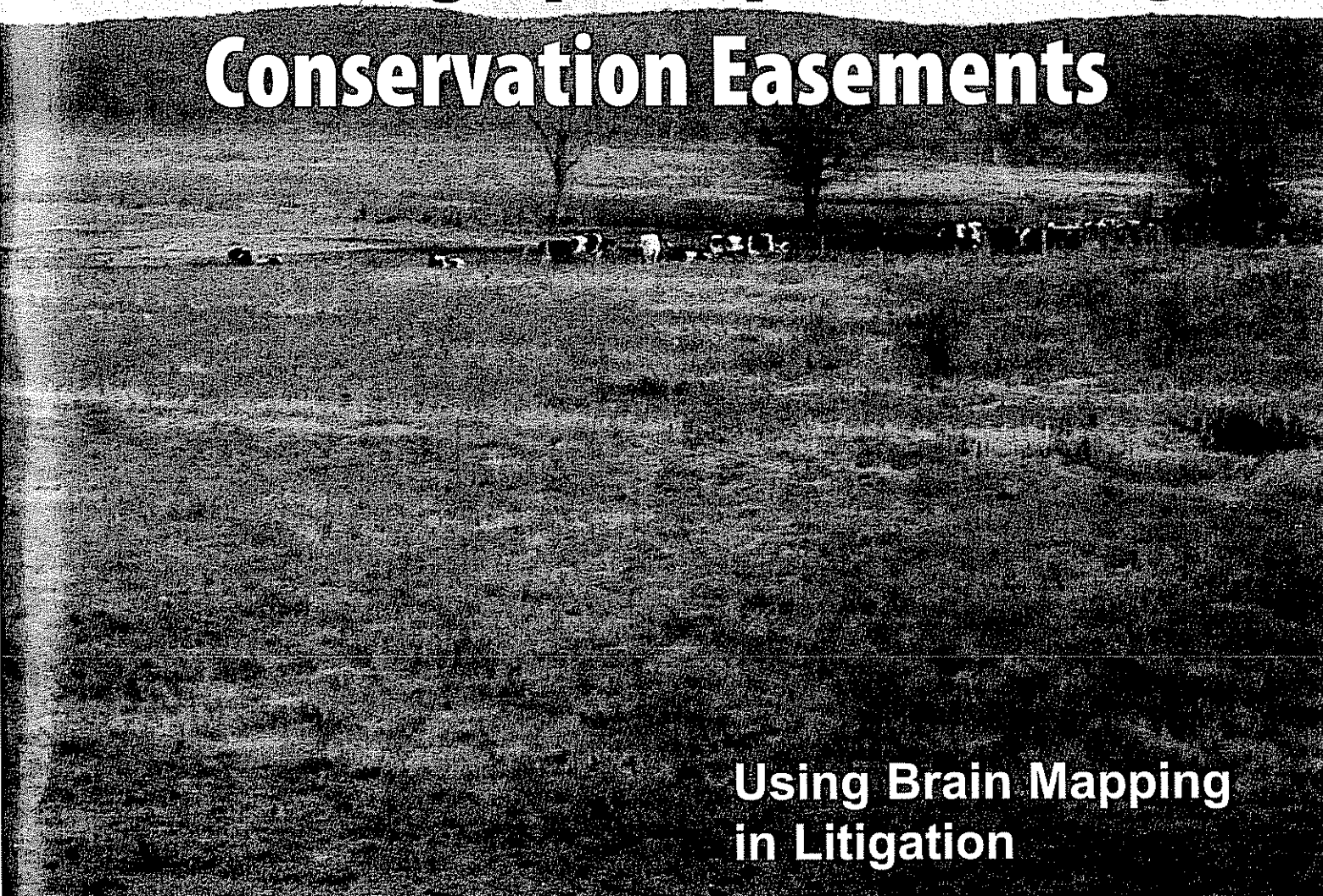


# Connecticut LAWYER

March 2006

Volume 16 / Number 6

## Preserving Open Space through Conservation Easements



Using Brain Mapping  
in Litigation  
Staffing for Success

# The Use of Conservation Easements in Municipal Land Use Review and Planning

By Richard P. Roberts and Kenneth R. Slater, Jr.

Photography by Jaclyn M. Falkowski

Conservation easements are an increasingly common tool for both towns and property owners. Generally, they are voluntarily placed on the land, often in conjunction with a subdivision, for the purpose of preserving open space, important environmental resources, or significant architectural, scenic, or historical features. As with other types of easements, they are an interest in land and are an encumbrance which runs with the land on which the restrictions have been granted.<sup>1</sup>

This article will address some of the basic elements of conservation easements as well as their use by municipalities as methods of preserving open space. Although conservation easements are also frequently granted to non-profit organizations outside of the context of the development or subdivision of land, the primary focus of this article is on the latter. The legal formalities for implementing a conservation easement and the common provisions contained in conservation easements will be discussed, together with the issues and considerations frequently encountered in enforcing them. Examples from various towns will be used from time to time to illustrate the different approaches.

## Conservation Easements Generally

Conservation easements are granted for a variety of reasons. Outside of the municipal land use approval process, they are granted for benevolent or charitable purposes to obtain a tax deduction or a reduction in the assessment of the property. They are granted (or, from the viewpoint of some developers, demanded) as part of the municipal land use approval process to satisfy specific requirements of zoning or subdivision regulations or as a condition for approval of wetland permits or certain zoning or subdivision applications.

The conservation easement, as an interest in land, must be in writing and should be recorded on the land records of the town where the property is located. Unless specifically stated otherwise, it runs with the land and is binding on the heirs, successors, and assigns of the parties. It must identify the grantor as well as the grantee. As a matter of property law, the easement need only be executed by the party granting the interest in land and delivered to and accepted by the party acquiring the ease-

ment interest. However, conservation easements often impose obligations upon the party acquiring the easement, in which case it is prudent, and possibly legally required, for both parties to execute the instrument. In addition, a recent public act requires that a duly authorized officer of any "nonprofit land-holding organization" execute deeds or conveyances of interests in land, including conservation easements, to any such organization.<sup>2</sup>

The grantee may be any one of a number of entities as will be discussed below. The document must also identify with specificity the land on which the restriction has been granted by way of a metes-and-bounds description or a reference to a survey or plan that is recorded in the town clerk's office. Frequently, the document recites that the grantor owns the property and has the right to execute and deliver the agreement.<sup>3</sup> Finally, and most importantly, the instrument must contain a detailed recital of the restrictions which have been placed on the land and the mechanism and process for verification of compliance and, ultimately, enforcement of those restrictions.

## Municipal Acquisition of Conservation Easements

### Statutory Provisions Expressly Related to Conservation Easements

As a creature of statute, all of the powers of a municipality, including the power to acquire conservation easements, must be granted by the state. Two specific statutes permit municipalities or their boards and commissions to acquire conservation easements. The first is Conn. Gen. Stat. § 7-131b, adopted in 1963 as part of that year's landmark Public Act 490, which provides property tax relief to persons that designate and maintain property as undeveloped forest or agricultural land. With respect to conservation easements, that act included provisions authorizing municipalities to establish conservation commissions, to apply for and obtain state grants for the preservation of

**As a creature of statute, all of the powers of a municipality, including the power to acquire conservation easements, must be granted by the state.**

open space, and to acquire interests in land to conserve open space.<sup>4</sup> Only property designated by the planning commission as open space in its municipal plan of development would qualify under that statute as property that could be acquired by the town in the form of a conservation easement. If the property is not so designated, it may still be accepted by the town as a gift.

The second series of statutes pertaining to conservation easements are found in the land title chapter of the Connecticut General Statutes. Those statutes, Conn. Gen. Stat. §§ 47-42a-c, provide general authority and the requirements for the placement of development restrictions on real property.<sup>5</sup> Those statutes are not limited to conservation easements involving municipalities, but include guidelines applicable to municipal acquisition and maintenance of conservation easements.

Another statute involving conservation easements arises from the Department of Agriculture's Development Rights Program. That program enables the purchase of conservation easements to acquire development rights to preserve agricultural use of the property by the state and stave off the lure of more immediate monetary gains of converting farms to residential subdivisions or other developments.<sup>6</sup>

### Mechanisms for Municipal Acquisition of Conservation Easements

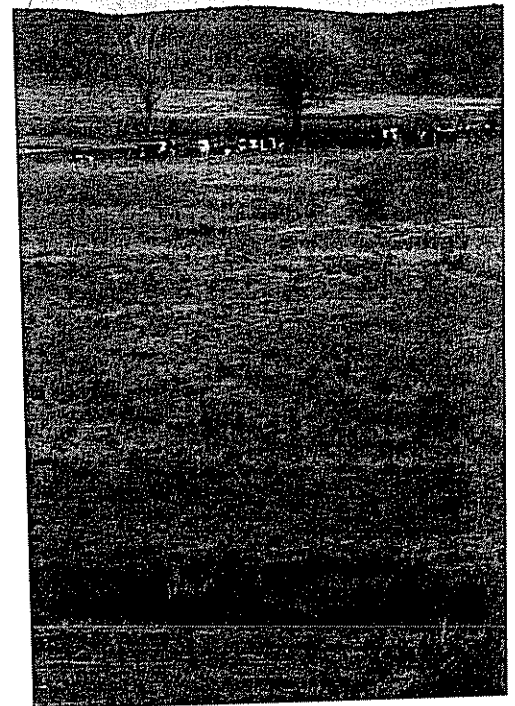
A municipality should carefully consider the mechanism it employs to acquire conservation easements. The mechanism set forth in Conn. Gen. Stat. § 7-131b requires the property to first be designated as proposed open space in the municipal plan of conservation and development. Once designated, the actual acquisition of the easement must be approved by a vote of the legislative body of the municipality. In contrast, Conn. Gen. Stat. § 47-42c provides that a municipality can acquire a conservation easement "in the same manner as it may acquire other interests in land."

Chartered towns and cities may specifically outline the process for the acquisition of interests in land. If so, those provisions would prevail absent a direct conflict with the statutory language.

In order to comply with either statutory mechanism, municipalities that are not governed by a charter ("home rule") ordinarily must undertake the burden of obtaining town meeting approval to accept any conservation easement. The only other alternative for a home rule town would be to establish, by ordinance, a mechanism other than a town meeting for approval of the municipal acquisition of the land. The ordinance could vest the board of selectman or an agency of the municipality with the authority for acquisition of interests in land.

Regardless of the mechanism towns employ to acquire real property interests, few have established a coordinated system to consider and accept conservation easements. Many towns permit these matters to be governed entirely by their municipal land use agencies with no substantive oversight or consent by the legislative body or the administration of the town. Furthermore, as noted below, unless designated by the town as the agency authorized to acquire real

estate interest for the town, municipal land use agencies do not have any express authority to accept conservation easements and have limited or no rights to condition approvals upon the grant of a conservation easement. These commissions have distinct missions and jurisdictions that often overlap and conflict. Because of the statutory requirements and the potential for confusion and inconsistency, each town should establish its own protocol for the acceptance and management of conservation easements with clearly delineated standards and procedures.

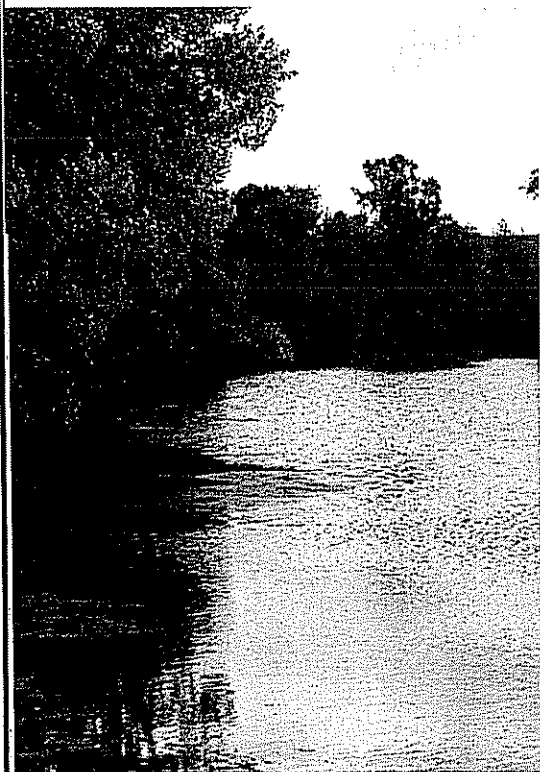


### Authority for Land Use Agencies Regarding Acquisition of Conservation Easements

Although planning, zoning, and inland wetland and watercourses agencies are increasingly requiring open space areas and conservation easements as part of approvals of subdivisions, site plans, special permits,

*(Please see next page)*

**Although planning, zoning, and inland wetland and watercourses agencies are increasingly requiring open space areas and conservation easements as part of approvals of subdivisions, site plans, special permits, and wetland permits, there are no specific provisions of the various land use statutes regarding conservation easements.**



and wetland permits, there are no specific provisions of the various land use statutes regarding conservation easements.

The enabling act for the establishment of zoning commissions and zoning regulations provides that a zoning commission is "authorized to regulate, within the limits of such municipality . . . the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces . . . The section of the zoning statutes authorizing village zones to protect the distinctive character, landscape and historic structures within such a district similarly enables provisions for open space areas."<sup>7</sup> Although no provision contained in the chapter regarding zoning includes any specific provisions regarding the regulation of

open spaces or conservation easements, those general enabling provisions permit the adoption of regulations establishing a specific mechanism, such as conservation easements, to assure that the areas are maintained as open space.

The chapter of the general statutes regarding planning commissions contains several provisions regarding open space. First, as noted above, the planning commission is required to adopt a plan of conservation and development to be used as a guide for future municipal planning.<sup>8</sup> The plan, which is required to be updated at ten year intervals, may include the planning commission's recommendations regarding municipal acquisition of open space areas and greenways.

The enabling act for subdivision regulations expressly authorizes a planning commission to adopt regulations to make provisions for open space<sup>9</sup> and to allow "cluster development" that would permit a concentration of building units to allow up to one-third of a parcel to be maintained as open space.<sup>10</sup> The planning chapter of the Connecticut General Statutes also allows a commission to accept a payment of up to ten percent of the pre-development value of the property in lieu of the dedication of open space.<sup>11</sup> The payment in lieu of open space dedication must be placed in a fund to be used for acquisition of open space for recreational or agricultural purposes. Like the zoning statutes, the planning statutes include no specific provisions regarding the mechanism to protect open spaces.

Neither the Tidal Wetlands Act nor the Inland Wetlands and Watercourse Act include specific provisions regarding open space or conservation easements.<sup>12</sup> However, given the discretionary authority to permit proposed impacts to wetlands or watercourses, the agencies regulating those resources regularly require provisions for the conservation of areas containing environmentally valuable resources as a condition to approval.

Although not afforded any authority to actually approve development, the municipal agency most closely linked with open space areas is a conservation commission established by a municipality under the authority of Conn. Gen. Stat. § 7-131a. Such commissions are authorized to inventory natural resources and open space areas, whether public or privately owned, and to

advise land use commissions and, in some cases, the chief executive or legislative body of the municipality regarding land use changes. Since the Inland Wetlands and Watercourses Act requires each municipality to designate a wetlands and watercourses agency for the town, conservation commissions sometimes serve those dual roles.

## **Content and Enforcement of Conservation Easements**

### **Common Provisions in Conservation Easements**

Conservation easements, or conservation restrictions as they are referred to in Conn. Gen. Stat. § 47-42a, may contain a wide variety of provisions intended to preserve open space, important environmental resources, or significant architectural, scenic, or historical features. In addition to the restrictions on activities enumerated in the document, a clear and unambiguous identification of the property subject to the easement is essential. Many towns require signage, pinning, or special monumentation at prescribed intervals to provide definitive evidence of the location of the conservation area for the public or for subsequent owners of the property.

There are several activities that are typically prohibited within a conservation area. Generally, these include: (i) construction or placing of buildings, roads, signs, billboards, or other structures on or above the ground; (ii) dumping or placing of soil or other material as landfill, or the dumping or placement of trash, ashes, waste, rubbish, garbage, junk, or other similar materials; (iii) excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other mineral substance; (iv) removal or destruction of trees, shrubs, natural vegetation, killing of wildlife, spraying of pesticides, sometimes excluding the use of pesticides to control mosquitoes and the like; or (v) any other activities or uses detrimental to drainage, flood control, water conservation, erosion control, soil conservation, wildlife, and the maintenance of the affected property in its natural, scenic, and open condition.

In addition to the preceding provisions which are commonly found in conservation easements, particular situations or grantees might require further controls

*(Please see page 22)*



Examples of these may include prohibition of the use of the property for septic systems serving buildings outside of the conservation easement area; placement of mobile homes or equipment in the conservation area; prohibitions against making any topographic changes within the easement area; prohibition of the operation of vehicles, snowmobiles, ATVs, motorcycles, and similar motorized vehicles within the easement area; and prohibition of the construction and/or installation of roads or driveways within the area.<sup>13</sup> The document may include restrictions or prohibitions on the use of pesticides and require a formal plan for an alternative integrated pest management system. The easement may also include affirmative obligations, such as the requirement that new plantings be limited to native plantings characteristic of the region; the requirement that management of the area be performed in accordance with a specific plan prepared by an expert, such as an arborist or wetlands scientist; or the creation of wetlands or specialized wildlife habitat to mitigate impacts on portions of the unrestricted property.

Conversely, there generally are some activities that are expressly permitted in the easement area either as of right or upon prior approval of the regulating entity. These could include such things as removal of dead trees or brush, pruning or

**Chartered towns and cities may specifically outline the process for the acquisition of interests in land. If so, those provisions would prevail absent a direct conflict with the statutory language.**

thinning of live trees or brush, installation of sanitary sewers and/or water lines, or the installation, maintenance, and repair of other public or private utilities. Others may be applicable to particular uses of the property, such as forestry or agriculture, and could allow such activities as farming, the grazing of farm animals, gardening, creation of farm ponds, and the like.<sup>14</sup> As noted above, those activities are sometimes regulated by a specific management plan required by the easement.

Depending on the nature and location of the property relative to other open space, roads, or town-owned property, there may be a condition that the property must be made available to the public for passive recreation. In addition, in instances where certain types of state grants are used for the acquisition of open space, there must be a provision for public access.

Most conservation easements include restoration obligations in addition to provi-

sions authorizing monetary relief. The grantor or successor-in-interest is obligated to restore the property to its natural state or otherwise bring it into compliance with the provisions of the agreement. The actions necessary to do so may be enumerated in the easement document and could include such things as replanting trees and shrubs, removal of trash or debris, removal of any unauthorized structures, replacement of any boundary markers that have been damaged or removed, and the implementation of appropriate soil erosion and sediment controls.<sup>15</sup> The document may provide that the restoration is at the expense of the grantor and in accordance with standards developed by the town or, at a minimum, subject to the town's satisfaction and that all necessary permits and approvals be obtained for such work.

Because the conservation easement is an instrument creating an interest in land which will continue to exist in perpetuity (unless provided otherwise in the document<sup>16</sup>), careful attention should be given to the lists of activities that are to be included or excluded. Equally importantly, the parties should make every effort to ensure that the instrument reflects their understanding of those activities. Courts are generally reluctant to deviate from the definitive language of the contract in order to impose restrictions in addition to those specifically contained in the document.<sup>17</sup>

**Entities Holding the Conservation Easement**

One of the essential elements of a conservation easement is the identification of the grantee of the easement. That party holds the easement and has the right to enforce its terms. In situations where a conservation easement is being granted for purposes other than compliance with municipal land use regulations, the holder of the easement will often be a non-profit entity, such as a land trust, which is "in the business" of managing conservation easements and conservation lands. Where the easement is being created as part of a proposed development, the grantee may be specified by the municipal regulations or by past practice in that municipality.

More sophisticated zoning or subdivision regulations will provide a list of entities which would be acceptable grantees,

often with a reservation of the right to approve, in the agency's sole discretion, any other holder not so listed. The most commonly named entities are the town; a non-profit agency, land trust, or similar organization; or a homeowners' association.<sup>18</sup>

Frequently, the easement will run in favor of the town and either its planning and zoning commission, conservation commission, or its inland wetlands and watercourses commission as the agent of the town authorized to hold and police the easement on behalf of the town. In addition, there may be an actual conveyance of the land to the town as contemplated by Conn. Gen. Stat. § 8-25(a) if the town is willing to accept such land. Many towns are reluctant to do so for liability reasons as well as the associated maintenance and stewardship responsibilities.

If the easement is granted to the town and managed by one or another of its commissions, there should be both a procedure for determining whether the proposed easement is one which is both appropriate with respect to the characteristics of the land it encumbers and properly crafted for managing the enforcement of the easement after it has been granted. The allocation of responsibilities among various boards and commissions and the determination of which entity is responsible for each of these elements should be clearly defined.

In the event the grantee of the easement is a non-profit corporation, a land trust, or some similar organization, rather than the municipality itself, it is much clearer who bears the responsibility for enforcing the easement. The document should provide some plan of succession in the event the entity which is the initial grantee ceases to exist or otherwise is unwilling or unable to fulfill its obligations in the future. Some towns also require written evidence that the proposed grantee is willing to accept the obligations and responsibility for the enforcement of the easement.<sup>19</sup>

Many towns have also provided the option of having a homeowners' association be the holder of the easement in order to deflect initial responsibility from the town.<sup>20</sup> The use of a homeowners' association may be useful in situations where fee title to the open space is conveyed. Unless it is qualified as a tax exempt entity under IRS Section 501(c)(3), a homeowners' association may not be a qualified holder of a

conservation easement under Conn. Gen. Stat. § 47-42a. Easements which run in favor of a homeowners' association frequently also provide the town with the right to enforce the easement in the event the association fails to do so and permit the town to hold the association and the homeowners financially responsible for the expenses incurred in conjunction with such enforcement. A plan of succession should also be included in documentation involving a homeowner's association. An alternative to the use of a homeowners' association is to include restrictions and covenants in the deeds to the lots within a subdivision.

Other requirements that may exist when a homeowners' association is the holder of the easement include mandatory participation by all property owners, having the obligation referred to in deeds of lots or otherwise binding upon future owners, and compliance of the homeowners' association with the provisions of the Common Interest Ownership Act and any other relevant laws. The regulations often will also require that the association be established prior to the issuance of any building permits or the sale of any lots.<sup>21</sup>

Older, existing easements may not have provided for a homeowners' association as the entity with the right to enforce the terms. Some documents exist which create a reciprocal right to enforce the terms among all of the property owners in the subdivision which contains the easement

area, although the right of the town to step in is usually provided as a backstop.

### Rights and Responsibilities of the Holders of Conservation Easements

Once the conservation easement has been granted, the holder of the easement has the benefit of the restrictions but also bears the responsibility of enforcing its terms. The right to enforce the easement is generally limited to the named grantee or its successor in interest. A recent act, P.A. 05-124, affords certain enforcement powers to the attorney general. Otherwise, third parties do not usually have the right to enforce the terms of a conservation easement granted to another.<sup>22</sup> Unless a conservation easement granted to a town expressly provides otherwise, an individual citizen of the town would not have standing to enforce the easement. Because the decision of whether to exercise a right of enforcement is discretionary, an individual citizen could not compel the town by mandamus to enforce provisions of a conservation easement.

In order to make meaningful enforcement of a conservation easement possible, there should be some form of baseline documentation to establish the conditions of the property at the time the easement is granted. This will eliminate the possibility of claims that undesirable conditions

*(Please see next page)*

## CUMMINGS & LOCKWOOD LLC

ATTORNEYS AT LAW

*is pleased to announce the relocation of our*

### STAMFORD OFFICE

to

Six Landmark Square

Stamford, CT 06901

Phone: 203.327.1700

Fax: 203.351.4535

[www.cl-law.com](http://www.cl-law.com)

February 1, 2006

STAMFORD | GREENWICH | WEST HARTFORD | NAPLES | BONITA SPRINGS

existed prior to the granting of the easement. The presence or absence of structures, trails, roads, wetlands, vistas, ledge or other outcroppings, stone walls, and other natural or man-made features should be noted.

One of the fundamental rights of the holder of a conservation easement is the right to inspect the encumbered property to verify compliance with the restrictions. The right of access and the right to make such inspections should be specified in the easement. Conservation easement instruments often contain a provision that the inspection may be done following notice to the owner of the encumbered property. If the grantee is a municipality or an agency of a municipality, the document typically provides that a cease-and-desist order may be issued to prevent any activity which the agency believes is in violation of the document. The document may also specify the process following an asserted violation, including hearings before the agency and the imposition of fines and penalties. Although a matter of contract, penalty provisions of a conservation easement to a municipality should adhere to statutorily authorized municipal citation procedures to minimize the threat of a subsequent legal challenge.

Many easements explicitly provide that the town may initiate enforcement proceedings to restrain the violations or to order the restoration of the property to a condition which satisfies the terms of the



agreement. The easement document typically provides that the grantor is obligated to pay reasonable attorneys' fees and costs incurred by the grantee to remedy a violation of the agreement.

Some towns have elected to have conservation easements run for a term of years, with automatic extensions for an additional term of years unless an instrument terminating or modifying the easement is recorded. These provisions are less common in easements that have been created recently because they would not be eligible as open space under the subdivision statutes or as a gift eligible for favorable tax treatment.

**Once the conservation easement has been granted, the holder of the easement has the benefit of the restrictions but also bears the responsibility of enforcing its terms.**

pality and the property owner as to the nature of the obligations being created. Unrealistic expectations on the part of a town commission may be in conflict with the property owner's expectations as to his or her ability to use the property to its fullest extent.

The absence of reliable or orderly records may be a problem, particularly in the case where a municipality is the holder of the easement. Regardless of whether an easement is actually recorded, if the documents are not properly tracked by municipal officials, they will not likely be policed or enforced.

Another problem arises when open space is shown on a plan of subdivision but no formal easement is granted and recorded. Often there are no effective follow-up mechanisms to ensure that documents are actually approved and recorded to transfer the interests in the land shown on the subdivision map as "lands to be conveyed as open space" or "conservation easement." If a land use approval is issued with a designation of open space but no easement is actually recorded or formally accepted by town officials other than the land use agency, the question of whether the annota-

### Common Problems and Suggestions

Conservation easements undoubtedly serve a valuable purpose. The challenges raised by maintaining and enforcing existing conservation easements provide lessons for using that tool in the future.

One of the more common problems, noted above, is the failure of the instrument to cover all of the possible activities on the encumbered parcel that may impede the preservation goals. Having the instrument broadly worded but also tailored to the particular situation may reduce these problems. As with any legal document, inconsistencies or ambiguity in the language of the easement may also create problems for the holder of the easement when it seeks to enforce its terms.

Another common issue could be solved by adequately educating both the municipi-

CBA PUBLIC SERVICE

## Dispute Resolution

Connecticut Bar Association

### LAWYER-TO-LAWYER DISPUTE RESOLUTION PROGRAM



Confidential dispute resolution for attorneys only, providing mediation and binding arbitration to help resolve disputes

including, law firm dissolutions, departures of one or more attorneys from a law firm, and the allocation of fees between lawyers in different firms.

Call (860)612-2006 for further information or visit [www.ctbar.org](http://www.ctbar.org)



tion on an approved and recorded plan is sufficient to create a dedication of open space is murky at best. The question of what the particular restrictions on that property are and who is in a position to enforce them is even more unclear.

"Open space" may have been created or granted to the town in documents many years ago where rights to enforce the obligations are vested in homeowners' associations that are long since defunct or in the collective property owners in the subdivision. Having multiple commissions accept or require conservation restrictions on properties may be problematic if requirements between the different agencies are inconsistent.

One other issue, which is more of a policy issue than a legal one, is the initial analysis of whether a particular piece of property is appropriate to be set aside as open space or encumbered by a conservation easement. The characteristics of the property, the location relative to public access and other open space, and the future management objectives of the conservation restrictions should also be considered in advance.

## Conclusion

Conservation easements are an increasingly common method of preserving the remaining open spaces in Connecticut. While they serve as an important and effective means of preserving valuable environmental resources, they should be tailored to reflect the particular situation applicable to a piece of property and a coordinated plan. Municipalities and their commissions should have a consistent procedure for accepting and policing conservation easements that adheres to statutory authority and incorporates a policy of whether such open space areas are granted to the town or to private conservation organizations or land trusts. CL

*Richard P. Roberts is a member of the firm of Halloran & Sage LLP in Hartford. He is also a member of the firm's Municipal Law Practice Area, assisting municipal clients in a wide variety of matters, including real estate acquisitions and sales, land use, charter revision, and drafting and review of ordinances.*

*Kenneth R. Slater, Jr., is a member of the firm of Halloran & Sage LLP in Hartford. He is also a member of the firm's Environmental and Land Use Practice Group. He represents businesses, property owners, municipalities, and*

*individuals in both transactions and litigation involving environmental and land use regulation, permitting, and enforcement.*

## Notes

- 1 Some towns have chosen to require actual conveyance of fee title to conservation lands, rather than limiting it to an easement, but many of the considerations discussed below are equally relevant to that situation.
- 2 Public Act 04-114 defines "nonprofit land-holding organization" as a "nonprofit corporation incorporated pursuant to chapter 602 of the general statutes, or any predecessor statute thereto, having as one of its principal purposes the conservation and preservation of land, including, but not limited to, a land trust." Therefore, it does not require a municipality or one of its agencies to execute conservation easements.
- 3 A subordination of mortgages on the property to the lien of the conservation easement should also be required to prevent the lender from foreclosing the easement out of existence. Such a subordination is required if the easement is given for tax purposes.
- 4 C.G.S. § 7-131b(a) provides as follows: "(a) Any municipality may, by vote of its legislative body, by purchase, condemnation, gift, devise, lease or otherwise, acquire any land in any area designated as an area of open space land on any plan of development of a municipality adopted by its planning commission or any easements, interest or rights therein and enter into covenants and agreements with owners of such open space land or interests therein to maintain, improve, protect, limit the future use of or otherwise conserve such open space land."
- 5 These statutes provide as follows: Sec. 47-

42a. Definitions For the purposes of sections 47-42b, 47-42c and Section 2 of Public Act 05-124, the following definitions shall apply:


(a) "Conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.

(b) "Preservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.

Sec. 47-42b Enforcement of conservation and preservation restrictions held by governmental body or charitable corporation. No conservation restriction held by any governmental body or by a charitable corporation or trust whose purposes include conservation of land or water areas and no preservation restriction held by any governmental body or by a charitable corporation or trust whose purposes include preserva-

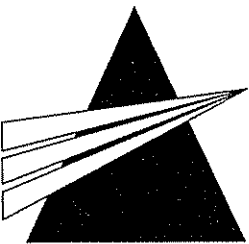
*(Please see page 33)*

technical  
experts,  
skilled  
communicators



- property transfer and brownfields
- litigation support services
- emergency preparedness
- engineering and design
- site investigation, remediation, and RCRA/CERCLA

**(888) 265-8969**  
www.woodardcurran.com



**WOODARD & CURRAN**  
Engineering • Science • Operations

**Serving New England for more than 25 years**

**THE USE OF CONSERVATION EASEMENTS IN MUNICIPAL LAND USE REVIEW AND PLANNING**  
(CONTINUED FROM PAGE 25)

tion of buildings or sites of historical significance shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable or being assigned to any other governmental body or to any charitable corporation or trust with like purposes Sec. 47-42c. Acquisition of restrictions. Such conservation and preservation restrictions are interests in land and may be acquired by any governmental body or any charitable corporation or trust which has the power to acquire interests in land in the same manner as it may acquire other interests in land. Such restrictions may be enforced by injunction or proceedings in equity The attorney general may bring an action in the superior court to enforce the public interest in such restrictions.

- 6. See C.G.S. § 22-26a *et seq*
- 7. C.G.S. § 8-2j
- 8. C.G.S. § 8-23 (a) and (e)
- 9. C.G.S. § 8-25
- 10. C.G.S. § 8-18
- 11. C.G.S. § 8-25b
- 12. C.G.S. §§ 22a-28 *et seq* and C.G.S. §§ 22a-36 *et seq*
- 13. As an example, see Section 31310 of the

Granby Subdivision Regulations (amended January 21, 2000)

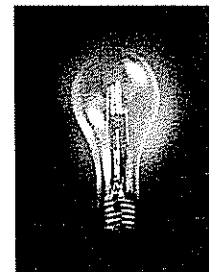
- 14. See *Conrad v Mattis*, 28 Conn. L. Rptr 566 (2000), discussing whether a vegetable garden constitutes "farming" and the definition of "clear cutting" of trees.
- 15. As an example, see the form Conservation Easement Agreement provided by the Town of Glastonbury.
- 16. There is often a provision that the easement terminates automatically if the property is taken by condemnation so that the property owner may receive compensation based on the full value of the property.
- 17. *Southbury Land Trust v Andricovich*, 59 Conn. App. 785 (2000), in which case the land trust's claim that any new construction had to be attached to existing structures was not supported by the language of the document and, therefore, would not prohibit the erection of a second residence on the encumbered property.
- 18. As an example, see Chapter VI, Section 4 of the Woodstock Subdivision Regulations (effective August 25, 2005).
- 19. As an example, see Article IV, Section 7(E) of the Thompson Subdivision Regulations (amended through October 27, 2003).
- 20. See *200 Associates, LLC v Thompson Planning & Zoning Commission*, CV-02-0067123-S (JD of Windham at Putnam, Sept. 16, 2004)
- 21. As an example, see Section 3168 of the

Canton Subdivision Regulations (as amended through April 2, 2002)

- 22. See *Burgess v. Breakell*, 14 Conn. L. Rptr 610 (1995), in which a superior court judge held that a neighbor could not enforce a conservation easement that had been granted to a conservation commission

**Be a Connecticut Lawyer Author**

Can you shed some light for your colleagues on a substantive legal topic? Want to report on a big change in the law and what that



means to practitioners? Can you help other lawyers save time and money? Then we want you to write for us. We're looking for a few good writers who can say this and more in 2,000 to 3,000 words. Call (860)223-4400 or e-mail [editor@ctbar.org](mailto:editor@ctbar.org) with your idea or manuscript today.



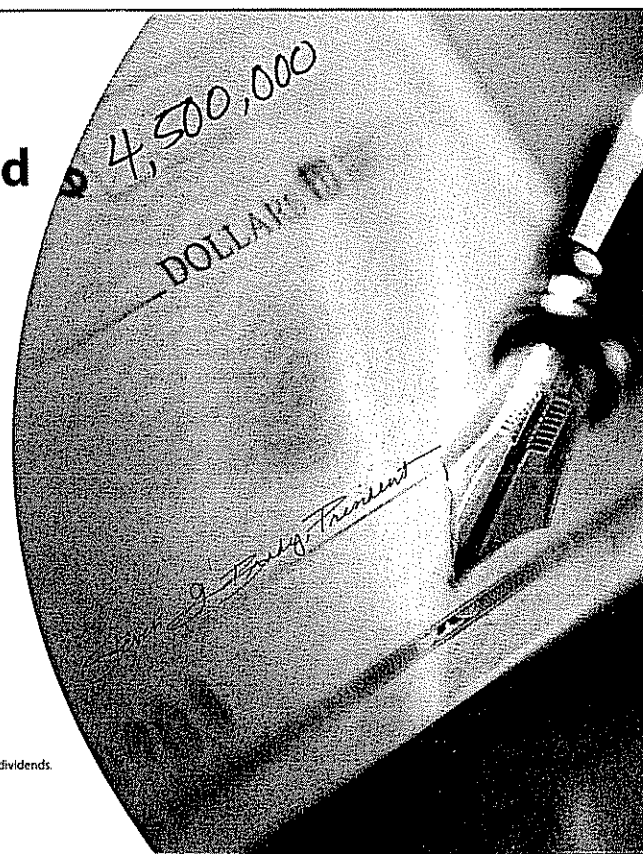
**Minnesota Lawyers Mutual policyholders are hereby served**

*with a 2005 dividend payment of \$4,500,000!*

Being insured with Minnesota Lawyers Mutual is about more than having a stable, reliable carrier to address your lawyers professional liability needs. It means you are also part owner in a company that has consistently shared its success with customers for the past 18 years — to the tune of almost \$30 million.

If you are a recipient of a share of the 2005 dividend, enjoy. If you aren't, perhaps it's time to make a change. Visit us at [mlmins.com](http://mlmins.com), or call 800.422.1370 to see how we can help you with your professional liability coverage today.

The amount of \$4,500,000 refers to the dividend for the year of 2005. No insurance company may make statements concerning future dividends.



800.422.1370 | [mlmins.com](http://mlmins.com)