

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

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 wants 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.

A Conservation Easement is a document that has 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 document is on file with the land records of the Town of Old Lyme in the Town Clerk's Office and is typically accompanied by a map 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 hands. The document gives permanently enforceable rights in the property. These rights are held by the Town of Old Lyme. In consultation with the Town during the application process, the landowner or developer has identified specific permitted uses and reserved those rights in the Conservation Easement document. The easement limits or prohibits certain other activities including development. Easements can be flexible, may cover a portion of a piece of privately held property and 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 and with a conservation intent.

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 *prior to 2005*

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.)

The Open Space Committee will develop a procedure to meet with listing real estate agents when property with easements are placed on the market to explain the easement documents and restrictions.

III. Conservation Easements in favor of the Town of Old Lyme *since* 2005

Sub-Divisions approved since 2005 containing Conservation Easements
Lord's Meadow, Dougherty, Four Ponds, Pedersen, Woodcrest

1. Establish baseline at time easement is donated/acquired to include
 - a) File containing:
 - Copies of Easement
 - Aerial Photos, ground photos
 - C.E. Summary Form
2. Visit with property owners as they acquire lots
3. Ensure easement boundaries are marked by developer w/ markers from Town Land use Dept.
4. Ensure Conservation Easement is filed on land records w/ maps
5. Determine if stewardship plan is necessary.
6. Add to property visit schedule for regular visits at least every 5 years.

Enforcement Plan

IV. 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.

Easement Violations – cont’d:

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

The Open Space Committee will determine the response or series of responses necessary to address the violation. Such responses may include, without limitation: hiring an attorney to enforce the easement, seeking an injunction to prevent further damage to the conservation values by the activity that violates the easement, delegating a member or members of the Board to address the violation, and allowing the Town of Old Lyme Zoning Enforcement Office to attempt to resolve minor violations without hiring counsel.

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.

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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 will be sent that is copied to 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 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.

Send to for comments:

*Town Land Use Attorney
ZEO
CRERPA*

For approval of final document

*Open Space Committee
Conservation Commission
Planning Commission
Board of Selectman*

Other Action Items:

Hold Stewardship workshop for easement donors or current property owners?

Propose budget that includes boundary marking of Open Space and Easements prior to 2005.

Note: In seeking approval from Planning Commission request Open Space Comm. to meet with landowners w/ C.E.'s until Land Use Department has adequate staff to assume responsibility.

