

TECHNICAL ASSISTANCE BULLETINS

Easements

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TA Bulletin # 8

This TA Bulletin is one in a series of documents intended to provide guidance to volunteer board and committee members on specific planning topics. Emphasis is placed on the development review process.

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Black's Law Dictionary defines an easement as a "right of use over the property of another." Easements are generally limited to a specific purpose and do not impose an obligation on the landowner or confer special rights to the holder of the easement beyond its stated purpose.



Most of the land area surrounding The Basin on the west side of Vinalhaven has been protected by conservation easements. Photo by Chris Ayers.

Easements are an important part of our modern lives. They are often used for reserving:

- Land for electrical and other utility lines;
- Above and below ground storm water drainage systems;
- Passage of motor vehicles over certain roadways;
- Sidewalks in our cities and villages; and
- Hiking trails.

Easements can also be used for:

- Maintenance of buildings that abut a lot line;
- Preservation of architecturally significant buildings;
- Conservation of scenic views, wildlife corridors and other natural resource values; and
- Protection of land for farm or open space purposes.

Background Information

Principles of Easements

What is an Easement?

Ownership of a piece of property can be described as a “bundle of rights.” These rights include, but are not limited to, the right to occupy, use, lease, sell and develop the land. An easement involves the exchange of one or more rights from the landowner to someone who does not own the land. Easements have been used for years to grant governments, utilities and conservation organizations certain specific but limited property rights. An easement grants the holder certain rights for specified purposes while the ownership of land remains with the property owner. An easement may apply to the entire property or to a portion of it; it may be in the form of an agreement, deed restriction or covenant.

An easement does not prohibit selling the land or passing it on to heirs. It does require each successor to honor the restrictions specified in the easement. Although the landowner (the grantor) continues to manage his or her property, it is up to the party holding the easement (the easement holder) to keep records of the easement and to monitor the land to make sure that no violations occur.

What is a Conservation Easement?

A conservation easement, sometimes called a restrictive covenant, is a voluntary, legal agreement between a landowner and another party which either restricts the development of a tract of land or a portion of it, or imposes affirmative obligations on the landowner. The conservation easement is attached to the landowner’s deed and is recorded in the Country Registry of Deeds. In the agreement, the landowner gives up certain rights associated with the property, such as development rights or timbering rights, either for a specific period of time or on a permanent basis. However, the landowner does not give up actual ownership of the property. The easement is held by a qualified easement holder such as a government agency or a land trust.

Conservation easements and Maine law. According to Maine law (Title 32 MRSA Sections 476-480), a conservation easement can be used to retain or protect natural, scenic or open space values of real property, to assure its availability for agricultural, forest, recreational or open space use; to protect natural resources; or to maintain or enhance air or water quality of real property.

In practical terms, this means that conservation easements can be used to:

- Ensure that open space created through cluster or other development remains open in perpetuity;
- Provide public access to water bodies or other areas;
- Protect natural areas;
- Provide for public recreation;
- Keep farms and timberland from being developed; and
- Protect natural resources such as ground water recharge areas and wildlife habitat areas.

Easement creation. A conservation easement may be purchased or donated. The owner of the property is the only one who can decide to place a conservation easement on the property. When a property is owned by several individuals, all owners must agree to the easement. If the property is mortgaged, the mortgage holder must also be in agreement. A conservation easement is a voluntary land preservation tool that is privately initiated.

Conservation easements can and should be tailored to the particular needs of the landowner and the resource to be protected. For example, a portion of a property containing important wildlife habitat might be placed under a “forever wild” easement, while a working farm in close proximity to an urban area might be placed under a “resource management” easement.

Advantages of Conservation Easements

Economic Advantages. Assume that a piece of property is valued at \$100,000, and the landowner places a conservation easement on the portion that borders a water body. Upon reappraisal, it is determined that the easement devalues the property by \$20,000 to \$80,000. This means:

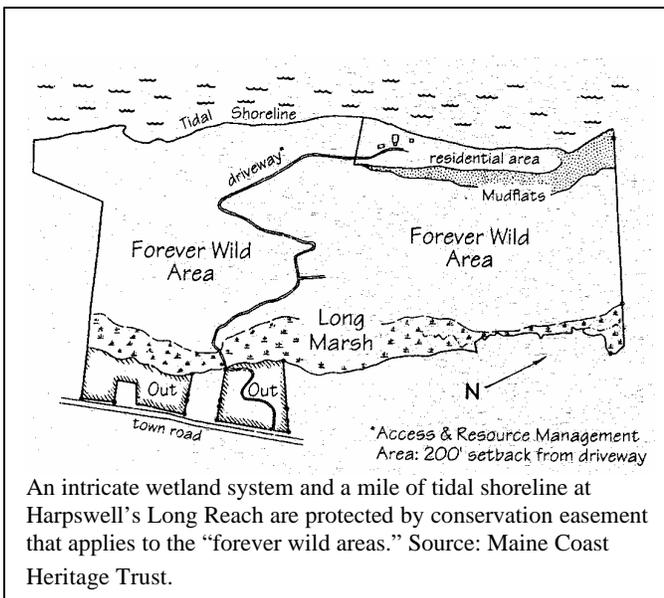
1. Income taxes - the \$20,000 devaluation may qualify as a charitable donation;
2. Capital gains taxes – selling a property that has appreciated in value from its purchase price generally results in a sizable capital gains tax. Reducing the property’s sale price through a conservation easement will reduce that liability;
3. Property taxes - may drop; and
4. Estate taxes – if the property is to be left to heirs, their tax liability will be reduced.

Environmental Incentives. Land, water and wildlife preserved through a conservation easement has a perpetual value that is difficult to quantify in terms of dollars and its benefits to future generations. Easements protect the land and apply to all future landowners. Often, a government agency or land trust will “hold” the easement to ensure that any and all restrictions are followed in perpetuity.

What are the Income Tax Benefits of Conservation Easements?

According to Section 170(h) of the Federal Internal Revenue Code, if a conservation easement is a “qualified conservation contribution,” the owner may deduct a portion of this from his/her taxable income, equal to 30% of the taxpayer’s adjusted gross income each year for six years. Any value that remains after the sixth year is lost for deduction purposes. The accepted value of the donated easement is the value of the land without the easement minus the value of the land with the easement. In order to meet the definition of a “qualified conservation contribution,” the conservation easement must meet several criteria:

1. Be “an easement or other interest in real property that under state law has attributes similar to an easement;”
2. Be donated to and held by a “qualified conservation organization.” This includes charitable conservation organizations or governmental units but not private foundations;
3. Be “for conservation purposes” and for the “substantial and regular use of the general public or the community.” This includes public outdoor recreation and education, protection of habitats or ecosystems, preservation of “historically important land areas” or preservation of open space that will clearly yield public benefit;
4. Be enforceable in perpetuity;
5. Have an agreement by the mortgage holder that the easement remains in effect with any sale of the property, even if foreclosed; and
6. Have “documentation sufficient to establish the condition of the property at the time of the gift.”



Who can hold an easement? Maine Law (Title 32 MRSA Section 476) defines an easement holder as either:

1. A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or
2. A registered nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.

Does an easement guarantee public access?

Conservation easements do not necessarily provide for public access to the property. The granting of an easement does not mean that the landowner is “giving away” the land. While the landowner is giving up certain rights to develop the land, he or she may still maintain the right to farm, hunt, fish or even put structures on the land. Public access can be restricted or refused. However, this may have income tax implications (see box).

Trail Easements

State law (Title 33 MRSA Section 1581-1585) states that a trail easement can be created in the same manner as other easements. Trail easements are for the purpose of creating and maintaining a trail for use by the general public for:

- Pedestrian, bicycle and/or equestrian use;
- All-terrain vehicles, if the instrument creating the easement provides for all-terrain vehicles;
- Snowmobile use, if the instrument creating the easement provides for such use; or
- Any combination of the above uses, as specified in the instrument creating the easement.

Scenic Easements

State law (Title 36 MRSA Section 1110) provides that any municipality, through donation or the expenditure of public funds, may accept or acquire scenic easements or development rights for the preservation of farmland or open space. The term of such scenic easements or development rights must be for a period of at least 10 years.

Solar Easements

Solar easements ensure access to direct sunlight (Title 28 MRSA Section 1401). Such easements may be acquired, transferred and recorded in the same way as other conveyances of real property interests.

Right-of-Way Easements

State law (Title 23 MRSA Section 3021 et. seq) establishes procedures for the laying out and discontinuance of town ways. When a town way is discontinued, unless otherwise stated in the discontinuance order, a public easement is retained which shall include, without limitation, an easement for public utility facilities.

Utility Facilities - Easements

Utilities have been granted broad statutory authority to construct and maintain their facilities in, upon, along, across and under the roads and streets in any municipality in which they are authorized to operate. This statutory "easement" (Title 23 MRSA Section 2301

et. seq.) extends to telegraph, telephone and television facilities, and water, gas, and petroleum facilities. When a road is discontinued, unless the discontinuance order specifies otherwise, the public utility easement is retained. This allows the utility to maintain, repair and replace its installations within the limits of the discontinued right-of-way.

Historic Property or Historic Façade Easement

A historic property easement is a conservation easement under which owners of a historic property pledge to preserve specified historic features of the property and usually agree to obtain the easement holder's written consent before making alterations. An agreement might stipulate, for example, that permission must be obtained before certain exterior features of a historic building can be changed, before an archaeological site can be disturbed, or before a historic landscape can be altered by subdivision or new construction.

Planning Considerations

Landowner Considerations. Maine Coast Heritage Trust (MCHT), a statewide land trust, has identified a number of questions which landowners should consider prior to donating or selling an easement (see [Conservation Options, A Guide for Maine Landowners](#) for a more complete discussion). Key questions include:

- Do you want to continue owning the land and pass it on to a family member?
- Do you want to continue living on the land?
- How many people will inherit the property?
- Do you want to donate your land to a charitable organization?
- What natural and cultural values does the land have?
- What protection is needed to conserve the property's natural or scenic values?
- Are estate or property taxes a concern? Could you benefit from an income tax deduction?
- Do you need to receive payment for the land?
- Do you need to reserve a right to construct buildings on the property in the future?
- Has the property appreciated greatly in value during your ownership?

The answer to each of these questions will help landowners develop a conservation plan tailored to their needs and the unique features of their property. MCHT recommends that landowners contact a statewide

conservation organization or a local land trust for assistance in developing a conservation plan. MCHT also recommends that landowners seek legal and other professional advice.

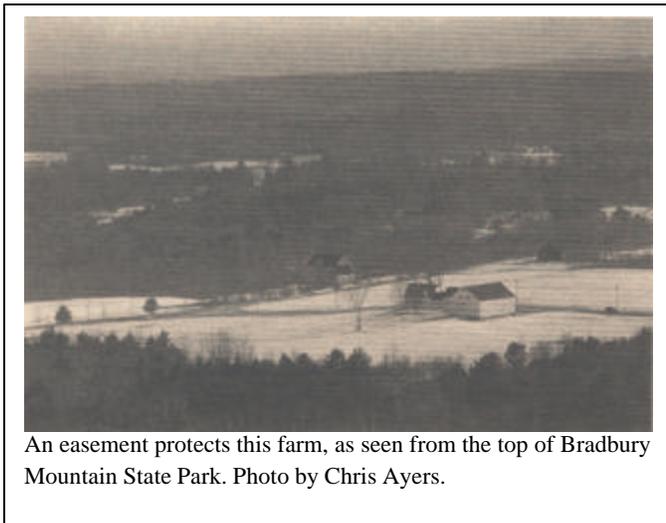
Municipal Considerations. Municipalities can have at least three essential roles with respect to easements:

1. *Monitoring private easements.* Municipalities have no control over a landowner's right to sell or donate an easement to a third party. However, an easement doesn't supercede local ordinances. Landowners must comply with local ordinance requirements regardless of easement provisions.
2. *Requiring easements to achieve a public purpose.* Easements are effective tools for achieving public objectives, especially during the development review process. A municipality can require easements or impose deed restrictions for the protection of the public health, safety and general welfare including storm drainage, snow removal, utility services, sidewalks and trails, building maintenance, rights-of-way and emergency vehicle access.

The municipality can also require easements or deed restrictions to ensure the management of important natural or cultural resources, particularly if these

resources are identified in the Comprehensive Plan. Public access easements may be appropriate under some circumstances (for example, as a trade-off for the reduction of one or more development review standards).

3. *Accepting public easements.* A municipality may offer or be asked to accept an easement offered by a private landowner. There may be considerable public value in accepting the easement, but not if it's offered simply to reduce taxes without a corresponding public benefit. An example of a conservation easement with a public benefit would be a hiking trail in a scenic area, or public access to a water body. In weighing whether or not to accept an easement, the municipality should understand its maintenance obligations, the duration of the easement, and the rights which the property owner retains and whether those rights would interfere with the public benefit.



An easement protects this farm, as seen from the top of Bradbury Mountain State Park. Photo by Chris Ayers.

Comprehensive Planning Process

The local Comprehensive Plan can be used to identify resources that should be protected by easements.

Comprehensive Plan Inventory. The first step is to inventory important local resources. Where possible, these areas should be mapped:

- Wildlife corridors
- Wetlands and other significant habitat areas
- Scenic vistas
- Working farms in close proximity to urban areas
- Wooded areas in close proximity to urban areas
- Snowmobile trails, hiking trails
- Public access (or lack thereof) to water bodies
- Undeveloped shoreland areas
- Islands

- Unique natural areas
- Historical buildings

It is not practical to protect all of the identified resources with easements. However, the local inventory can identify high priority areas to provide a basis for local action.

Policies and strategies. The Comprehensive Plan should contain policies and strategies to encourage the use of easements. The Plan should address development review easements (see next section) as well as conservation easements. If easements will be required in municipal ordinances, the policies and strategies in the Comprehensive Plan should lay a clear foundation for them. Policies and strategies should identify the types of resources for which easements should be required. Where possible, resources to be protected should be noted on the future land use map. Following are some model policies and strategies for use in developing the Comprehensive Plan.

Model Comprehensive Plan Policies:

- ⇒ Ensure that new developments make adequate provision for storm drainage, utilities, pedestrian access and parking.
- ⇒ Provide public access to the following water bodies: (name them).
- ⇒ Preserve archaeological and historic resources of federal, state and local value.
- ⇒ Protect wildlife habitat including travel corridors adjacent to rivers, streams and brooks, deer wintering areas, and inland and coastal wetland areas.

Model of Comprehensive Plan Strategies

- ⇒ Amend zoning, subdivision and site plan review ordinances to require that developers provide plans and, where applicable, proposed easements and/or deed restrictions or covenants for storm drainage, utilities, pedestrian access and parking.
- ⇒ Amend zoning, subdivision and site plan review ordinances to allow density bonuses and decreased setbacks in exchange for public access easements to the following water bodies :

(name them)

⇒ Amend zoning, subdivision and site plan review ordinances to require conservation easements or deed restrictions aimed at protecting important resources within the community as identified in the Comprehensive Plan inventory including:

- Wildlife corridors
- Wetlands and other significant habitat areas
- Scenic vistas
- Working farms in close proximity to urban areas
- Wooded areas in close proximity to urban areas
- Snowmobile trails and hiking trails
- Unspoiled shoreland areas
- Islands

- Unique natural areas
- Historical buildings

⇒ Enlist private land trusts and statewide conservation organizations to preserve significant natural and cultural resources identified in the Comprehensive Plan inventory.

⇒ Work with land owners to preserve working farms and forests in close proximity to the village; encourage voluntary conservation efforts and the donation of conservation easements.

The Role of Land Trusts

Many conservation easements in Maine are held by local land trusts. These nonprofit corporations have been established for the specific purpose of protecting land and are recognized by the IRS as publicly-supported charitable organizations. During the 1990's, Maine's 88 land trusts (see page 12) helped conserve over a million acres of land. Trusts can own land and/or hold and monitor conservation easements. Land trusts also provide information and work with landowners to protect conservation lands. To locate the land trust serving your area, go to www.mcht.org.

Many landowners may be more comfortable selling or donating land or easements to a private, nonprofit organization than to a unit of government, especially if the land trust is locally based. Land trusts can often step in to negotiate easements and raise funds for land purchases more quickly than a government agency. Land trusts also may act as intermediaries for public agencies in land transactions. They can alert local government and state agencies about critical situations where immediate action needs to be taken to protect endangered land.

Review Process

The local review process starts with the submittal of proposed development plans by the developer. It is up to the Planning Board to determine whether or not easements will be part of the development. For example, easements may be an issue in subdivisions to provide for drainage facilities, common utility corridors, sidewalks and trails, zero lot line building maintenance, the preservation of wildlife corridors, or the provision of public access to water bodies or recreational areas. Easements may also be needed to preserve scenic or historic resources. If the developer is seeking to reduce certain submittal requirements or standards, there may be an opportunity to allow concessions in exchange for easements. For commercial developments, easements are needed for common elements such as walkways, building maintenance, and common entrances or parking areas. Easements can be effective in achieving such public benefits.

At a minimum, the developer should be required to document the location of easements and provide draft easement language for local inspection. This section of the bulletin provides model ordinance submittal requirements; it also discusses how to apply the requirements and how to use the information during the development review process.

The next section of the bulletin provides model "standards" that the developer must meet to obtain approval. The Review Standards section presents several levels of standards. A basic standard is presented first, followed by additional or more detailed standards.

The left column provides a listing of documents (submittals) which municipalities should require in order to adequately review proposals with easements. Each submittal helps the Planning Board determine whether the standards contained in the ordinance will be met. The right hand column provides a discussion of the submittal requirements. This background information will help the Planning Board interpret the submittals. Submittal requirements should be included in local ordinances. The municipality may also develop a submittal checklist so that it can determine if an application is complete.

**Submittals for Basic Standard
(For Use in Subdivision Review, Site Plan Review and Zoning Ordinances)**

Submittals

Discussion

- A.** A statement indicating whether or not easements are planned for the development, as well as a discussion of the type and extent of any easements.
- B.** A site plan showing the location of storm drainage facilities, snow removal storage areas, utility service areas, sidewalks, trails and other pedestrian walkways, parking areas, and common areas, if applicable.
- C.** Significant open space areas identified in the Comprehensive Plan including open space, wildlife corridors, wetlands, scenic areas and areas to which public access will be provided. Provide a statement indicating how these areas are to be protected and/or maintained.
- D.** A list of easements, deed restrictions and covenants to be included in deeds to the affected properties and lots.
- E.** Plat with easement restriction location(s), and list of deed restrictions or covenants.

- A.** Some developments (for example, a new business in an existing building) may not involve any easements. On the other hand, new developments such as a subdivision may involve easements for utilities, common areas and areas of public access.
- B.** The reviewing authority will need to know the nature, extent and location of facilities and areas for which an easement or other protection/maintenance arrangement may be needed.
- C.** The reviewing authority will need to check the Comprehensive Plan to ensure that all significant open space and other vital resource areas have been identified and that they will be protected and/or maintained without placing a burden on the municipality.
- D.** Easements, deed restrictions or deed covenants are important because they are the primary method of informing future owners of use restrictions on the property, and the fact that the owners are required to honor the terms of these limitations. Ultimately, a list of easements, deed restrictions and/or covenants, and a statement that the restrictions and covenants will be included in deeds to all affected properties, should be placed on the plat or made part of the Findings of Fact.
- E.** The plat (plan) of a subdivision and the final plan application for a site plan review are important legal documents. They record the standards and provisions which the developer agreed to during the approval process. As an alternative to placing restrictions on the plat, a board may require that the plat refer to Findings of Fact.

Basic Review Standards

This section presents review standards which should be included in subdivision, zoning and site plan review ordinances. Several alternatives are presented. These standards are applicable to new developments, expansions, and changes of use. Standards are presented in the left column, and a discussion of the standard appears in the right column.

Basic Standards (For Use in Subdivision Review, Site Plan Review and Zoning Ordinances)

Standards

Discussion

A. Driveways

1. The appropriate use of common driveways is encouraged to minimize the number of curb cuts required.
2. All lots using common driveways shall provide a driveway maintenance agreement to be reviewed and approved by the municipal attorney.

A. Driveway spacing is a key to maintaining mobility on Maine's highways. The uncontrolled proliferation of driveways reduces speeds and creates safety hazards. The use of shared residential and commercial driveways can be an effective technique for reducing congestion and safety hazards. Some local subdivision ordinances prohibit driveways on arterial highways.

B. Stormwater Management

1. Adequate provisions shall be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs and other surfaces. Any such stormwater drainage system and maintenance plan must not have adverse impacts on abutting or downstream properties.
2. Existing natural drainage ways shall be retained at their natural gradients and must not be filled or converted to a closed system unless approved as part of the development review process.
3. Where stormwater drainage facilities serve more than one property, the system shall be protected by an easement reviewed and approved by the municipal attorney.

B. This standard should be included in a subdivision, site plan review or zoning ordinance to ensure that the developer not only plans for and provides storm drainage facilities, but that these facilities are protected by easements or deed restrictions. One landowner can disrupt a storm drainage system with inappropriate fill, landscape alterations, or buildings. An easement becomes critical if the stormwater management plan calls for drainage from one person's property over the land of another.

In some cases, the municipality may require a drainage easement onto or across private land that is to be developed. This should be recorded on the plat and/or other legal document.

C. Utilities

1. The development must be provided with electrical, telephone and telecommunication service adequate to meet anticipated project needs. New utility lines and facilities must be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service must be placed underground. Restrictions protecting utility corridors within the development shall be included on the plat and in the lot's deed.

C. Utility services are important in any new development. Ordinarily, when service drops (service from a utility to a property owner) are installed, the landowner grants the utility an easement. Protection of common utility corridors within the development should be protected by easement or deed restrictions.

Standards

D. Zero Lot Line Development

1. Any interior side yard may be reduced to zero provided that the opposite side yard equals 20 percent or more of the site frontage. Where a zero side yard setback provision is used, the abutting property must be held under the same ownership at the time of initial construction, unless the owners of the abutting properties record an agreement, or deed restriction, and consent in writing to such zero setback.
2. For the purpose of upkeep and repair of structures located on an interior property line, a maintenance easement shall be recorded between the owner of the property containing said structure and the owner of the property upon which entry must take place in order to perform maintenance activities. Such easement shall be an irrevocable covenant and shall be submitted to the Code Enforcement Officer prior to issuance of a building permit.

E. Wildlife Management Plan

1. In projects involving 50 or more acres, a wildlife management plan shall be submitted. This plan shall address measures, including conservation easement provisions, to preserve and improve on-site wildlife habitat. Rare and endangered species habitat protection shall be addressed, if applicable.
2. Open space and conservation easement areas shall be designed to serve as suitable habitat for native species. Open space and conservation areas shall be continuous on site and off site, if applicable. Stream corridors and contiguous wetlands can provide such linkage.

Discussion

- D.** Zero lot line development allows for creative development. However, it is important to ensure that an easement, agreement or deed restriction is put in place which permits maintenance of the structure that is built to the property line.

- E.** This provision helps ensure that significant wildlife areas are protected in accordance with a wildlife plan and/or conservation easements.

Additional Review Standards (For Use in Subdivision Review Ordinances)

A. Easements

1. All subdivision plats shall reference any required conservation easement.
2. If lots are created that exceed the required minimum lot size, these lots shall contain a deed restriction against further subdivision.

- A.** It is important that the plat reference any and all conservation easements. This will alert prospective property owners of their rights, duties and responsibilities with respect to the easement.

Standard

- B. Cluster Development to Preserve Open Space**
1. Clustering shall be permitted upon the submission of an acceptable open space management plan.
 2. The minimum tract area for the use of the cluster option shall be 5 acres.
 3. The minimum common open space area shall be protected from future development by development restrictions which shall be noted on the plat as a condition of subdivision approval.
 4. If an open space management plan acceptable to the Planning Board cannot be provided, the building lots shall be increased in size to include the entire tract area, and conservation easements shall be used to restrict the area identified as open space on the cluster plan.
 5. In subdivisions where some of the individual lots exceed the required minimum lot sizes, no further subdivision of these lots shall be permitted. This restriction shall be included on the plat and in the deed to each lot.
- C. Retention of Open Spaces and Natural or Historic Features**
1. The subdivision shall reserve at least 10% of the area of the subdivision as open space in order to provide for the recreational needs of the occupants of the subdivision and/or to maintain the scenic or natural beauty of the area. In determining the extent and type of open space the Board shall consider:
 - The needs identified in the Comprehensive Plan or recreation plan for open space or recreation facilities in the neighborhood surrounding the subdivision;
 - The policies of the plan for meeting those needs;
 - The proximity of the subdivision to neighboring dedicated open space or recreation facilities;
 - The type of development and the demographic characteristics of potential residents in the subdivision; and
 - The density or lot sizes of the development.

Discussion

- B. Cluster development is a design technique that concentrates buildings in specific areas on a site and allows remaining lands to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features.**

The standards suggested here would allow clustering in accordance with an open space plan prepared by the applicant. The common open space area could be preserved either by restrictions set forth on the plat, as a condition of plat approval, or by a conservation easement held by a qualified easement holder.

In the event that it is not practical or desirable to create a common open space area, the area identified on the cluster plan as open space can be protected by conservation easements and deed restrictions. For example, each lot owner in the subdivision could be granted access to the open space area, and each owner could be prevented from building in or obstructing access to it. This keeps a portion of the property open without creating a homeowners association responsible for the “common” land.

- C. The standard should ensure that some areas within the subdivision are retained as open space. It should ensure that open space areas are protected by conservation easements or deed restrictions.**

Standard

Discussion

Open space areas shall be protected by conservation easements or restrictions on the plat and in the deed to each lot.

2. A site intended to be used for active recreation purposes, such as a playground or a play field, should be relatively level and dry.
3. Sites selected primarily for scenic or passive recreation purposes shall have such access as the Planning Board may deem suitable. The configuration of such sites shall be deemed adequate by the Planning Board with regard to scenic attributes, significant wildlife habitat preservation, and trails, lookouts, etc. as appropriate. Restrictions protecting such areas shall be included on the plat and in the deed to each lot. Alternatively, such areas may be protected by a conservation easement.
4. Proposed subdivisions which include or are adjacent to buildings or sites on the National Register of Historic Places or which the Comprehensive Plan has identified as being of historical significance, shall be designed in such a manner as to minimize any negative impacts on the historic features. When protected historic features include buildings, the placement and the architectural design of new structures in the subdivision shall be similar to the historic structures. The Planning Board shall seek the advice of the Maine Historic Preservation Commission in reviewing such plans. Restrictions protecting such areas shall be included on the plat and in the deed to each lot.

D. Preservation of Natural Beauty and Aesthetics

1. Unless located in an area designated as a growth area in the Comprehensive Plan, a subdivision proposed for a wooded site shall maintain a wooded buffer strip no less than fifty feet in width along all existing public roads. The buffer may be broken only for driveway and street construction. Restrictions protecting buffers shall be included on the plat and in the deed to each lot.
2. Unless located in an area designated as a growth area in the Comprehensive Plan, buildings in the subdivision shall be located within forested portions of the subdivision and not in open fields. When the subdivision contains no forest or insufficient forest land to include all buildings, the subdivision shall be designed to minimize views of buildings that will be visible from existing public streets. Restrictions minimizing views shall be included on the plat and in the deed to each lot.

- D.** The standards at left are aimed at ensuring that subdivisions blend into the landscape, that important wooded areas in rural areas are retained, and that the visual impact of the subdivision be limited to the maximum extent possible.

Standard

3. When a proposed subdivision contains a ridge line identified in the Comprehensive Plan as a visual resource to be protected, the plan shall restrict tree removal and prohibit building placement within 50 feet vertical distance of the ridge top. These restrictions shall appear as notes on the plan and as covenants in the deed.
4. When a proposed subdivision street traverses open fields, the plan shall include the planting of native street trees. Street trees shall include a mix of tall shade trees and medium height flowering species. Trees shall be planted no more than fifty feet apart.

Discussion

Land Trusts in Maine – 2001 (Source: Maine Coast Heritage Trust)

Androscoggin Land Trust	Lower Kennebec Regional Land Trust
Belgrade Regional Conservation Alliance	Mahoosuc Land Trust (Bethel)
Biddeford Pool Land Trust	Maine Audubon
Blue Hill Heritage Trust	Maine Coast Heritage Trust
Boothbay Region Land Trust	Maine Farmland Trust
Brunswick-Topsham Land Trust	Maine Wilderness Watershed Trust
Buxton Land Trust	Medomak Valley Land Trust
Cape Elizabeth Land Trust	Monhegan Associates
Chewonki Foundation	New England Forestry Foundation, Inc.
Coastal Mountains Land Trust (Rockport)	New Gloucester Land Preservation Trust
Conservation Trust of Brooksville, Castine, Penobscot	Newburgh Conservation Alliance
Cumberland Mainland and Islands Trust	North Haven Conservation Partners
Damariscotta Lake Watershed Association	North Yarmouth Land Trust
Damariscotta River Association	Oceanside Conservation Trust of Casco Bay
Downeast Lakes Land Trust	Orono Land Trust
Downeast Rivers Land Trust	Oyster River Bog Association (Rockland)
Eastern Trail Alliance	Peaks Island Land Preserve
Eastport Land Trust	Pemaquid Watershed Association
Falmouth Conservation Trust	Phippsburg Land Trust
Foothills Land Conservancy	Portland Trails
Forest Society of Maine	Pownal Land Trust
Francis Small Heritage Trust (Limerick)	Quoddy Regional Land Trust
Freeport Conservation Trust	Rangeley Lakes Heritage Trust
Frenchman Bay Conservancy	Saco Bay Trails
Friends of Merrymeeting Bay	Saco Valley Land Trust
Friends of Wilson Pond Area	Sanford-Springvale Mousam Valley Land Trust
Georges River Land Trust	Scarborough Land Conservation Trust
Gorham Trails	Sheepscot Valley Conservation Association
Gorham-Sebago Lake Regional Trust	Sheepscot Wellspring Land Alliance
Great Auk Land Trust (Jonesport)	Small Woodland Owners Association of Maine
Great Moose Lake Regional Land Trust	Somerset Woods Trustees
Great Pond Mountain Conservation Trust	South Portland Land Trust
Great Works Regional Land Trust (Berwicks)	The Nature Conservancy
Greater Lovell Land Trust	Three Rivers Land Trust
Harpswell Heritage Land Trust	Trust for Public Land
Island Heritage Trust (Deer Isle)	Upper St. John Land Trust
Islesboro Islands Trust	Vinalhaven Land Trust
Kennebec Land Trust	Webb Lake Association
Kennebunk Land Trust	Western Foothills Land Trust
Kennebunkport Conservation Trust	Windham Land Trust
Kittery Land Trust	Woodie Wheaton Land Trust
Land Stewards (Biddeford)	Yarmouth Land Trust
Laudholm Trust	York Land Trust
Loon Echo Land Trust (Naples)	

Definitions

It is not necessary to use all of these definitions in a local ordinance. Many are provided for information only.

Conservation Easement: A nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include: retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality of real property.

Conservation Plan: A document outlining the goals, methods and strategies for preserving a property.

Deed Restriction: Restrictive covenants, placed within a deed, that stipulates future uses of the property.

Easement: A right that one has in the land of another, such as for utilities or access (see also conservation easement).

Holder:

- A. A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or
- B. A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the conservation of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.

Land Trust: A nonprofit organization recognized as such by the Internal Revenue Service that helps landowners voluntarily conserve their property.

Limited Development: A conservation easement that permits landowners to undertake specified and limited future building or development that does not interfere with the land's conservation values.

Open Space: An undeveloped tract of land that provides scenic, ecological and/or recreational values.

Public Benefit(s): The values (scenic, recreational, ecological, cultural, historic or spiritual) that people derive from a protected property.

Scenic Easement: An easement that protects the aesthetic values of a landscape or viewshed.

Third Party Right of Enforcement: A right provided in a conservation easement to enforce any of its terms granted to a governmental body, nonprofit corporation or charitable trust, which although eligible to be a holder, is not a holder.

Bibliography	For Further Information Contact:
<p><u>Conservation Options, A Guide for Maine Landowners</u>, 1994, Maine Coast Heritage Trust.</p> <p><u>Preserving Rural Character</u>, American Planning Association Planning Advisory Report # 429, 1990.</p>	<p>Maine State Planning Office (207) 287-3261 Web Address: http://www.state.me.us/spo/</p> <p>Maine Department of Environmental Protection</p>

Copies of this bulletin and others are available from the Maine State Planning Office, 38 State House Station, Augusta, ME, 04333-0038. Request the appropriate document from the Land Use Technical Assistance Series, or view and download the document you need from the SPO website (<http://www.state.me.us/spo/>).

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