

Conservation Easements

Conservation easements should be an important tool in the town's efforts to protect its open space and natural resources. However, it is important that each potential easement be carefully evaluated so that the town does not add to its monitoring burden without adequately protecting a truly significant resource.

Criteria for Acceptance of Easements

The criteria for acceptance of a conservation easement by the Town of Columbia are based upon the goals stated in the Open Space Plan. These are:

- * Protect quantity and quality of drinking water supplies
- * Protect quality and accessibility of recreational waters
- * Protect the rural character of the town which includes scenic vistas and roads, agricultural uses and structures, and historic or cultural sites.
- * Protect unique or sensitive environmental resources
- * Protect habitat areas for Columbia's game and non-game wildlife, including large unfragmented forest blocks
- * Protect wildlife corridors particularly those along perennial streams and water bodies
- * Protect sites that provide opportunities for passive recreation such as hiking, biking, nature study, cross country skiing, canoeing or kayaking, fishing, and hunting.
- * Protect sites that abut or serve to connect existing dedicated open space
- * Protect sites suitable for active recreation as identified and prioritized by a Recreation Commission

1. A conservation easement must serve one or more of the open space goals listed above. The goals it serves should be listed within the conservation easement agreement.
2. A conservation easement must protect a *significant* resource. The Open Space Plan lists the attributes a parcel must have in order to be considered a "priority parcel". A list of such priority properties has been created which may serve as a reference in evaluating potential easements. Significant resources identified by other agencies such as the DEP, WINCOG, or by professional environmental review should also be considered.
3. The easement must be large enough to be significant for its purpose. If it is too small to ensure that its conservation resources remain intact, it may still be considered if it abuts other protected land or there is potential for adding additional acreage in the future.
4. The easement should have the potential for a sound management plan.
Easements with public access usually present a difficult management scenario, especially when the purpose of the easement is for recreation. As a rule, protection of land for recreational purposes should be through other means than an easement.
If the landowner insists on provisions in the easement that would be hard to monitor or that might at a future time diminish the conservation values of the property, acquisition of the easement should be reconsidered.
5. The easement should be on property that is in a relatively natural, undisturbed condition. The easement property must be free of environmental hazards such as sites of former industrial/commercial use, buried fuel storage tanks, evidence of dumping of waste

materials, or any other use which may lead to pollution of the soils or waters on the site.

6. An easement on a mortgaged property shall be accepted only if the lender agrees to subordinate its rights to the rights of the easement holder.

Additional contraindications to acceptance of an Easement:

The property's values are primarily scenic, but the property cannot be readily viewed by the general public.

Adjacent properties are being developed in a way that is likely to significantly lessen the conservation values of the property in question.

The configuration of the easement (and any abutting easements) are extremely irregular, narrow, or with so many multiple abutting owners that enforcement would be extremely difficult.

The proposed easement is part of a development plan which is likely to have significant adverse impact on conservation resources, and which the evaluation committee cannot therefore endorse.

Procedure for Establishment of Conservation Easements

1) At such time that the terms of a conservation easement agreement have been agreed upon and signed by the grantor and grantee, and the boundaries of the proposed conservation easement are approved by the Planning & Zoning Commission, they shall be flagged in a manner that distinguishes them from wetland and property line flags.

2) Upon agreement of both parties (grantor and grantee) that the boundaries are properly flagged, permanent markers (provided by the Town of Columbia) shall be installed by the grantor along said boundaries, facing away from the restricted area. The markers shall be placed at intervals of no more than 75 feet, and one must be placed at every change of direction where the internal angle is 120 degrees or less. The markers shall be attached to either a healthy tree or to a metal post. They shall be placed at a height of between 54" and 72" from the ground. Markers attached to trees must be secured with two galvanized common nails, leaving the head of the nail 1" outside of the wood. Markers mounted on metal posts must have galvanized wire through both holes of the marker and through two holes of the post.

If the easement adjoins another easement on an abutting property, markers do not need to be placed on the abutting property line.

3) At such time that the boundaries are marked as described in step #2, the grantee will be responsible for numbering each metal marker in a permanent manner. Numbers will correspond to the lot number within the subdivision and progress sequentially around the perimeter. For example, the first marker on subdivision lot 3 would be #3-1, the next #3-2, and so on. If the lot is not part of a subdivision, the first number on the marker will correspond to the assessor's lot number. The location of each marker shall be recorded by the grantee on a survey map of the conservation easement. The map itself shall be provided by the grantor.

4) Within a week of the completion of the above three steps, a photo survey of the restricted area shall be taken by the grantee. Each point from which a photo is taken will be documented with both a written description of the location in reference to a numbered marker or any other permanent landmark, and a compass bearing based on magnetic north.

5) At the same time, a survey of ecological and man-made features shall be made and recorded both in a written summary and on a companion map.

6) With the above steps completed, the following items shall be provided by the grantor:

- a road map of the town of Columbia, locating the conservation easement
- a topographic map of Columbia, locating the conservation easement
- a reduced survey map of the conservation area showing the boundaries of the easement, and indicating abutting owners.

The following shall be provided by the grantee:

- A copy of the photo survey descriptions and the ecological and man-made features survey and map

At this time, both grantor and grantee must sign a document agreeing to a statement of condition at the time of transfer.

7) The deed conveying the easement from the grantor to the Town of Columbia (grantee) shall be recorded in the town records. Until such time as legal transfer is made and recorded

and the baseline documentation described above is completed, there shall be no excavation, movement of earth, or construction within 25 feet of the boundary of the conservation easement.

Monitoring and Enforcement of Easements

An easement is a partnership with different entities holding separate rights to the same property. Usually, there is a clear understanding of the mutual needs and goals of the parties at the time the easement is first put into effect. However, with the passage of time, if there is poor or no communication between the parties or a change in ownership of the parcel, there is potential for misunderstandings to arise.

For an easement to be effective, the two parties must communicate clearly and regularly in a cooperative manner. The terms of the easement should be clear and enforceable. The property owner needs to know just what to expect from the easement holder and vice versa. There must be a program of regular, systematic, and well-documented monitoring.

For these reasons, the following monitoring program is recommended:

1) Annual Inspection. The easement document grants to the grantee the right to enter the property to monitor the easement on an annual basis, or more often if there is evidence of a violation or a request from the owner for an activity permitted in the easement only with the approval of the grantee.

*All such visits should be preceded by notification of the property owner. This should be in writing and well in advance of the visit. Any correspondence in regard to the visit should become part of the permanent file.

* The owner or his/her representative should accompany the town's representative on the inspection if possible. Any phone or face-to-face conversations in regard to the visit should be documented in writing and become a part of the easement record file.

* The person doing the inspection should bring along the maps, written description, and photos of the photo and ecological baseline surveys created at the time the easement was first instituted. The visitor should also bring a copy of the last year's inspection report.

*During the visit, notes should be taken on any changes to the easement area. These changes may be either natural or the result of human activity. Photographs should be taken where a record seems desirable. These photos should be referenced in the same manner as those of the original survey.

*Discuss observable changes with the owner.

* Complete the inspection report form and send two copies to the owner. Ask him/her to sign and return one copy for the town's files.

2) New Owners. A letter should be sent to the new owner at the time the town becomes aware of such a change in ownership. (The original easement agreement should provide for such notification) The letter should include a brief history of the easement, its purpose, and the manner of its monitoring. If the new owner has questions, a meeting should be arranged to address them. This initial contact should set the precedent for clear and cooperative communication between the two parties.

3) Enforcement. As time passes, violations are fairly certain. The town needs to remedy violations in a way that restores the protection of the significant resource and maintains a positive relationship with the property owner where possible. Litigation usually results in hard feelings that may cripple the future landowner/grantee relationship to the point where the incentive to cooperate is destroyed. It is in both parties interest to avoid litigation wherever possible.

1) When the town becomes aware of a violation, it should contact the owner before entering the property to verify the violation. Where possible, a joint inspection should take place with the same procedures being followed as in the annual inspection. The town's representative must be prepared at this time to document the violation in a manner that would stand up in court, should litigation become necessary.

2) Once the nature of the violation is established, Remediation should be discussed with the owner. Some violations, such as cutting of trees, do not have a simple Remediation. Mature trees cannot be replaced. The owner can put in new seedlings, but the town may also desire payment for the loss in value of the easement.

Dumping of non-hazardous waste or mowing of a "no mow" area can be simply solved. Ideally, both parties can agree upon the needed Remediation. The cost for the Remediation must be borne by the owner, but the actual work may be carried out by a party mutually agreeable to both parties.

It may be possible that the violation was committed by a third party, who may even be unknown. Although the owner remains legally responsible for the activities on his/her land, the town may wish to assist the owner in remediating the problem.

3) Where there is no cooperative effort on the part of the owner, or there are repeat violations by the same party, a legal remedy should be undertaken. A conservation easement program that is not willing to carry out enforcement has wasted a lot of time and effort in establishing and monitoring these easements. When a legal remedy is decided upon, the town attorney must advise on the pro's and con's of litigation versus arbitration on a case by case basis.

The Easement Agreement

Attached are copies of easement documents used by Mansfield and Coventry, as well as a model agreement from the Conservation Easement Handbook.

Although any easement may involve language to cover the specific issues on the specific property, every agreement should include the basic elements included in the checklist found in the Conservation Easement Handbook.

To date, the Town of Columbia has used the Mansfield model document , and a document supplied by K&M builders for the Homestead development.

The Town of Columbia needs to decide upon a standard document which may be shown to the potential grantor at the time the donation or sale of an easement is being discussed. This document shall include all items desired by the Town of Columbia, and the rights of the grantee should not be negotiable. However, the rights of the grantor and the specific prohibitions and/or rights reserved by the grantor may be subject to negotiation.