



Conservation Easements: A Step by Step Guide

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PRELIMINARY STEPS:

1. Landowner expresses interest in land conservation.
2. Discuss the land and conduct a preliminary observation of it.

MEETING WITH THE LANDOWNER:

3. Collect preliminary information about the parcel from tax maps, town tax records, topographic maps, wetland maps, aerial photos, etc. if the project appears viable
4. Investigate the property in more detail through follow-up visits and research:
 - Ask the landowner for copies of any maps, deeds or other information on the property. You will need a copy of the current deed.
 - Identify boundaries (map & mark if necessary). Photograph corner markers, stone walls that are boundaries and other landmarks that document the boundaries. Label the photos and reference them to a map.
 - Inspect the land for potential hazardous waste sites and request information on any records of such from NHDES (Waste Mgt. Div), Select Board & Fire Chief .
 - Determine if there's an interest in excluding part of the parcel from the easement (e.g., existing or future house site)
 - Note the condition of forest, wetlands, roads, trails, etc.
 - Review the deed to the property.
 - Determine whether the land contains any special features that might be referenced in the easement deed, including:
 - A general inventory of natural features, using existing local information as available as well as information collected on site.
 - Known occurrences of rare species or natural communities on the property. Source: NH Natural Heritage Inventory.*
 - Wetlands officially designated as prime. Source: municipal conservation commission or NH DES, Wetlands Bureau.*
 - Deer wintering areas or other critical wildlife habitats. Source: NH Fish & Game Dept.*
 - Historic sites. Source: NH Div. Of Historic Resources*
 - Archaeological sites. Source: NH State Archaeologist's Office.*
 - Whether the land overlays a significant stratified drift aquifer. Source: US Geological Survey or NHDES for aquifer maps or use the land trust's natural resource inventory maps.
 - Whether the land is in a watershed of a public water supply. Source: Municipality &

topographic maps.

- Whether the land is on a designated scenic road.
- The relationship of the property to nearby protected lands, special features, etc.

*** Note:** The information sources noted above will need a map showing the location and parcel configuration

5. Explain conservation options fully and objectively, as applicable to the project (it may help to provide printed materials from the Land Trust Alliance [LTA] or other sources [see Where to get help, below]) and determine the landowner's choice (the decision may come later).

6. Talk with the landowner further and ask:

- Why they are interested in land conservation.
- What they have in mind for conservation restrictions.
- How they describe the land, its history and its importance to them, the community and the region.
- The history of the property - use and ownership. Is there a forest or farm management plan? If so, obtain a copy.
- How much they know about land conservation options and techniques.
- Who else (e.g., family members) may have an interest in what they're planning and what communication has taken place among them?
- Whether they intend to reserve any rights in the easement such the ability to remove one or more house lots at a future time?
- Whether there is a mortgage or any liens on the property.
- Whether there is a survey of the property (if so, get a copy).
- Assess potential problems carefully.

7. Provide information to the landowner:

- Land trust or conservation commission information (land trust brochure, local land conservation plan, etc.)
- What you and your group will do to help them reach their land conservation goals and what you will not do (e.g., legal or tax advice or financial assistance).
- Resources that are available.
- Conservation options in addition to easements (review again).
- A sample conservation easement deed.
- Federal and local tax implications for the landowner (LTA Standards & Practices Guidebook has information sheets on the IRS aspects you can photocopy)
- The expected time frame to complete the project.
- Costs that will be incurred (easement, legal, survey, title search. etc) and who will pay. Invite the landowner to contribute to costs that might otherwise be covered by the land trust, especially an easement monitoring endowment contribution.
- Recommend that the landowner have his or her own attorney and/or financial advisor advise him or her about the legal and tax issues associated with conservation easements.
- Send a follow-up letter describing the agreement, expectations, costs, time frame, etc.

ONCE THERE IS AGREEMENT TO PROCEED WITH A CONSERVATION EASEMENT:

Note: If a municipal conservation commission is to receive the easement, the approval of the local governing body (Select Board or Town or City Council) is required by state law.

8. Determine if it is appropriate to have a second land trust hold an executory (backup) interest in the easement and secure their approval.

9. If applicable, proceed with getting a subordination of the mortgage from the mortgage holder.

10. Have a conservation easement deed drafted based on the decisions made with the landowner. This can be done by an attorney, land conservation consultant or a local, regional or statewide land trust. Expect to revise this initial draft at least once after review by the land trust and the landowner. For this, you will need to provide:

- Full name(s) and address(es) of the Grantor(s)
- Location of property (street or road name)
- A description of:
 - structures or improvements in the easement area
 - rare or unusual species or unique habitats
 - historic features
 - mortgages or liens on the property
 - special restrictions
 - reserved rights
 - any other unique features of this property or circumstances of the landowner.
- Copies of:
 - current municipal master plan language that supports the conservation of this type of property.
 - the land trust's statement of purpose and conservation plan.
 - map/survey of property
 - current deed or deed reference (book & page # in the Registry)
 - the amount of acreage to be placed under easement
 - whether the easement will allow public access.

11. If the land trust or conservation commission has accepted the responsibility, contract for a survey if necessary (once geographic limits of the easement are decided with the landowner). Some type of property description, preferably a survey, will be referenced in the easement deed.

12. Have a title examination performed. Have the results reviewed by the land trust's attorney.

13. Refine the first draft of the easement deed and survey after review by all parties. Repeat as needed.

14. Compile baseline documentation for the easement property. It would ideally include:

Legal Information.

Copies of the deeds for the property

Copies of any mortgages, liens, or encumbrances and releases, if applicable

Title history and abstract

Maps

Locus map (shows location of the property within a larger geographic area)

Survey

Topographical map showing location and approximate boundaries of property

Tax map

Forest type map, if available

List of abutters (may be on survey or tax map)

Photographs (optional but recommended)

On-site photos keyed to a map

Aerial photos, if appropriate

Natural resource information (this may vary depending on the property)

Descriptions of wildlife habitats or wildlife known to use the property

Rare, threatened or endangered species; unique natural communities, if known to occur

Forest resources assessment

Scenic features

Geology and soils

Agricultural resources

Historic or archaeological resources

Wetlands and water resources; aquifers

Human-made features

Location and description of any improvements in the easement area, including structures, trails, fences, wells, utility lines, roads

Land management and history

Current forest or agricultural management plans

Description of land use history (farming, grazing, mining) and past disturbances (storms, fire)

Municipal data (referenced in easement deed)

Master plan sections that support conservation of this type of land

Special designations, such as scenic road

Hazardous waste assessment

Other

Location of other protected lands in area

Owner confirmation of the baseline documentation

15. Have the easement deed signed by all applicable parties (requires notarization)

16. Register the easement deed as well as any accompanying maps at the county Registry of Deeds. There is a fee for this.

17. Provide the landowner with a copy of the registered easement deed and any related documentation.

18. Recognize the completion of the project and the landowner's conservation actions through a news release, newsletter article, etc. Send a thank-you note. Remind the landowner that you'll be monitoring the terms of the easement regularly (preferably annually).

19. Sign and copy any IRS paperwork related to a possible tax deduction the landowner will claim.

20. Monitor the land annually to confirm that the easement restrictions are complied with. Meet with the

landowner and give her or him a copy of the completed monitoring report.

21. Enforce any easement violations if necessary.

WHAT YOU WILL NEED:

- Several people to share the work
- These guidelines and other information sources
- Printed information for landowners
- Sources of information for natural resources inventory
- Access to maps, aerial photos, etc.
- Funding
- Support from the community & its elected officials if the project is a municipal one
- Easement expertise
- Legal review
- Deed research
- Mapping skills
- A reasonable amount of time (such as a year)
- Publicity (optional)
- Town master plan (to reference language in support of conservation)
- Surveyor (may not be necessary in all cases)
- Camera

WHERE TO GET HELP:

- Local, regional and statewide land trusts
- Publications of the Land Trust Alliance, a national non-profit umbrella organization of land trusts:
 - 1331 H St NW, Suite 400, Washington, DC 20005
 - phone 202-638-4725; fax 202-638-4730
 - <http://www.lta.org>
- UNH Cooperative Extension,
 - for help with natural resource inventories and land conservation planning:
 - Community Conservation Assistance Program
 - Amanda Stone, Community Conservation Coordinator
 - UNH Cooperative Extension
 - 36County Drive, Laconia, NH 03246.
 - Tel: 364-5324 Fax: 364-2456
 - E-mail: amanda.stone@unh.edu

for a list of NH land trusts and map showing their geographic coverage or a list of land conservation-related publications:

Community Conservation Assistance Program
214 Nesmith Hall
University of NH
131 Main St.
Durham, NH 03824-3597

- New Hampshire Land Conservation Assistance Program, for help with education and training in land conservation, technical assistance and assistance with land transactions. This program is under development - contact the Society for the Protection of NH Forests for information at 224-9945.
- New Hampshire Wildlife Federation at 224-5953 or nhwf@aol.com, for a copy of their Community Conservation Manual (under development).
- Town counsel (attorney) for conservation commissions
- NH Association of Conservation Commissions at 224-7867 or http://www.nhacc.org/nhacc_.htm for a copy of their Conservation Commission Handbook.