

Many towns hold conservation easements to protect environmental features on private lands. These easements restrict the uses of the land so that natural resources and open space are protected, and the town can retain its character. As a holder of conservation easements, a municipality takes an important step in protecting the local environment while promoting public health, safety and welfare.

A conservation easement conveys a form of property interest to the municipality, but along with that interest comes the duty to monitor and enforce the terms of the agreement. Municipalities accepting easements bear responsibility for ensuring that the easement is properly maintained for the purposes for which it was obtained. This is not only a legal obligation but, more importantly, is a vital commitment to the public good.



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Caring for Conservation Easements

From Preservation to Stewardship

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Land Stewardship for Municipalities

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About Easements

Property owners may grant conservation easements on their land for the purpose of preserving natural resources. A landowner and a land trust or government agency enter into a legal agreement that permanently limits certain uses of the land in order to protect its conservation values. This arrangement allows the owner to continue to own and use the land and to sell it or pass it on to heirs, as long as the terms of the easement are honored. (See CD – About Easements.)

Some conservation easements protect wetlands and transition areas and can be carefully tailored to meet specific conservation needs. Typical restrictions include prohibiting all building, industrial or commercial activity, removal or disturbance of vegetation and trees, and dumping or excavation. An easement may also be set up to permit certain public uses, such as pedestrian trails. The easement holder, usually a governmental agency or a nonprofit organization, agrees to perform periodic inspections and to take legal action, if necessary, to ensure that easement provisions are met. (See CD – Easement Provisions in Brief.)

Obtaining Conservation Easements

Towns can acquire easements through purchase, owner donation or by placing conditions on approvals for development during subdivision or site plan review.

Local governments or non-profit organizations can purchase (See CD – Easement Purchase.) or receive donations of easements. Municipalities can purchase easements by bonding or through Green Acres grants and/or open space taxes. They can encourage donation by pointing out the public benefits that natural resources, such as wetlands, provide and the possible tax benefits that the owner may realize. (See CD – Donations Using Local Planning Tools.)

During development review, the planning board or board of adjustment can require easements on wetlands, wetland buffers or other natural resources and require applicants to survey the easement using state plan coordinates, easily transferable as data to computer-based maps. The boards can require placing monuments on the boundaries of the easement to facilitate monitoring, and should ensure that easements have simple shapes for ease of management. (See CD – NJ Land Use.)

Legal Requirements

New Jersey law requires that a conservation easement be recorded on the property deed. (See CD – NJ Law.) Easement holders must also be allowed to enter the land or water area in a reasonable manner and at reasonable times to assure compliance with the easement restrictions.

Conservation easement contracts should comply with all requirements of the law and be written to protect the particular resources, which will vary in type and location on different tracts of land. (See CD – Easement Provisions in Brief.)

Creating a Municipal Inventory of Easements

An inventory of easements is critical for ongoing stewardship of the natural resources that easements are created to protect. It helps the municipality establish where easements are located, what restrictions they impose and the baseline conditions for future monitoring.

The first step in compiling a municipal inventory is locating the easements. Sources for information on existing conservation easements include:

- land trusts,
- tax maps,
- past development applications,
- title searches of properties that have wetlands or wetland buffers, and
- watershed organizations.

Location information can be captured as a Geographic Information System (GIS) data layer, which will be a useful addition to the municipality's maps.

The inventory should describe the existing conditions and restrictions on each parcel and specify what measures are needed to maintain it properly. Ideally, this information was originally incorporated into the easement language. For example, if the site is overrun with invasive vegetation, the easement agreement should call for replacement of invasive plants with native species. (See CD – Conservation Easement Inventory and Baseline Inspection.)

Easement Stewardship - Ongoing Protection

Once the easements have been inventoried, ongoing stewardship is possible. The environmental commission or a municipal official should schedule periodic inspections or monitoring. Contacting property owners before visiting will help ensure cooperation. The municipality should also have a program to educate property owners about the purpose of the easements on their properties and the importance of the natural resources easements protect. (See CD – Mendham Township Brochure.)

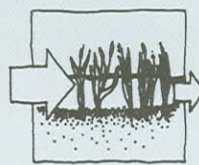
Why Protect Wetlands

(See CD – Introduction to NJ Act.)

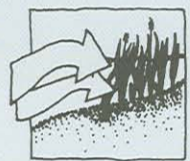
New Jersey's law provides strong protections for wetlands. The law is intended to preserve wetlands because they are vital and valuable natural resources that serve the public interest. They work 24 hours every day, providing value to the public by:

- protecting and preserving drinking water supplies;
- protecting water quality through vegetative uptake of pollution in stormwater;
- providing a natural means of flood and storm damage protection that prevents loss of life and property;
- providing essential habitat for a major portion of the state's fish and wildlife;
- maintaining critical base flows to surface waters during droughts; and
- providing natural open space.

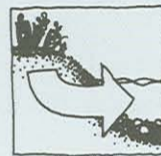
• FLOOD PROTECTION



• SHORELINE STABILIZATION



• STREAMFLOW MAINTENANCE



• GROUNDWATER RECHARGE



Are wetlands protected in New Jersey? The New Jersey Legislature passed the Freshwater Wetlands Protection Act in 1987 to combat the substantial loss of wetlands that was occurring under the corresponding federal program. The State had lost a large percentage of its wetlands, in some counties more than 50 percent of them. The New Jersey Department of Environmental Protection (NJDEP) enacted regulations to implement the law through a permitting system. Almost any activity in wetlands, including cutting vegetation, draining, filling and road construction, requires a permit. The state also requires a buffer or transition area around wetlands to protect them from adjacent activities. (See CD – Wetlands Regulation Summary.)

New Jersey is still losing wetlands, though at a much slower rate than before the Wetlands Act. The NJ Freshwater Wetlands Regulations establish several General Permits for activities deemed to have minimal impact. Most of the wetland acreage lost in New Jersey since passage of the law has been due to activities allowed by these permits. Violations of the regulations have also caused extensive loss of wetlands. (See CD – Statewide General Permits.)

Municipal action can complement easement protection by:

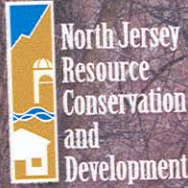
- including wetlands and their buffers in the town's open space or greenway plans. (This means that when a development application is submitted that encompasses part of municipality's greenway or open space plan, the town is in an excellent position to require a conservation easement on that portion of the tract.)
- using zoning techniques like large lot zoning, lot-size averaging, conservation zoning or non-contiguous development zoning. (These techniques enable applicants to avoid disturbing wetlands and offer local land use boards the ability to prohibit applicants from disturbing wetlands.)
- passing ordinances, such as stream corridor protection or clustering provisions, that will protect wetlands from development impacts. (See CD – NJ Land Use.)

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STEWARDSHIP RESOURCE

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ASSOCIATION OF NEW JERSEY
ENVIRONMENTAL COMMISSIONS
P.O. Box 157
Mendham, NJ 07945
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