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**Presentation on Conservation Easements to
Carroll County Committee on Future of Carroll County Farm**

January 12th, 2018

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Society for the Protection of New Hampshire Forests

Tel. 224-9945, Ex. 341

I. Introduction (3:00)

- A. Mechanics
 - a. Introductions
 - b. Questions invited along the way
 - c. Talking points available as handout
- B. Overview of agenda
- C. Take-home messages
 - a. CE is permanent set of land use restrictions
 - b. CE has flexibility re what restrictions apply where
 - c. Discounted sale of CE can protect key land features, generate significant \$, & enhance prospects for innovative future uses
 - d. Find land cons. partner w/ cons. commitment, philosophical “right fit”

II. Overview of a Conservation Easement (3:10)

- A. Definition
 - a. Written promise by Landowner not to develop land
 - b. Easement Holder commits to uphold restrictions, can be pvt. “land trust” (e.g. Lakes Reg. Cons. Trust, or Forest Society) or cons. oriented govt. agency (e.g. Ossipee Conservation Commission, State, USA)
 - c. Legal form as CE Deed, recorded at Carroll County Registry of Deeds
 - d. “Runs with the land,” binding all future owners
 - e. No constraint on Landowner’s ability to convey to anyone, anytime, at any price
- B. Common restrictions (typ. of Forest Society CE—not necessarily used by others)
 - a. No commercial or industrial use except forestry & ag.
 - 1. Forestry & ag activities must follow “best practices”

2. Additional key forestry provisions:
 - Mgt. plan prepared by licensed forester, addresses cons. goals in CE, & submitted to Holder in advance
 - On-site operations must follow mgt. plan, & be supervised by forester
 - b. No subdivision
 1. Possible exceptions: larger properties, & conveyances to cons. groups
 - c. No structures or improvements except for forestry, ag, habitat mgt., & non-commercial outdoor recr.
 - d. No dredging, filling, alteration of terrain, except for...
 - e. No mining, extraction of sand, gravel, etc., except for...
 - f. No disposal of man-made or hazardous materials
 - g. No conveyance of ROW's or other partial interests w/o Holder OK
 - h. No use of CE area for mtng. min. size, frontage, etc. reqs. for developing other premises
 - i. No disturbance of boundary markers
- C. Reserved rights of Landowner (trump restrictions listed above)
- a. Renewable energy production, w/ bias towards solar
 - b. Commercial activities with *de minimus* impacts, e.g. "agritourism" sorts of activities
- D. Easement Holder responsibilities ("Stewardship")
- a. Monitoring
 - b. Enforcement
 - c. Establishment & maintenance of relationship w/ Landowner
 - d. Adherence to best practices (Stds. & Practices, Accreditation)
- E. Some Key Principles
- a. Landowner retains all rights to use land except as specifically ltd. by the restrictions of the CE
 - b. Substantial reliance on stds. of "not detrimental to the Purposes of this CE" and "not impairing of significant cons. features," few detailed, prescriptive restrictions
 - c. Restrictions are *perpetual*, except:
 - a. Extinguishment due to condemnation (by govt. entity, for public purpose, w/ compensation to Holder), most commonly seen w/ rds.
 - b. Changed conditions eliminating cons. significance (theoretical only)
 - d. CE can be amended only for clarification, correction, tighter restrictions, or adding land; requires OK by both parties as well as NH Char. Trust Div.
- F. CE can be donated or sold
- a. Sale of CE presumed necessary to meet County's fiduciary obligations
 - b. Sale price discounted below full value ("bargain sale") likely needed

- a. Fundraising feasibility for Holder, incl. demonstration that Landowner has “skin in the game”
 - b. Value determined by independent appraiser using std. “Before & After Methodology”
 - “Before” value of property “as is,” w/ full development potentials, minus “after” value of property subject to CE on portion of land base
 - c. Sale proceeds as “found” \$, pot. avail. for further investment in land, seed \$ for other initiatives, etc. (solely County decision re use of \$)
 - d. Holder must have serious fundraising capacity
 - a. Must raise total project costs: negotiated CE purchase price PLUS transaction PLUS long-term stew.)
 - e. Cons. groups willing & able to purchase CE for signif. \$ will be *very ltd.*
 - a. Project likely to involve one lead Holder, w/ other assisting partners

- G. Executory (“backup”) interest
 - a. Additional organization to oversee Holder’s stewardship
 - b. Power to act as if Holder, & take over CE
 - c. Public grant programs (e.g. LCHIP) may require

- H. Public access
 - a. Not required if sufficient other conservation significance
 - b. BUT required by some public funders, e.g. LCHIP
 - c. Typ. limited to pedestrian, geographic limitations also common

- I. CE’s are flexible...to a point
 - a. What’s needed to ensure protection of key cons. features
 - b. Holder’s acquisition criteria & stew. capacities
 - c. CE doesn’t have to encumber ALL of land, exclude areas most likely to be needed for potential future development
 - a. CE area to be shown on survey plan
 - b. CE must include enough land to attract Holder, expected to ensure cons. of key land resources, & needing to raise \$ for project

- J. Summary of CE appeal for Landowner
 - a. Continued ownership & use of land w/o reqd. changes
 - b. Enhanced ability to attract entrepreneurial users of land prepared to make long-term commitment but only if future use & availability of land are seen as stable
 - c. Additional income
 - d. Protection agst. future, possibly shortsighted land use decisions w/ irreversible outcomes

III. Other Counties w/ CE's (& Forest Society as Holder) (2:45)

- A. Strafford County, 213 ac. donated CE, 2002 (see SCRD Bk. 2661, Pg. 222)
 - a. Key motivator: threat of condemnation by feds for new prison, desire to gain Forest Society as partner in potential defense
- B. Cheshire County

IV. Resources for More Info (2:50)

- A. Society for the Protection of NH Forests (www.forestsociety.org, tel. 224-9945)
- B. NH Land Trust Coalition (www.nhltc.org)
 - a. Workshops 2x/yr.
 - b. Saving Special Places annual conference (April 7, 2018, in Alton)
- C. Potential partner land trust (see Coalition website above for contact info)
- D. Land Trust Alliance (www.landtrustalliance.org website)

V. Conclusion (2:55)

- A. Review take-home messages

(3:00 pm—END)