

Conservation Easement/Open Space Monitoring and Enforcement Policy for the Town of Old Lyme

Introduction

The Town of Old Lyme regularly receives and has received Open Space and Conservation Easements on parcels of lands through the process of development and subdivision. The Town of Old Lyme must protect the natural resources it owns or has easements on, to ensure the public's confidence in its goal of preserving and protecting the rich natural resources contained in these lands forever. The Town desires to maintain good relations with the fee owners of the land on which it holds easements and abutting property owners of Town owned Open Space as well as those who use our protected lands. The Town of Old Lyme seeks to avoid potential easement violations or encroachments through a variety of preventive actions that encourages proper stewardship and education and a non-confrontational but regular inspection process.

Conservation Easements, where the grantee is the Town of Old Lyme, are documents that have been agreed to by both the property owner and the Town as a result of the approval process for subdivisions and other forms of development. The executed Conservation Easement is on file in the land records of the Town of Old Lyme in the Town Clerk's Office and is typically accompanied by a map that is also on file in the Town Clerk's office. The Conservation Easement permanently limits the type and amount of development on a piece of property even though the property remains in private ownership. The document gives the Town of Old Lyme permanently enforceable rights in the property. In consultation with the Town during the application process, the landowner or developer may identify specific permitted uses and reserve those rights in the Conservation Easement document. The Conservation Easement limits or prohibits many other activities, including development. Easements are legally binding on all future owners and are enforced by the Town of Old Lyme. The landowner continues to own and manage the property within the limits of the easement pursuant to the terms of the conservation easement.

Monitoring Plan

I. Open Space Owned in Fee

- Town, through its Open Space Committee, is to visit each property once a year.
- Town, through its Open Space Committee, is to update or renew stewardship plan

II. Conservation Easements in favor of the Town of Old Lyme

- Town, through its Open Space Committee will regularly visit Conservation Easement properties with easement donor or current property owner in attendance preceded by a letter and telephone call.
- Once the initial visit has taken place, the Open Space Committee will regularly revisit the easement property, and at least every five years.
- A copy of the conservation easement file will be brought on each visit (file includes easement documents maps and records of previous visits.)

Enforcement Plan

III. Easement Violations

An easement violation may be discovered through a visit or by casual observation or reported by a third party. The violation may have been caused by the property owner, an adjacent property owner or a third party trespasser. The Open Space Committee will not automatically conclude that the violation has been caused by the property owner. The Open Space Committee will attempt to document the violation upon discovery and a member shall bring a written report of the violation to the next Open Space Committee meeting. These written reports will be placed in the permanent Conservation Easement files maintained in the Town Land Use Office and referred to the Planning Commission for enforcement.

Relatively minor violations – road-side trash, minor tree cutting – may be addressed in a written monitoring report and a request for a planned response or remediation from the landowner. A minor violation is one that will not cause substantial harm or diminishment of conservation values.

Serious violations – prohibited construction or subdivision, excavation, timbering without an approved forest management plan – require a swift and definitive response. A serious violation is one that is expressly prohibited by the easement's terms and one that, if allowed to continue, will substantially impair or diminish the conservation values protected by the easement.

A. The Open Space Committee must determine whether:

- the violation is ongoing, requiring a cease and desist order or a restore order, and what restoration steps are needed;
- the violation is reversible, requiring review and analysis of the restoration required
- the violation is irreversible, requiring compensation or reclamation as restoration is not possible outside expert advice is required

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The Open Space Committee may, in the case of a minor violation and must, in the case of a serious violation, document the violation with photographs, video, maps, measurements, field notes, comparisons to the baseline along with recent monitoring reports to demonstrate clearly that a violation has occurred.

B. The Open Space Committee may:

1. appoint a member to contact the landowner by telephone to explain the situation and the violation and request correction, replacement or cessation of the activity and a deadline for compliance and keep notes of all conversations.
2. follow up telephone contact with a letter
3. if corrective action is not taken, send a second letter that is copied to the Town Attorney, ZEO and Planning Commission.
4. if corrective action is still not taken, make a recommendation to the Planning Commission for action by the ZEO and/or Town Attorney,
5. and will have the Chairman act as the sole spokesperson and manage any public inquiries in consultation with the ZEO and/or Town Attorney.

APPROVED OPEN SPACE COMMITTEE 2/13/2009

Send to for comments:

Town Land Use Attorney

ZEO

CRERPA

Open Space Committee

Conservation Commission

Planning Commission

Zoning Commission