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Stewardship Plan for Four Conservation Easements Held by the Town of Newfields

Jeffrey H. Taylor & Associates, Inc.

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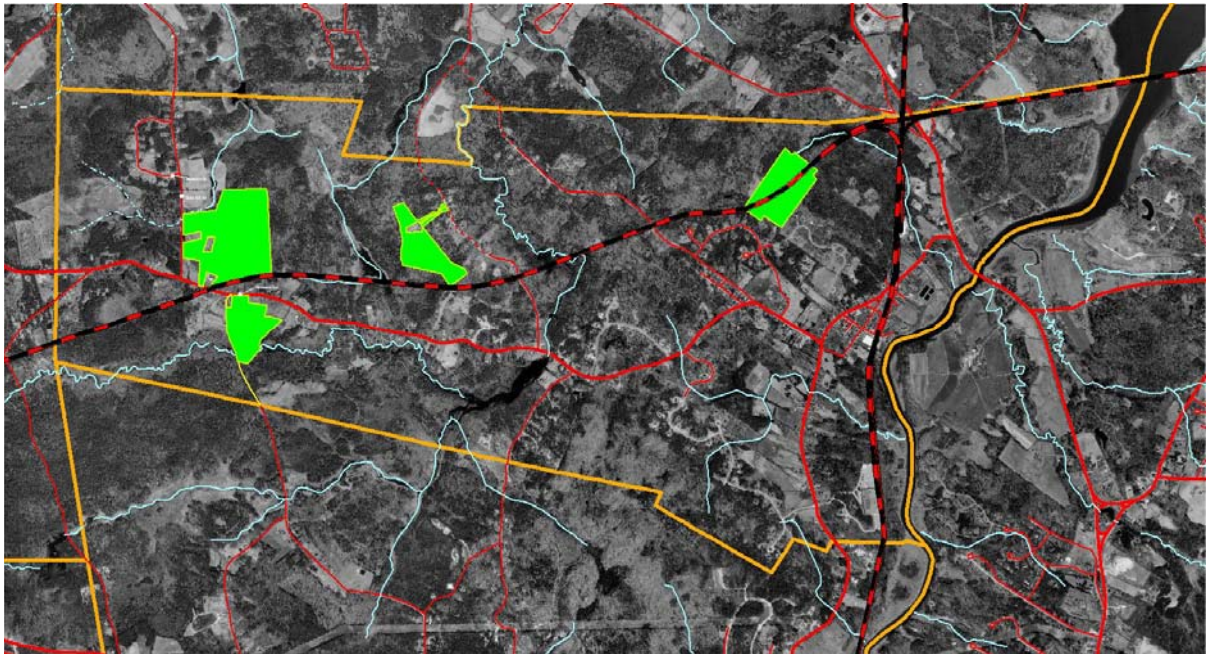
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Stewardship Plan for Four Conservation Easements Held by the Town of Newfields, NH



In Partial Fulfillment of a Grant from the New Hampshire
Estuaries Project

July 2006



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Introduction

In 2005 the Town of Newfields, NH was awarded a grant by the New Hampshire Estuaries Project. The Eligible Activity applied for, under the category of Land Conservation and Natural Resource Protection was “Development of monitoring plans for town-held easements on conservation lands”. The Town identified four properties on which they hold conservation easements as the focus of the project.

Newfields’ goal in applying for the grant were to have each property visited by the contractor and a local volunteer, conduct an interview with the landowner and a ground monitoring of the property. Following the visits, baseline documentation reports and a stewardship plan for each easement property would be created. As a part of the plan, the Town also hoped to address policy considerations relating to stewardship of easements.

Activities

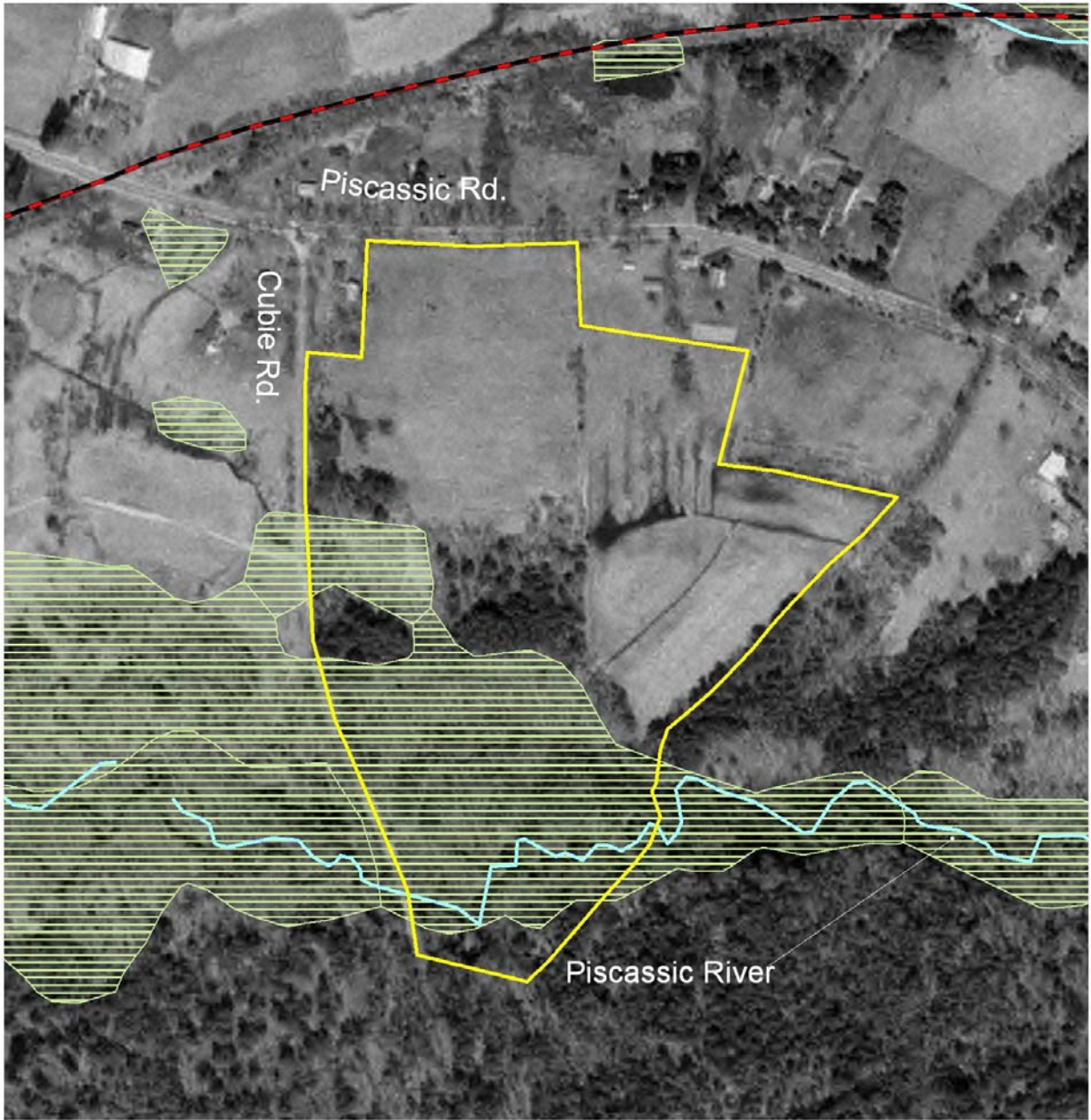
Chris Kane was the lead associate for Jeffrey H. Taylor & Associates on this project. In the course of the grant period the following activities were undertaken by Mr. Kane in conjunction with the Newfields Conservation Commission for each of the four subject properties.

- Review of easement file
- Procurement of additional materials for files from Registry of Deeds
- Organization and creation of permanent easement files
- Creation of monitoring field file
- Contact with landowner in writing notifying them of monitoring visit
- Identification of local volunteers for monitoring
- Monitoring visits with volunteer and landowner, with review of easement terms, activities and plans for management, and field visit of property including photographs, verification of boundaries and monuments, and documentation of features
- Creation of Monitoring Report for each property visit
- Follow-up letter to landowners
- Data request of NH Natural Heritage Bureau
- Edit/correction of existing GIS digital map files
- Creation of 3 GIS maps, baseline cover report and labeled photos with map key
- Creation of Baseline Documentation Report
- Development of property-specific stewardship plan

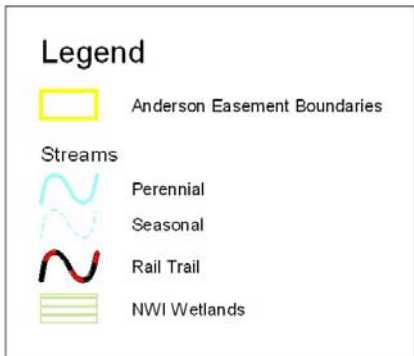
Additionally, a spreadsheet including pertinent property information was produced. A draft Easement Violation Policy was also produced, and following discussions with the Conservation Commission, a final draft is provided here as Appendix B.

Property Profiles and Stewardship Plans

The following Stewardship Plans are based on review of the easement file documents, owner interviews, field visits and discussions with the Newfields Conservation Commission. Opinions and Recommendations are intended as such, according to the best professional judgment of the contractor. Easement excerpts below are summarized versions of the actual more specific language contained in each easement deed. It is important to note that all easement deeds are different in some way, and the “Idiosyncrasies of Easement Deed” sections intend to flag and summarize the some of the terms that are special to each deed. The entire easement deed should be reviewed before monitoring visits, or to answer any questions regarding allowed uses, etc.



1998 Aerial



Anderson Easement

30.937 ac., Newfields, NH

Chris Kane, 6/2006



Anderson Easement

1. Property Profile

This 30.9 acre easement was granted to the Town of Newfields by the Anderson Family Revocable Trust of 1993 on June 8, 2004, Marguerite P. Anderson, trustee, who is the current owner. The property is comprised of regularly managed hay fields, mixed hardwood-softwood forest, and a portion of an intact forested wetland associated with the Piscassic River which flows through a portion of the property. The wetland is classified as a natural community within a “Low-gradient silty-sandy riverbank system”, tracked by the NH Natural Heritage Bureau. This “Swamp white oak floodplain” community is ranked as S1; the highest category of rarity on a state-wide basis. The property has approximately 490 ft. of frontage on Piscassic Road and approximately 1,485 ft. of frontage on Cubie Road, both public roads. The property also has approximately 815 feet of frontage on both sides of the Piscassic River.

2. Pre-existing Issues

None.

3. Idiosyncrasies of Easement Deed

2.B. The easement deed prohibits subdivision in general, but leaves the door open for subdivision under certain conditions, at the sole discretion of the Grantee (Town).

3.A. Grantor reserves the right to place all or a portion of a well, septic tank, and leach field in the easement area if such area is not available on land not subject to the easement. The “land not subject to the easement” however is not specified. It was most likely intended to mean the Anderson house area, but potentially this could be argued to extend to abutting lots as well.

5.A.; B.; C. Grantee retains right to reasonable access to Property to determine compliance, to place conservation land signs, and to allow pedestrian access and to construct (a max of 10 ft. wide) and maintain trails to be used by public.

5.D. Grantee shall have the right, but not obligation to keep the current fields open by mowing, grazing or other means, but only if the Grantor has allowed them to grow up for at least 3 years.

4. Summary of Monitoring Visit

Lindsay Carroll and Chris Kane visited with “Meg” Anderson at her home, and then walked the entire easement boundary and interior portions. The only activities since the easement establishment have been annual mowing of the fields. No easement issues were observed, however an old pile of dumped mattresses lingers on the discontinued Cubie Road frontage in the SW corner. Several easement corners were not marked, including those in the vicinity

of the Anderson house excluded area and on the common boundary with the house abutting to the west on Piscassic Road. The west corner on Piscassic is of some concern, as the survey clearly shows a permanent monument at this location, and as the area was searched thoroughly it is possible that this was removed.

5. Stewardship Recommendations

Before 2007 Monitoring Visit:

Remove Dumped Mattresses The Conservation Commission should either remove dumped mattresses on Cubie Road, or ensure that they are otherwise removed before the 2007 monitoring visit. This is not a violation issue, but it is a source of concern to Meg Anderson, and a potential site of continued dumping if it is not dealt with.

Contract Surveyor to Place Permanent Monuments at Un-marked Easement Corners The corner monument at the NW easement corner on Piscassic Road may have been moved, as the survey shows one here, and the area was thoroughly searched. The boundary common to this corner house lot is almost entirely unmarked, and the line is very close to a garage. The excluded area around the Anderson house and next to the abutting house lot to the east are also un-marked. Three lines occur in portions of a field with no discernible marking to indicate the easement boundary.

To prevent potential boundary violations, the Town should have a surveyor place permanent corner monuments at these locations. For efficiency Millette, Sprague & Colwell who did the original easement plan should be approached first. This investment will serve as a passive preventative measure that could save the Town time, money and unfavorable publicity in the future.

Annually:

The volunteer monitor, currently Lindsay Carroll, should monitor the easement annually. This will involve reading the easement and reviewing the file in advance, contacting the owner to arrange a meeting time, conducting a brief meeting with the owner to review the easement terms and activities past and planned, and walking significant portions of the property, especially the boundaries with the abutting house to the west on Piscassic Road.

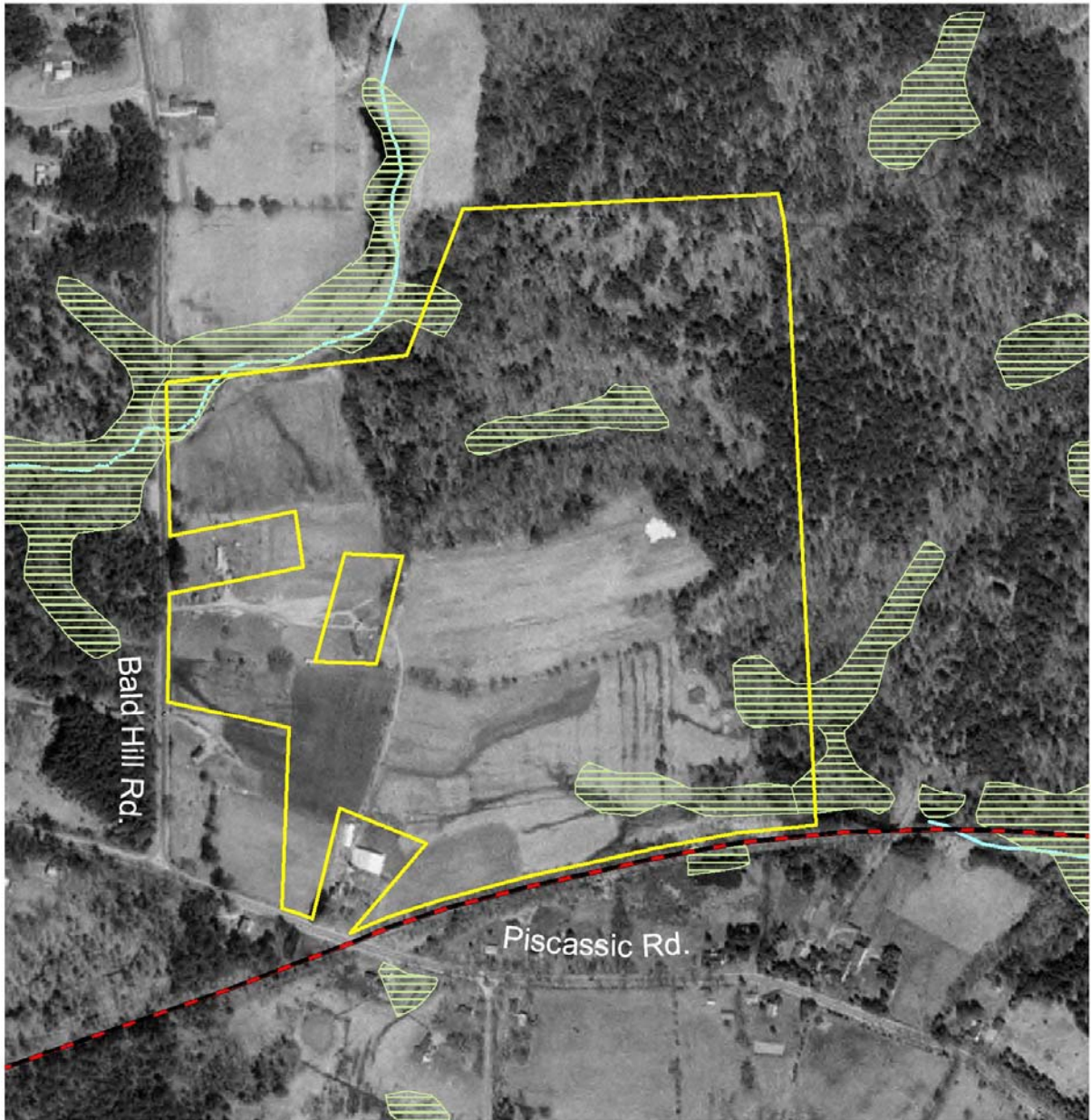
As a part of the easement discussion, the monitor should clarify that the easement does not in any way allow or condone a subdivision except in extenuating circumstances that are not specified, and that the reserved right for the constructions of a well, septic tank or leach field is intended to apply to their residential exclusion only. If the fields are abandoned for over 2 years, discuss whether the Town should act to keep them open, as allowed by the easement. The owner should be informed that the floodplain forest wetland is rare in NH, and that activities in this area should minimize disturbance there. In particular, if a timber cut is planned, the management plan should address the sensitivity of the area. Also mention that any commercial forestry must be according to a written management plan for which a written

certification has been filed with the Town in advance. Write and send a follow-up letter summarizing the visit and meeting, and addressing any questions or issues.

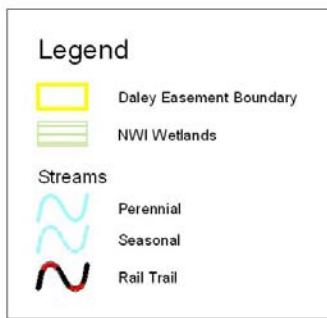
Photographs should be taken as needed to document changes, problems, or observances of special/unusual features. These photos should be numbered and labeled with property information, photographer name, photograph date, and a description of the location of the photographer, compass direction of photos and the subject. An accompanying survey reduction should be marked with photo numbers and direction, monitor name and date, and any notable observations. A Monitoring Report should be produced either from paper or digital master, and placed along with all photos, maps and correspondence with owner, etc. in the permanent property file.

If potential violations or other issues are encountered, the monitor will document thoroughly, and report the finding to the Conservation Commission in a timely manner, without discussing the issue with the owner. In this case the monitor should not send a follow-up letter until the issue has been vetted with the Commission, and a response has been decided on. (See draft Violation Policy)

If the property is transferred, the monitor should contact the new owner immediately, and arrange a brief orientation meeting to explain the easement restrictions, and also set a time for a property walk with the owner.



1998 Aerial



Daley Easement

84.24 ac., Newfields, NH

Chris Kane, 6/2006



Daley Easement

1. Property Profile

This 84.2 acre easement was granted to the Town of Newfields by the C. Joseph Daley, Jr. Revocable Trust of 2001 (C. Joseph Daley, trustee), Cora A. Daley and Cora Lee Daley on November 2, 2004. Cora A. Daley is the mother of Joe and Cora Lee. The grantors are the current owners. The property has large, extensive hayfields highly visible from Piscassic and Bald Hill Roads, and a significant stand of managed pine and mixed hardwoods. The farm buildings that serve the agriculture on the property, and two residential zones are excluded from the easement. The easement is composed of portions of three tax parcels, one of which is owned separately from the other two. The property has approximately 89 ft. of frontage on Piscassic Road and approximately 728 ft. of frontage on Bald Hill Road, as well as approximately 1,600 feet of frontage on the Rockingham Recreational Trail, a public trail.

2. Pre-existing Issues

A timber cut was performed in early 2005 without a certified forest management plan, which came to the attention of the Conservation Commission after the fact. Forester Jeff Eames supervised the cut. The Commission deemed that the lack of a management plan was not intentional. At the first monitoring visit on January 22, 2006 Alison Watts and Chris Kane discussed the topic with Joe Daley, who had contracted the work. The requirement in the easement, as well as the rationale for it was expressed to Joe, who agreed to forgo any further cutting until a written plan had been drafted and approved.

3. Idiosyncrasies of Easement Deed

The easement is granted by three parties on three parcels, but the ownership is not the same for all three parcels. A more typical approach would have been to have two separate easements from two parties, pertaining separately to the property that they each owned. None-the-less, the easement restrictions were intended to apply equally and consistently to all parcels.

2.A.I. Animal husbandry to include the breeding, training and use of horses for the personal recreational use of the Grantor;

2.C.I. Improvements (structures) are allowed only as necessary for accomplishment of the agricultural, forestry, conservation, non-commercial non-motorized recreational uses of the Property, “including facilities for horses and other equine animals for the private recreational purposes of the Grantor only”...The keeping, breeding, and use of horses for private, “recreational” uses is thus specifically allowed.

3.A.; 3.B.; 3.C. These sections specify the right of the Grantor to permit or forbid hunting, use of motorized recreational vehicles, or access for recreational uses by the public from time to time. Interpretation of these restrictions/allowances may lead to misunderstandings in the future. The property is posted at the present time, which would indicate that the public is not

allowed to access the property at any time. According to Joe, his concern is that he have some level of control over who uses the property, when, and for what purposes.

3.D.; E. Grantor allowed to construct a paddocks and an outdoor riding arena, and other such appurtenances normal and customary to recreational horses, but not to include parking lots, viewing stands, etc.

5.A.; B.; C. Grantee retains right to reasonable access to Property to determine compliance, to place conservation land signs, and to allow pedestrian access and to construct (a max of 10 ft. wide) and maintain trails to be used by public.

5.D. Grantee shall have the right, but not obligation to keep the current fields open by mowing, grazing or other means, but only if the Grantor has allowed them to grow up for at least 3 years.

4. Summary of Monitoring Visits

The property was visited by Chris Kane on two occasions, once with Allison Watts on 1/22/06 and once with Mark Bouzianis on 4/4/06. At the 1/22 visit there was a discussion with Joe Daley about the requirement for a forest management plan, activities past and planned, wildlife in the area, and the easement terms. A walk around much of the property boundary followed. Areas known to be favored by deer and selective cut areas were observed. Joe expressed a desire to do some excavating of a swale in the field north of the barn to expedite field drainage. Chris suggested he contact NRCS for some free, qualified advice regarding this. Several easement corners delineating the three excluded areas are either un-marked, or the pins have been buried to prevent conflict with plows. As a result, the corners could not be accurately located. On the 4/4/06 visit, the entire easement boundary was walked, and photos were taken. The corners of excluded areas were located as to the extent that tape and compass would allow. Joe was present at the end of the visit, and we talked briefly about the excluded area locations.

5. Stewardship Recommendations

Before October 1, 2006:

Suggest that Owner Post Signs that More Specifically Address Public Use The Commission may want to consider recommending signs that indicate that the property is open to public use, but with certain restrictions. Signs that specify what uses are never allowed, and what uses may be allowed by owner permission would come closer to communicating the easement restrictions to access than do stock off-the-shelf signs.

Before 2007 Monitoring Visit:

Explore More Effective Ways of Dealing with Obscure Corners of Excluded Areas Several corners of excluded areas were reportedly marked with iron pins, which Joe says he pounded

into the ground to avoid hitting with farm machinery. The uses and land cover of both sides of the boundary of the three excluded areas and the surrounding easement land are in many cases the currently same. As long as this is the case, monitors can rest assured that there are no problems on the easement portions. Looking to the future, it would be advisable to either make a habit of using a metal detector to locate these corners during monitoring, or to be conservative in estimating the boundary locations. If activities in these areas change to the point where easement violations may be imminent, a permanently visible means of marking these corners may be the best solution, despite possible inconveniences to the landowner.

Annually:

The volunteer monitor, currently Mark Bouzianis, should monitor the easement annually. This will involve reading the easement and reviewing the file in advance, contacting the owner to arrange a meeting time, conducting a brief meeting with the owner to review the easement terms and activities past and planned, and walking significant portions of the property, especially the boundaries with the three excluded areas. Also mention that any future commercial forestry must be according to a written management plan for which a written certification has been filed with the Town in advance. If the fields are abandoned for over 2 years, discuss whether the Town should act to keep them open, as allowed by the easement. In the case of new owners, clarify the issue of horses and the specific language pertaining to their use, as well as any plans to build riding facilities. A follow-up letter should be sent to the owner afterwards, thanking them for their time and cooperation, summarizing the visit and meeting, and addressing any questions or issues.

Photographs should be taken as needed to document changes, problems, or observances of special/unusual features. These photos should be numbered and labeled with property information, photographer name, photograph date, and a description of the location of the photographer, compass direction of photos and the subject. An accompanying survey reduction should be marked with photo numbers and direction, monitor name and date, and any notable observations. A Monitoring Report should be produced either from paper or digital master, and placed along with all photos, maps and correspondence with owner, etc. in the permanent property file.




If potential violations or other issues are encountered, the monitor will document thoroughly, and report the finding to the Conservation Commission in a timely manner, without discussing the issue with the owner. In this case the monitor should not send a follow-up letter until the issue has been vetted with the Commission, and a response has been decided on. (See draft Violation Policy)

If the property is transferred, the monitor should contact the new owner immediately, and arrange a brief orientation meeting to explain the easement restrictions, and also set a time for a property walk with the owner.



1998 Aerial

Legend

-  Gilmore Easement Boundary
-  NWI Wetlands
-  Rail Trail



Gilmore Easement

30.97 ac., Newfields, NH

Chris Kane, 6/2006



Gilmore Easement

1. Property Profile

The easement was granted to the Town of Newfields by Nancy J. Gilmore on August 24, 2004. The current owner is Kristin Silverstein as trustee of the Kristin H. Silverstein Revocable Trust of 2001. Kristin and her husband Perry live in the house that is in the excluded area in the center of the easement, along with a large horse barn, and is also connected to an excluded driveway corridor. The property fronts on Halls Mill Road, and is composed of a large pasture in the interior, and mixed woods and wetlands surrounding it.

2. Pre-existing Issues

When the current owners were in the process of purchasing the property, they approached the Town about altering the easement to limit public access to the property, which was originally reserved as an affirmative right of the Town. As a result of the resulting recorded “Clarification & Modification of Conservation Easement Deed” the Grantor (landowner) has sole and complete discretion as to whether, where, and under what circumstances a public access trail would be constructed and maintained on the Property, effectively vesting control of any public access to the easement property to the Grantor. It could be argued that this granting resulted in Private Benefit to the new owner.

3. Idiosyncrasies of Easement Deed

2.B. The easement deed prohibits subdivision in general, but leaves the door open for subdivision under certain conditions, at the sole discretion of the Grantee (Town).

2.I. The Grantor shall be allowed to maintain the existing riding ring, but not expand or enclose it.

3.A. Grantor reserves right to prohibit hunting, fishing, hiking and access to general public.

3.B. Grantor reserves right to place all or a portion of a well, septic tank, and leach field in the easement area if such area is not available on land not subject to the easement. The “land not subject to the easement” is not specified as being the associated single family house and barn, and then only in the event that such existing systems fail.

5.A.; B.; C. Grantee retains right to reasonable access to Property to determine compliance, to place conservation land signs, and to allow pedestrian access and to construct (a max of 10 ft. wide) and maintain trails to be used by public. This right is expanded as a result of the Clarification & Modification document to give sole discretion for such granting of access to the Grantor.

4. Summary of Monitoring Visits

The property was visited by Chris Kane, Laurie Hill and Allison Watts on 5/3/06. The monitoring team met briefly with Kristin Silverstein, discussed the easement terms, history of the Silverstein ownership, and matters of a general nature. A walk around the property boundary followed. It immediately became apparent that at least a portion of a newly constructed swimming pool south of the excluded house appeared to extend into the easement area. As the visit progressed, however it also became apparent that there was a discrepancy between the standard magnetic surveying compass used to monitor, and the easement survey plan. Towards the end of the visit, it was determined that the surveyor must have used true north rather than the almost universally preferred magnetic north as a basis of the bearings. The property walk continued, following the entire exterior easement boundary, but questions remained as to the location of the excluded area and the pool relative to the easement area. Perry Silverstein would not meet with Laurie and Chris Kane, despite being at home for a portion of the monitoring visit.

5. Stewardship Recommendations

As Soon as Possible:

Locate and Place Monuments at Corners of Excluded Area and On Halls Mill Rd. Secure the services of a surveyor to locate the corners of the excluded area and to place permanent monuments at these locations. For efficiency approach the original surveyor Landry Surveying first. There will potentially be some push back from the owner about this initiative. Consider that the Town is a legal interest holder in the property, and as such has certain rights. Also, it should be in the mutual best interest of both parties to clearly establish the location of the easement boundary.

Before 2007 Monitoring Visit:

Attempt to Resolve the Pool Issue After careful deliberation, establish a position relative to the pool issue, and move it forward. Take the position that the Town and the landowner are tied together for the conservation of the land, and as such would be better off cooperating. Consult with an attorney before announcing the Town's position to the landowner.

If it is determined that the a portion of the pool or associated grading is inside the easement area, this would constitute a clear violation of Sub-Section 2.C. which specifically prohibits the construction of swimming pools. A straight-forward interpretation of the issue based on the easement alone would point to an enforcement action. However, considering that the baseline documentation has yet to be completed, and that the Town did not ensure that the excluded area was clearly marked from the beginning, the Town may want to concede the pool in the interest of the long-term stewardship of the property. There are drawbacks to either approach. Once the issue is resolved, complete baseline documentation of the easement. Consult with an attorney before moving forward with any option.

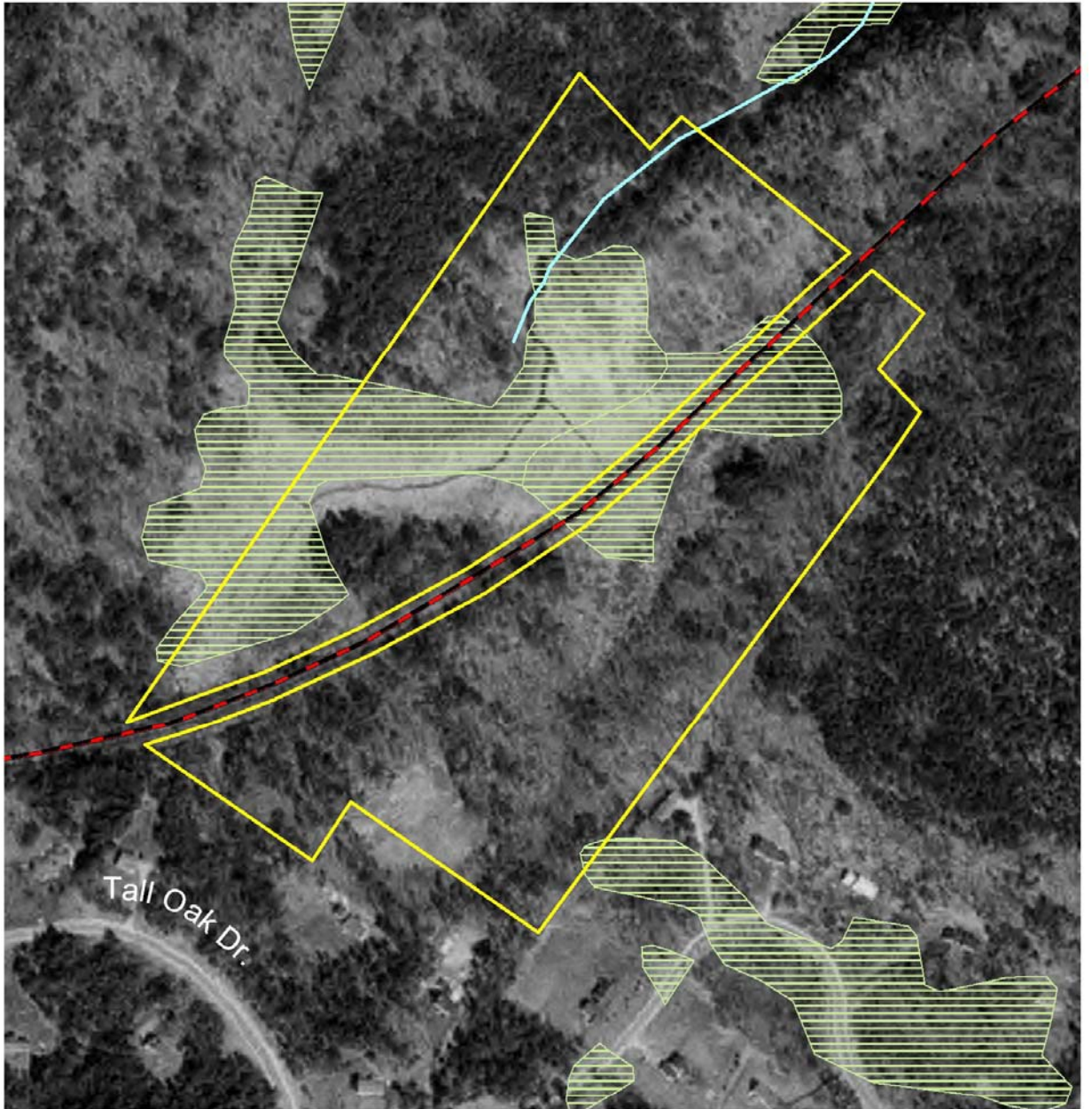
Annually:

The volunteer monitor, currently Laurie Hill, should monitor the easement annually. Considering that the pool issue will be fresh and likely contentious, it is advisable that the monitor be accompanied by another representative of the Conservation Commission. This visit will involve reading the easement and reviewing the file in advance, contacting the owner to arrange a meeting time, conducting a brief meeting with the owner to review the easement terms and activities past and planned, and walking significant portions of the property, especially the boundaries of the excluded area. As a part of the easement discussion, the monitor should clarify that the easement does not in any way allow or condone a subdivision except in extenuating circumstances that are not specified. Inquire about any plans to expand/relocate a well, leach field or septic system, and about plans for the riding ring. Also mention that any commercial forestry must be according to a written management plan for which a written certification has been filed with the Town in advance. A follow-up letter should be sent to the owner afterwards, thanking them for their time and cooperation, and summarizing the visit and meeting, and addressing any questions or issues. Note that bearings on the easement plan are adjusted to true north, not magnetic north as is the case in the vast majority of other surveys.

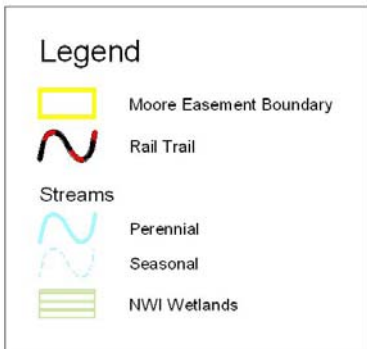
Photographs should be taken as needed to document changes, problems, or observances of special/unusual features. These photos should be numbered and labeled with property information, photographer name, photograph date, and a description of the location of the photographer, compass direction of photos and the subject. An accompanying survey reduction should be marked with photo numbers and direction, monitor name and date, and any notable observations. A Monitoring Report should be produced either from paper or digital master, and placed along with all photos, maps and correspondence with owner, etc. in the permanent property file.

If potential violations or other issues are encountered, the monitor will document thoroughly, and report the finding to the Conservation Commission in a timely manner, without discussing the issue with the owner. In this case the monitor should not send a follow-up letter until the issue has been vetted with the Commission, and a response has been decided on. (See draft Violation Policy)

If the property is transferred, the monitor should contact the new owner immediately, and arrange a brief orientation meeting to explain the easement restrictions, and also set a time for a property walk with the owner.



1998 Aerial



Moore Easement

40.1 ac., Newfields, NH

Chris Kane, 6/2006



Moore Easement

1. Property Profile

The easement was granted to the Town of Newfields by Wesley and Suzanne Moore on December 20, 1999. The property was recently transferred to Mary and William McCarthy of Auburn, Maine. The property is comprised of portions of two tax lots separated by a B&M Railroad right-of-way that is now dedicated as the Rockingham Recreation Trail. The land cover is predominantly un-managed mixed hardwood-softwood forest. A large portion of a diverse wetland system with significant open water areas occupies much of the interior of the property. A portion of a field is included in the easement area in the south portion. The property has no road frontage or access, but has approximately 2,000 ft. of frontage on both sides of the rail trail, a designated public trail.

2. Pre-existing Issues

None.

3. Idiosyncrasies of Easement Deed

II.A.1. Grantor reserves right to grant easements(s) and/or convey fee simple interest title to portions of the property relative to the water supply needs of the Town of Newfields for installation, use, maintenance, repair and replacement of such wells...provided that the conservation purposes...are not materially impaired...

II.B. No subdivision allowed except as related to the possible use as a (public) water supply.

II.H. Grantee may construct (subject to Grantor's written permission) and use as a public walkway a trail over and across the Property.

Appendix A. Note that following the property description of the two lots, there is a description of an excluded portion in the south corner, which was kept out of the easement. Also granted is a right to use a right-of-way across land of the Society for the Protection of New Hampshire Forests to access the easement property from Rte. 85.

4. Summary of Monitoring Visits

The property was visited on two occasions by Chris Kane; once on May 13, 2006 accompanied by Alison Watts and Steve Shope of the Conservation Commission, and the owner William McCarthy, and again on June 8, 2006 alone. It rained the entire time both days. Mr. McCarthy's family had originally owned the property before the easement was established, and they now also own an abutting parcel. The outside boundary of the two lots was walked, as well as the rail trail frontage. The excluded area has a barn on it, owned by the McCarthy's. This excluded area is only marked at one corner, and would benefit from permanent monuments. One of these un-marked corners is in an open field. No forestry activities have taken place here since the McCarthy's ownership, although the former owner

Moore did clear small trees and undergrowth in an area in the SE corner. The field in the south corner is mowed by the neighbor to the south, and he is allowed by the McCarthy's to use the field for soccer, etc.

5. Stewardship Recommendations

Before 2007 Monitoring Visit:

Explore Setting Excluded Area Corner Monuments There is only one corner of this area that is marked. The corners in the field and on the stone wall to the south are not marked in any way. The uses and land cover of both sides of the boundary of the excluded area and the surrounding easement land is currently the same. Looking to the future, it would be advisable to at least have the three corners monumented by a surveyor, possibly Rene Levesque, the original surveyor. Having permanent monuments placed at the corners and the boundary trees blazed will go a long way to preventing possible future issues of prohibited use.

Annually:

The volunteer monitor, currently Steve Shope, should monitor the easement annually. This visit will involve reading the easement and reviewing the file in advance, contacting the owner to arrange a meeting time, conducting a brief meeting with the owner to review the easement terms and activities past and planned, and walking significant portions of the property, especially the boundaries of the excluded area. Also mention that any commercial forestry must be according to a written management plan for which a written certification has been filed with the Town in advance. A follow-up letter should be sent to the owner afterwards, thanking them for their time and cooperation, and summarizing the visit and meeting, and addressing any questions or issues.

Photographs should be taken as needed to document changes, problems, or observances of special/unusual features. These photos should be numbered and labeled with property information, photographer name, photograph date, and a description of the location of the photographer, compass direction of photos and the subject. An accompanying survey reduction should be marked with photo numbers and direction, monitor name and date, and any notable observations. A Monitoring Report should be produced either from paper or digital master, and placed along with all photos, maps and correspondence with owner, etc. in the permanent property file.

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If the property is transferred, the monitor should contact the new owner immediately, and arrange a brief orientation meeting to explain the easement restrictions, and also set a time for a property walk with the owner.

Summary and General Stewardship Recommendations

The Town of Newfields has shown by undertaking this project that it takes the responsibility of stewardship seriously. Land that is protected will only stay protected if stewardship is performed regularly. The Town is on a solid footing now to move forward with new land protection initiatives knowing that they have also been diligent with administration of existing protected lands.

Stewardship as a practice has several benefits. It is first and foremost necessary to ensure the compliance of landowners with the easement terms. Thus annual visits will put the owner on notice that the Town is keeping an eye on the property, and will lessen the chance that a prohibited activity takes place. If performed well, stewardship also helps develop a positive relationship between the landowner and the Town. By viewing the relationship as a partnership for the continued protection of important resources on the property, trust and cooperation are fostered, and the landowner is much more likely to approach the monitoring volunteer or the Town with a question about an activity before they go ahead.

Each Easement should be visited in the field, and the owner interviewed on an annual basis. If issues or questions arise in the intervening month, additional visits, meetings or phone discussions will be necessary. It would be advisable for the designated volunteer monitors to visit their properties with another person, both to have another perspective and set of eyes, but also to familiarize someone else with the property, should a replacement monitor be needed in the future.

Record keeping is especially important to document the stewardship actions of the Town for the benefit of the Conservation Commission, and to facilitate future monitoring. It will also be critically important in an evidentiary capacity, should a litigation action be necessary. Thus, all reports, photographs, maps, and written correspondence, as well as written records of e-mails, meetings and phone conversations in any way related to a property should include the names of the involved parties including the Town representative, and be filed in the permanent easement file.

Newfields Easements Property Information

REGISTRY

Grantor	Date	Acres	Map/Lot	Book	Page	Survey	Current Owner	Owner Address	Owner Phone
Anderson Family Revocable Trust of 1993, The (Marguerite P Anderson, trustee)	6/8/2004	30.937	211-14	4307	2954	D-31665	The Anderson Family Revocable Trust of 1993, (Marguerite P Anderson, trustee)	301 Piscassic Rd, Newfields, NH, 03856	772-3461
Daley, C. Joseph Jr. Revocable Trust of 2001 (C. Joseph Daley, trustee); Cora A. Daley; Cora Lee Daley	11/2/2004	84.24	214-30.1, 213-8.1, 213-8.2	4389	1967	D-32077	Charles Joseph Daley (trustee), Cora A. Daley, Cora Lee Daley	20 Bald Hill Rd, Newfields, NH 03856	Joe - 772-7884 Cora - 772-2276
Gilmore, Nancy J.	8/24/2004	30.97	212-3.11	4354	123	D-31933	(Perry and) Kristin Silverstein as trustee of Kristin H. Silverstein Revocable Trust of 2001	95 Halls Mills Rd., Newfields, NH 03856	580-2422
Moore, Wesley T. and Suzanne D.	12/20/1999	40.1	207-4, 207-5	3445	1423	D-21219	Mary and William McCarthy	55 Winter St., Auburn, ME, 04210 wmccarthy@sjcme.edu	(207) 782-2904 H (207) 893-7721 W

Appendix B

Conservation Easement Violation Response Policy for Town of Newfields

D R A F T
5/24/2006

Overall Guidelines for Violation Response and Enforcement:

1. Maintain the conservation purpose of the CE.
2. Maintain Town's reputation and its ability to enforce specific CE's
3. Protect Town's legal rights and economic value in the CE
4. Maintain the most constructive working relationship possible with the landowner.
5. No one person should make unilateral decisions on violation response – get counsel first. Never give a landowner an on-the-spot opinion about whether or not a violation exists.
6. A Conservation Commissioner(s) will always be present at meetings with the property owner at which potential violations are discussed.
7. Communicate any decision or opinion on a potential violation clearly and firmly, and with one voice.
8. Be flexible as the situation warrants. Balance the harm caused by the violation with the cost/benefit of the selected enforcement response.
9. Generally only use litigation as a last resort and where there is a good chance of success.
10. Maintain consistent responses to similar CE violations.
11. File complete documentation of all aspects of the issue from start to finish whether a violation or not, including copies of all correspondence, summaries of personal and phone discussions and all meetings, photographs and maps.

Violation Prevention Strategies

1. Maintain good landowner relations.
Make a point of getting the landowner involved in the site visit.
If the landowner was unable to walk the property during monitoring, follow up with a phone call and send the written monitoring report to them. (If no violations are found, monitoring report should say so, but with an appropriate proviso such as “no violations were observed”, as violations may have occurred elsewhere on the property without the monitor’s knowledge)
Always encourage the landowner to ask questions.
2. Provide informal services to them – advice on enhancing wildlife habitat, send them newsletters and outings brochures, etc.
3. Frequent monitoring. (Volunteer/commissioner to conduct annual monitoring; and additional visits as needed.) Any volunteers who are recruited for monitoring should read the easement each time in advance, and receive appropriate training.
4. Ensure that the Town is informed when properties change hands.
 - Make sure local realtors know about CE properties.
 - Ensure that local tax assessor and other officials are aware of properties with conservation easements.
 - Check real estate transactions town by town on a regular basis.
5. Provide a “new owner introductory package” to ensure that new owners understand the conservation restriction for their property, and the concept and purpose of easements in general.
6. Whenever possible, urge CE landowners to keep their entire CE boundary and all corners clearly marked. If necessary, the Town should cost-share for this.
7. Work with the Town Attorney to refine the drafting of new conservation easements by learning from current standards.

Steps to Take in the Event of a Suspected Violation:

1. If a Conservation Commissioner or volunteer is on site with the landowner, ask non-judgmental questions for further clarification of the activity or physical modification. Do not use the term violation in your discussions. Use a polite, deferential approach. Thank the landowner for their time and tell them that you will follow up with them and send them a copy of the monitoring report.

Then go to 2.

2. If a Conservation Commissioner or volunteer is on-site without the landowner, simply complete the monitoring with good documentation including numerous photographs with map key, and report the suspected violation to the Conservation Commission chair.

The Conservation Commission chair reviews the Monitoring Report, the CE deed Purposes, Use Limitations and Reserved Rights sections with the monitor.

The Conservation Commission chair carefully rereads full CE deed, visits the site if necessary, and makes an initial assessment of whether or not it is a violation.

Conservation Commission chair then consults with the full Conservation Commission to further discuss and come to a final decision: violation or non-violation. Minutes of this discussion should be taken and filed.

a) If the decision is non-violation, the process ends - all discussions, correspondence and documentation are filed in the permanent file.

b) If the decision is violation, the Conservation Commission determines whether or not it is a minor or major violation and for what reasons. This determination is used to assist decision-making along the way, gauge level of effort required and level of expectations for remediation and compensation. If it is major, then the Town will put more resources into attempting to resolve the issue than may be the case for minor violations. Conservation Commission informs Board of Selectmen of decision and discusses next steps.

The Conservation Commission also develops alternative suggestions for remediation and/or compensation by the landowner. At this time, Conservation Commission chair may approach Town council to provide consultant legal advice. Ideally, secure the services of an attorney with significant experience in land protection law.

3. The Conservation Commission chair drafts and sends a (registered if required in CE deed*) letter to the landowner which specifies the CE violation and references appropriate passages from the CE document. The letter requests a personal meeting.

4. The Conservation Commission chair contacts the landowner by telephone to arrange the meeting with the landowner. The Conservation Commission chair and other Commissioner(s) meet with the property owner to walk the site, discuss the Purposes and Use Limitations of the CE, and the nature of the violation.

a) If the Conservation Commissioners and landowner agree upon the nature of the violation, they will discuss alternatives for remediation and attempt to arrive at a solution. This may require further visits, research, consultations and meetings.

The visit(s) is followed by a letter(s) that documents the conversation and discussed alternatives. If an agreement has been reached, the letter will also document the chosen remediation and a schedule of restoration as appropriate.

b) If the landowner does not agree that there is a violation or does not agree on the solution to a violation, Conservation Commission chair reaffirms his/her position and states that s/he will consult Town's legal counsel. Town council and the Conservation Commission will review the Breach of Easement section of the CE deed for guidance as to process.

The Conservation Commission chair consults with the Conservation Commission/Board of Selectmen and/or legal counsel to brainstorm other approaches that may be taken to attempt to reach an amicable resolution. Other alternatives may be employed to bring the landowner back into negotiation. The Conservation Commission chair and Town Council should identify a time limit for closure of the case to avoid letting the issue lag over and extended period of time.

- 1) If it is a major violation and the Town has exhausted all attempts at negotiation, the Conservation Commission will seek Board of Selectmen approval to take the violation to court.
- 2) If it is a minor violation, and after exhausting attempts at negotiation for removal and full restoration, Town may consider temporary approval (limited term) or less than full restoration.

For either a major or a minor violation, the Town may consider the use of an amendment or a discretionary approval (similar to amendment but not signed by landowner) to resolve the violation. However, there are number of considerations that the Town must weigh before pursuing this route:

- There has to be an exchange to compensate for any adverse impact of the amendment. The monetary value of the CE may not be reduced by the amendment such to create private inurnment or benefit (requires an appraisal). Amendments should be either conservation-neutral or increase the conservation value.
- Any amendment in this case must meet the requirements of the Town's Amendment Policy.
- Consider whether or not the amendment would be controversial in the community and incite negative public reaction. Such an amendment would most likely set a precedent in the Town that could be used by other CE landowners to exact concessions on their own easements.

- Consider the time and expense for the approval process

If an amendment is pursued, get Board of Selectmen approval before informing the landowner. Document and update baseline data immediately.

*** Procedure for Registered Mail Correspondence**

If the CE deed stipulates violation-related correspondence by certified mail, use “return receipt requested”. A copy of the certified letter should also be sent by first class mail. Specify a time frame for response in the letter.

- a) If the certified letter is rejected, resend the letter certified, first class, and have it delivered by constable.
- b) If a response is not received in the time period identified, re-evaluate the situation. Try to visit the property at times when someone may be found at home and attempt to make contact. If there is no success with repeated attempts at contact and it is a major violation, consider litigation.