


NEW HAMPSHIRE MUNICIPAL ASSOCIATION



Understanding Conservation Easements

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Towns and cities sometimes agree to accept conservation easements without fully understanding their role as the holder of an easement. This webinar will explain what a conservation easement is and how the restrictions contained in the easement deed apply to both current and future land owners.

Attorney Thomas Donovan, Director of Charitable Trusts at the Office of Attorney General, and Attorney Terry Knowles, Assistant Director, will familiarize municipal officials with their legal duties and responsibilities in insuring the terms of the easement deed are monitored and enforced.

How to Participate Today

- Open and close your Panel
- Submit text questions
- Q&A addressed at the end of today's session
- Raise your hand in *response* to a question



Agenda

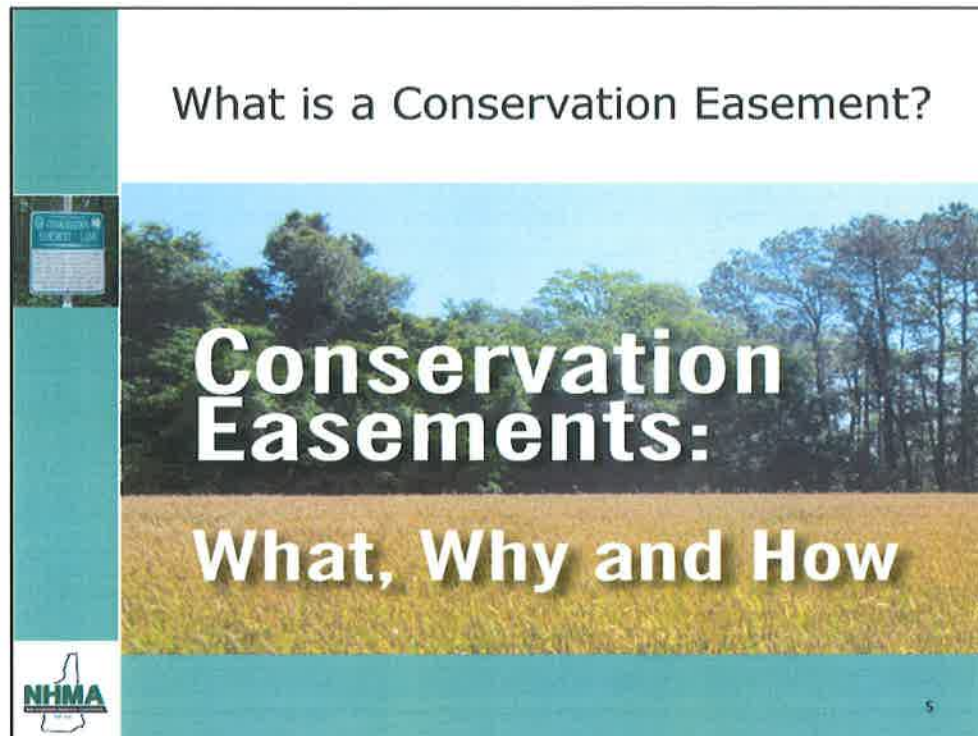


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The Importance of Due Diligence
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Review of Legislative Intent



The natural beauty of New Hampshire, exemplified by its pristine water sources, mountain views, forests, and farmlands, attracts large numbers of seasonal visitors as well as those seeking permanent residence in the state. Because unique natural features are often equated with prime development sites, a system for the preservation of these special places for future generations, through conservation easements, was enacted by the New Hampshire legislature in 1973.

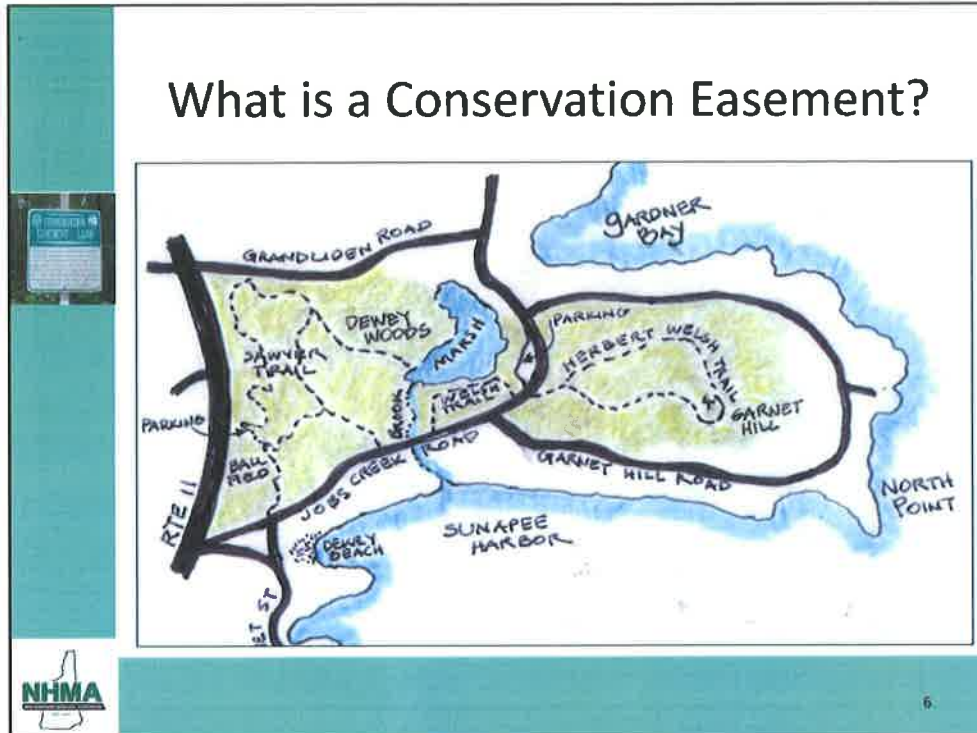


What is an easement?

In general, a conservation easement is a permanent prohibition on certain activities, often commercial or residential development, on a parcel of land. See NHRSA 477:45 I Conservation and Preservation Restrictions, Definitions.

The grantor of an easement permanently extinguishes certain rights in the use of the property. Typically, a conservation easement prohibits any activity that would diminish or harm the special features and/or unique characteristics of the land being protected. These use restrictions are specified in the easement deed, run with the land in perpetuity, and are legally enforceable against all future landowners by the easement holder.

What is a Conservation Easement?



A conveyance of some of the rights to use a parcel of land

FROM an owner of real property

TO the State, County, Town or City, or

TO a charitable corporation, association, or trust whose mission includes conservation easements and related activities

What is an Conservation Easement?



“Conservation easements restrict the development and use of the land they encumber for the purpose of preserving the land’s natural, open, scenic, historic, or ecological features. Landowners convey such easements to government entities or charitable conservation organizations (known as land trusts), and these entities and organizations hold and enforce the easements for the benefit of the public.” *Nancy McLaughlin, Professor of Law, University of Utah S.J. Quinney College of Law*

Understanding Municipal Roles and Responsibilities



If a New Hampshire municipality has accepted, or is considering the acceptance of, conservation easements it is important for town and city officials to understand their roles and responsibilities in monitoring the use of the conserved land and in insuring the provisions of the easement are fulfilled and enforced. See NHRSA 477:46 Restrictions Enforceable.

Need for Baseline Documentation

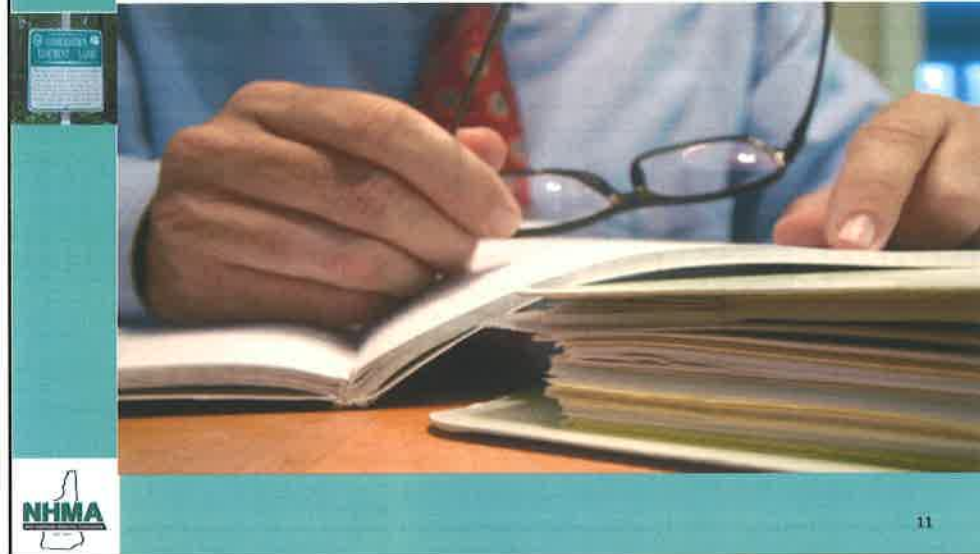


Once an agreement is reached between the parties, the next step is to establish a baseline description of the property.

Baseline documentation may include, but not be limited to, the identification of any monuments delineating the boundaries of the lot or parcel, a detailed description of the present use of the property, photographs, and identification of any buildings, wells, septic systems, burial grounds, unique natural features, etc.

Comprehensive baseline documentation can be useful in monitoring the property or addressing questions involving an alleged violation arises at some point in the future.

Legal Review a “Must”

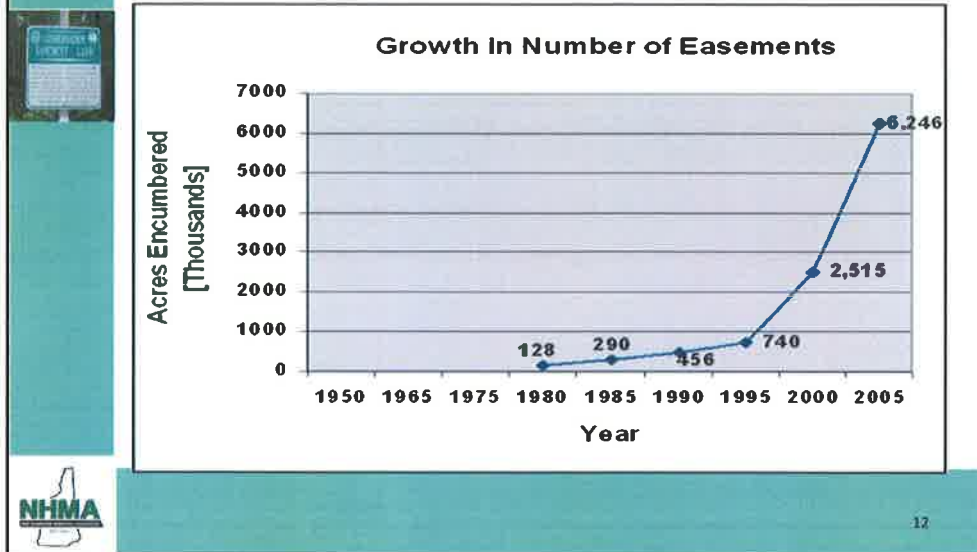


It is recommended the proposed easement deed be reviewed by the city solicitor or the town counsel prior to its execution.

The language in the deed should be clear and unambiguous and, to the extent possible, the meaning of specific words describing reserved rights, use limitations, and/or permitted activities should be easily understood.

For example, while the word “agritourism” is defined in RSA 21:34-a, a recent disagreement over the interpretation of that term necessitated a ruling from the New Hampshire Supreme Court in a local zoning case. Forster v. Town of Henniker, NH Supreme Court No. 2013–893, decided June 12, 2015.

Monitoring Conservation Easements

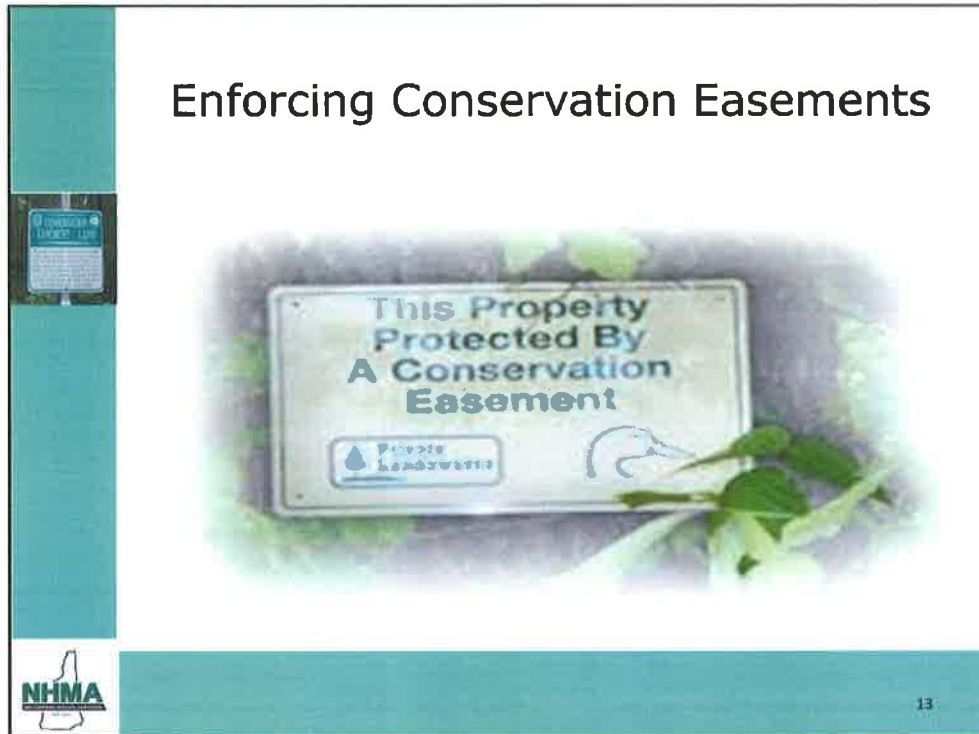


Once acquired, the municipality, as the easement holder, has a duty to monitor activities on or changes to the conserved property, generally once a year, to insure compliance with the terms of the easement deed.

All inspections should be conducted in a thorough and consistent manner.

The municipality may also find it useful to create a formal process for receiving, reviewing, and following up on citizen complaints about any alleged misuse of conservation land.

Enforcing Conservation Easements



A conservation easement is only as good as its enforcement. Therefore, if ongoing monitoring activities, or a citizen complaint, uncovers a possible violation, it must be forwarded to the appropriate body, generally the governing board of the municipality and/or the conservation commission, for investigation. If it is ultimately determined a violation has occurred, the next step is to notify the landowner of the activity which constitutes a breach of the terms of the easement. If another person has caused the violation, such as a neighboring land owner, that person should also receive notice.

Enforcing Conservation Easements



If a landowner refuses to remedy the violation and/or disputes that a breach has occurred, the municipality must then make a decision on how to proceed. Some easement violations are more serious than others.

For instance, prohibited ATV use, trash dumping, or minimal timber cutting may have a minor or temporary adverse effect on the conservation values protected by the easement. In that case, a warning letter followed by increased monitoring may be sufficient.

On the other hand, the violation may be of a more serious and permanent nature such as the construction of roads, erection of structures, or clear cutting of timber. In that case, the municipality must be prepared to bring an enforcement action in court against the landowner.

Enforcing Conservation Easements



Ongoing monitoring

Allegation of breach of terms of an easement; building permit application

Notification process – Selectmen or Conservation Commission?

Investigation; Contact the landowner

Warning; follow-up

Enforcement action in court if necessary

Eminent Domain Issues

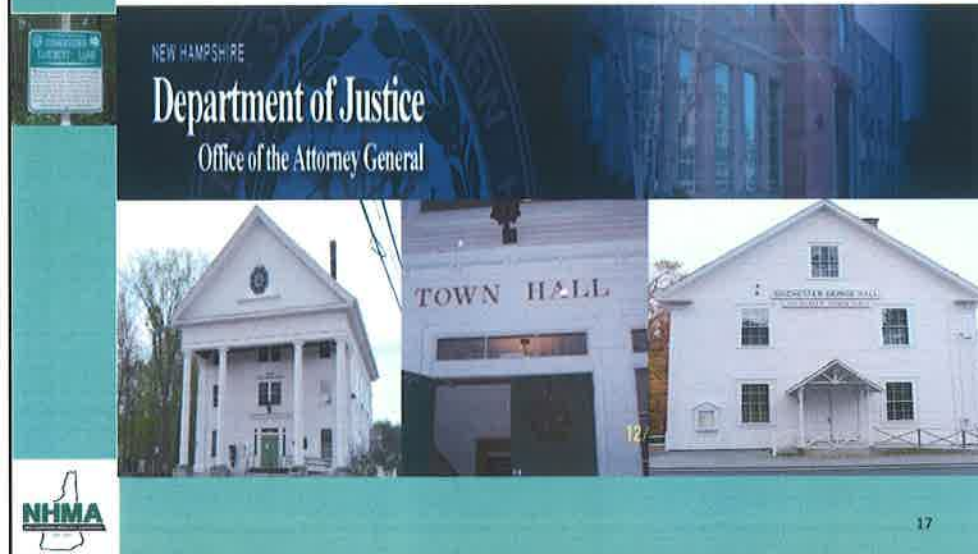


A conservation easement may be taken by eminent domain when the public benefit of the proposed project has been determined by the appropriate tribunal.

In a condemnation proceeding, however, fair market value must be paid for the easement parcel; the proceeds are then redirected for another conservation purpose

Negotiation may lead to land swaps

Municipal Interaction with Attorney General's Office



It is important to note the conservation easement amendment process may place the municipality in contact with the Attorney General. Why? Because most conservation easements are donated in whole or in part as a charitable gift to the easement holder. That transaction creates a charitable trust, since the easement is donated for a charitable purpose, i.e. the protection of certain land for conservation purposes. The municipality acts as a “trustee” to protect the property’s conservation values and the Attorney General, representing the public interest, oversees charitable trusts. Because a proposed amendment to a conservation easement may affect certain conservation values, the Attorney General, Charitable Trusts Unit may need to become involved in the process.

Amending a Conservation Easement



A municipality asked to consider an amendment to a conservation easement should carefully review the publication Amending or Terminating Conservation Easements: Conforming to State Charitable Trust Requirements, available through the Attorney General's website (see below). It sets forth seven principles for New Hampshire easement holders to consider in reviewing such requests. The publication divides requests into low, medium and high risk amendments. It explains which amendments require the Attorney General's review and which amendments require court approval.

The publication Amending or Terminating Conservation Easements: Conforming to State Charitable Trust Requirements may be found at:

<http://www.doj.nh.gov/charitable-trusts/documents/conservation-easements-guidelines.pdf>

Guidelines



Amending or Terminating Conservation Easements: Conforming to State Charitable Trusts Requirements

Low Risk Amendment

More Risk Amendment

High Risk Amendment

Charitable Trusts Available to Assist Municipalities



Given that most conservation easements are charitable trusts, municipalities must take their roles seriously. A town or city's biggest risk lies in not monitoring or enforcing the easements they hold, or in granting easement amendments too readily.

The Charitable Trusts Unit stands ready to assist municipalities facing amendment requests or alleged violations of conservation easements.

By carefully reviewing proposed conservation easements, and prudently monitoring and enforcing existing easements, municipalities can measurably improve the health, environmental quality, agricultural, recreational and aesthetic values within their communities.

Contact Information

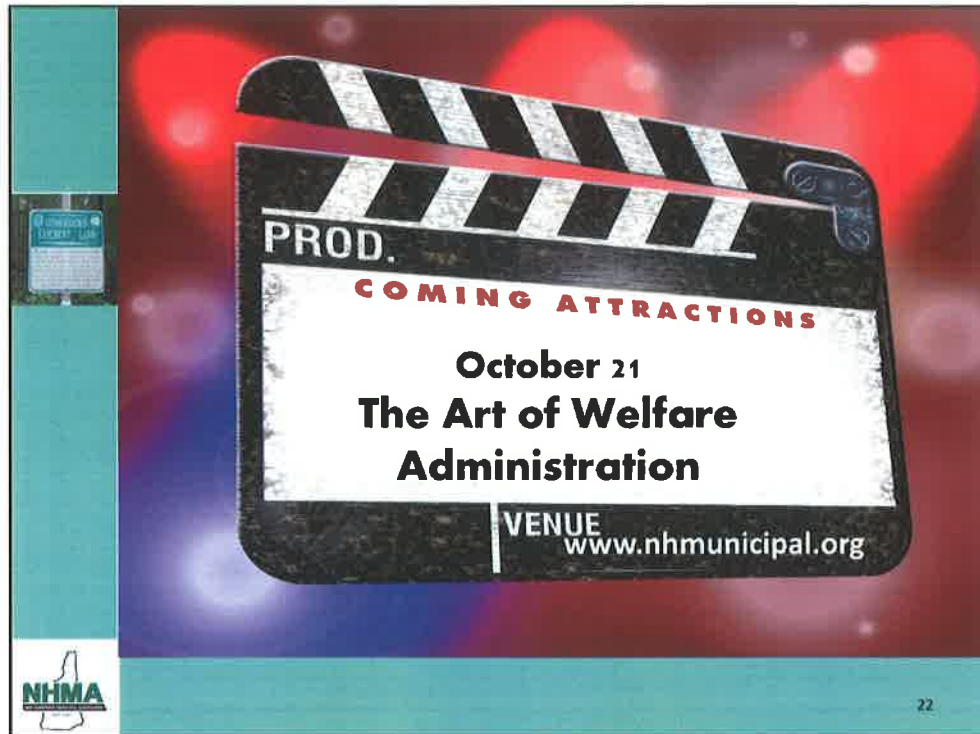


Website: <http://www.doj.nh.gov/site-map/charities.htm>

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This webinar will provide a basic overview of New Hampshire law governing local welfare administration, including why guidelines are important, review of guiding court decisions, how assistance is provided, income that is counted and that which is exempt. This webinar will also address fair hearings, suspension of assistance, along with fact scenarios.

Join Legal Services Counsel Stephen Buckley and Staff Attorney Margaret Byrnes who will take some of the mystery and uncertainty out of the laws related to welfare.

This webinar is open to members of the NH Municipal Association and is of special interest to any municipal official making local welfare decisions.

<https://www.nhmunicipal.org/Resources/Calendar>



THANK
YOU

*for attending
our webinar
presentation
today!*



Mission Statement

The New Hampshire Municipal Association is a non-profit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

