Report 92-4013, Bow, NH, 1994.

Appendix G: Bibliography

Morris, Jackie, "Source Protection: A Guidance Manual for Small Surface Water Supplies in New England," New England Interstate Water Pollution Control Commission, March, 1996.

New Hampshire Code of Administrative Rules Pln 100, "Rules for Local Water Resource Management and Protection Plans," State of New Hampshire, Adopted August 20, 1990.

New Hampshire Code of Administrative Rules, "Best Management Practices," Env-Ws 421.

New Hampshire Department of Environmental Services, "A Guide to Identifying Potentially Favorable Areas to Protect Future Municipal Wells in Stratified Drift Aquifers," Vol I, New Hampshire DES-WD-97-11, May 1997.

New Hampshire Department of Environmental Services, "A Guide to the New Hampshire Wellhead Protection Program and the Groundwater Protection Act," Concord, NH, October, 1991.

New Hampshire Department of Environmental Services, "A Guide to the NH Rules for Siting Small Overburden and All Bedrock Community Wells," Concord, NH, February, 1995.

New Hampshire Department of Environmental Services, "Groundwater Protection Rules, NH Code of Administrative Rules" Env-Ws 410, Concord, NH, February 1993.

New Hampshire Department of Environmental Services, "Known Contamination Sites," (draft) Concord, NH.

New Hampshire Department of Environmental Services, "NH Comprehensive State Ground Water Protection Program Profile," (with appendices) Concord, NH, Revised July, 1994.

New Hampshire Department of Environmental Services, "Phase 1 Wellhead Protection Delineation Guidance," Concord, NH, October, 1991.

New Hampshire Department of Environmental Services, "Purpose and Applicability of Instream Flow Rules, PART Env-C 720, (draft)" Concord, NH.

New Hampshire Department of Environmental Services, "New Hampshire Wellhead Protection Program, BMP Inspector Seminar," Concord, NH, March 1995.

New Hampshire Department of Environmental Services, "The DES Guide to Groundwater Protection," Concord, NH, 1996.

New Hampshire Department. of Environmental Services, "Water Use Registry and Reporting Data Base," Concord, NH, 1996.

New Hampshire Office of State Planning, "Developing a Local Inventory of Potential Contamination Sources," NH Department of Environmental Services, Concord, NH,

- New Hampshire Office of State Planning, "Model Health Ordinances to Implement a Wellhead or Groundwater Protection Program," NH Department of Environmental Services, Concord, NH, October, 1992.
- New Hampshire Office of State Planning, "Model Shoreline Protection Ordinance," Concord, NH, August 8, 1992, revised July 1994.
- New Hampshire Water Resources Board, "NH Water Resources Management Plan," Concord, NH, 1984.
- O'Connor, Robert et als, "Quabbin Watershed: MDC Land Management Plan 1995-2004," Metropolitan District Commission, Boston, MA, June 21, 1995.
- Robbins, Richard, et als, Effective Watershed Management for Surface Supplies, American Water Works Research Foundation and AWWA, Denver, CO, 1991.
- Rockingham Planning Commission, "Stratham Wellhead Protection Program Summary Report," Rockingham Planning Commission, June, 1993.
- Rowinski, Christine, "Functions and Values of Forested/Scrub Wetlands; Research Summary," NH Office of State Planning, Concord, NH, June, 1995.
- Roy F. Weston, Inc. et als, "Water Supply Study for Southern New Hampshire," Southern NH Water Supply Task Force, State of NH, Concord, NH, May, 1990.
- South Florida Water Management District, "Perpetual Conservation Easement," (model) , West Palm Beach, FL, February 9, 1993.
- Stone, Andrew W. and Amanda J. Lindley Stone, "Wetlands and Ground Water in the United States," The American Ground Water Trust and Audubon Society of New Hampshire, Concord, NH, 1994.
- Suska, Paul, "Groundwater Protection: What Do Towns and Water Suppliers Need?; Analysis of Survey Results as of February 5, 1996," NH Dept. of Environmental Services, Concord, NH, February 5, 1996.
- Toppin, Kenneth W., "Hydrogeology of Stratified-Drift Aquifers and Water Quality in the Nashua Regional Planning Commission Area South Central New Hampshire," US Geological Survey Water-Resources Investigations Report 86-4358, Bow, NH, 1987.
- Truslow, Danna B., "Preparing for Groundwater Protection and Planning, Groundwater Resource Evaluation for NH Town Planners," University of New Hampshire Water Resource Research Center, September, 1982.
- Water Quality: The Crisis Facing Our Country's Most Critical Resource," 1985 Annual Conference, Coalition of Northeastern Governors, Washington, D.C., 1986.

Appendix G: Bibliography

Williams, Eric, ed., "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials," NH Department of Environmental Services, Concord, NH, May, 1994.

Worden, Richard Carlos, "Policy Analysis Exercise Final Report: Is Prevention of Contamination Cheaper than Treatment at the Wellhead?," US EPA Region 1, Boston, MA, April 12, 1988.