

Town of Durham, New Hampshire
Guidelines for Acquiring Legal Interest in Conservation/Open Space Land
Adopted by Town Council on July 12, 2021

1. Establishment of Conservation/Open Space Real Estate Acquisition Guidelines

- A. It shall be the policy of the Town of Durham to adhere to the following procedures when using Town funds to acquire or to assist a third party to acquire any interest in real estate for conservation or open space purposes (hereinafter referred to as “project(s)”). These guidelines shall be followed by all representatives of the Town government and private persons or groups that bring projects before the Town Council for review and action.
- B. In accordance with these guidelines, projects may be brought forward to the Town Council by a representative of the Town government or a private person or group.
- C. Contracts for the acquisition of any interest in real estate shall be approved by the Town Council or its specified designee.
- D. On September 17, 2018, the Town Council adopted the provisions of RSA 36-A:4-a, I(b), which authorizes the Conservation Commission to expend funds for contributions to “qualified organizations” for the purpose of property interests, or facilitating transactions relating thereto, where the property interest is to be held by the qualified organization and the Town will retain no interest in the property. This authorization applies only to property located within Durham. This provision does not require the Conservation Commission to receive permission from the Town Council to provide such a contribution to a qualified organization; however, it is recommended that the Commission provide the Town Council with such a proposal prior to proceeding.

2. Process for Action on a Project

- A. Any proposed project shall first be brought before the Town Administrator for review. The Town Administrator may submit the project, or portions thereof, to the Town’s legal counsel for review.
- B. Once the Town Administrator is satisfied that the project package is complete and the draft real estate contract is satisfactory, the project shall be brought before a meeting of the Conservation Commission. Members of the Town Council and the Town Administrator will be extended a courtesy invitation to attend this meeting and any site walk that is scheduled. The Conservation Commission shall schedule a site walk, review the proposed project package at a public meeting, invite and consider any public input provided at the meeting, and recommend to the Town Council to fund the proposed project with or without amendments, or not fund the project.
- C. After receipt of the Conservation Commission’s recommendation, as well as a recommendation by the Town Administrator, the Town Council shall schedule the proposal for discussion at a regular meeting and determine whether to move the project forward to public hearing. If the Council is inclined to move ahead with further consideration of the project, it shall hold a duly noticed public hearing on the proposed

project. “Duly noticed” for purposes of this section shall mean the publication of a notice at least five (5) days preceding the date of said hearing in any newspaper distributed in the Town of Durham, with such notice stating a brief explanation of the project and information as to where and when any interested person may review information on the project in more detail. In addition, such notice shall be posted in at least two (2) public places. The Council may request a site walk of the parcel at any time during this process.

- D. If the project moves to public hearing and after considering public input, the Council shall discuss and vote whether to authorize the Town Administrator to enter into the proposed contract with the landowner as presented or amended. If the Town Council wishes to amend any of the use or management provisions from that which was presented to the Conservation Commission in the project package, it shall refer such proposed amendments to the Conservation Commission for review and comment prior to the Town Council taking final action. Any vote to authorize funding for the project shall also specify the funding source and authorize funding of the due diligence procedures specified in the contract.

3. Project Package

- A. All projects presented to the Conservation Commission and Town Council shall describe:
 - i. the project and property;
 - ii. the funding source(s);
 - iii. the use and management recommendations (only for properties to be acquired in fee-simple);
 - iv. the draft conservation easement (only for conservation easement acquisitions);
 - v. how the project fulfills the “Criteria to Evaluate Real Estate Interests for Conservation/Open Space” (see below).
- B. The draft real estate contract (e.g., purchase and sales agreement, option, etc.) and easement, if applicable, shall also be included with the project package. Further, any supporting documentation such as the appraisal shall be made available. If the project is a conservation easement, the project package shall include the recommended easement holding entity and a recommendation for funding for stewardship of the easement.

4. Additional Materials Required When the Town Will Hold a Legal Interest in the Property

- A. Any project brought forward to the Town Council that involves the Town’s full ownership (i.e. fee-simple) of land:
 - i. shall include recommendations on permitted and prohibited uses on the property;
 - ii. shall include recommendations for management (e.g., town forest or natural area) and stewardship needs (e.g., gates and signs);
 - iii. shall recommend a formal means of ensuring the property has legal conservation restrictions (e.g., an easement to a third party);
 - iv. shall recommend appropriate management oversight (e.g., conservation commission, parks and recreation, etc.) for the property; and
 - v. should include a contribution to a town stewardship fund for management of the

property. Such a contribution is desirable but shall be required only if so specified by the Town Council after consideration of relevant factors such as the likely level and type of management needed for the property; the expected cost of this management; the ability and willingness of the party conveying the property to contribute to a fund; the availability of other funding sources to support management of the property; and the value, quality, and appeal of the property.

- B. Any project brought forward to the Town Council that involves the Town holding a conservation easement:
- i. shall include the draft conservation easement for the property;
 - ii. shall recommend the appropriate Town body to steward, monitor, and enforce the easement; and,
 - iii. should include a contribution to an easement stewardship fund for annual monitoring of the easement and any costs that may arise from said easement, such as enforcing easement violations. Such a contribution is desirable but shall be required only if so specified by the Town Council after consideration of relevant factors such as the likely level and type of management needed for the property; the expected cost of this management; the ability and willingness of the party conveying the property to contribute to a fund; the availability of other funding sources to support management of the property; and the value, quality, and appeal of the property.

5. **Appraisal**

All acquisitions of real estate interest shall be for no more than fair market value as determined by an appraisal prepared by a New Hampshire licensed general real estate appraiser. The requirement for an appraisal may be waived by the Town Council if the value of the real estate can be shown to be less than fair market value. Funding requests for appraisals may be made directly to the Conservation Commission, Town Administrator, or Town Council.

6. **Real Estate Contract**

- A. The draft real estate contract shall include the following provisions:
- i. the right to conduct a title search to ensure there are no title defects, and to ensure the landowner has the rights being sold. Should title defects be found or the landowner cannot deliver the interest in real estate, the Town may terminate the contract, in which event all monies deposited by the Town shall be refunded;
 - ii. the right to conduct an Environmental Hazard Assessment (EHA). Based upon the EHA, the Town may, at its discretion, terminate the contract, in which event all monies deposited by the Town shall be refunded;
 - iii. the right to conduct a property survey;
 - iv. for an easement project, if the landowner has a mortgage, the mortgage shall be subordinated to the conservation easement.

- B. Any of the provisions listed in paragraph 6A may be waived by the Town Council, at its discretion, based upon factors identified in the project package.

7. Criteria to Evaluate Real Estate Interests for Conservation/Open Space

The following criteria are a tool for the Conservation Commission and Town Council to use when evaluating a project. Any project brought forward for Town Council consideration shall meet at least one of these criteria:

- i. Protect natural resources:
 - a) existing farms and land that have productive forest or farm land soils that meet local, state or national prime soils criteria;
 - b) land that is important to maintain drinking water quality and quantity;
 - c) key wildlife and plant habitats that protect native plants, wildlife and biodiversity, including salt water, wetland, and fresh water habitat;
 - d) parcels that add to existing blocks of protected forestland, and thus increase the potential for additional carbon storage and sequestration;
 - e) provide added weight if these resources are threatened by development pressure.
- ii. enhance public access to open space and opportunities for passive, nature-oriented recreational opportunities in both rural and developed areas in town;
- iii. maintain prominent scenic vistas and viewsheds that are important to Durham’s rural atmosphere and historical landscapes;
- iv. build upon, create, and connect large blocks and corridors of unfragmented land with additional criteria that include:
 - a) proximity of subject parcel to other conservation lands;
 - b) size of subject parcel.

8. Further Directions and Considerations

- A. The Conservation Commission and Town Council will determine whether the proposed project by itself fully protects the intended resource. If the resource cannot be fully protected without the conservation of additional nearby land, be it a wildlife habitat or a scenic vista, the likelihood of protecting the other properties should be weighed before moving forward with the project.
- B. When reviewing proposed projects, the Conservation Commission and Town Council shall give special attention and consideration to proposed projects that attract non-Town funds for the purchase and/or maintenance of the land in question.
- C. All costs associated with preparing a proposal initiated by the Conservation Commission for Town Council consideration, whether initiated by the Town Government or by a private person or group, will be borne by the Town unless a third party, including the landowner, is willing to fund all or part of these costs.
- D. The recommendation put forward by the Town Administrator in Section 2 Item C, shall weigh the benefits of the proposed acquisition against the broader tax implications and municipal priorities that currently exist in the community.