

Guidance to LCIP Property Owners: How to Make Requests to CORD

WHAT IS CORD?

CORD consists of representatives from twelve State agencies. Among its responsibilities, CORD is tasked with managing and administering lands acquired through LCIP under former RSA 221-A. CORD was created by RSA 162-C.

FOR INFORMATION

The conservation easements on LCIP lands under CORD's authority are held by the State of New Hampshire as Grantee. CORD has designated three NH State agencies to manage these lands—the Department of Agriculture, Markets and Food; the Department of Natural and Cultural Resources; and the Fish and Game Department.

Property owners should first contact the agency designated to manage their property if they have questions about proposed activities or CORD procedures generally.

The agency may also have given day-to-day management of the land to the NH Conservation Land Stewardship Program (CLSP). Property owners can also ask CLSP staff for information about their land or CORD procedures.

WHEN DO I MAKE A REQUEST TO CORD?

CORD permission is only *needed* to amend an existing deed restriction or easement or if the existing deed restriction or easement requires it. However, a property owner may *want* CORD's opinion on whether a proposed activity is allowed under an easement or restriction to make sure all parties are on the same page. In addition, some easements or restrictions do not require CORD permission but do require *notification*.

Determine if You Need to Make a Request: Prior to asking CORD for permission for an activity, a property owner should determine whether CORD permission is needed by reviewing the easement or deed restriction. Depending on the easement or restriction:

- Some activities may be permitted without notification or approval by CORD;
- Some activities may be permitted with only notification to CORD;
- Some activities may be permitted with notification and approval; and,
- Some activities may only be permitted if the existing easement or restriction is amended.

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The property owner may want to hire an attorney to assist with this determination. However, they may also ask the agency managing their property, or its designee, for information. If a property owner determines an easement or restriction does allow a proposed activity, they can still ask CORD to confirm this interpretation by requesting a courtesy opinion.

HOW DO I MAKE A REQUEST TO CORD?

For permitted activities: If a proposed activity is allowed by the easement or deed restriction and the easement or restriction does not require notification, no further action is needed.

For activities requiring notification: If an easement or deed restriction requires you to notify CORD prior to undertaking an activity, follow the instructions in the easement or restriction. If no instructions are provided, contact the CORD clerk and request that information about your proposed activity be included in a CORD agenda as an informational item.

For activities requiring notification and approval: If an easement or deed restriction requires CORD notification and approval prior to undertaking an activity, follow the instructions in the easement or restriction. If no instructions are provided, contact the CORD clerk and request to be placed on the next CORD agenda for review. Please include:

- A short cover letter (preferably one page) that describes the request.
- A copy of the easement or deed restriction at issue.
- A description of the proposed activity that includes important details.
- A vicinity or locus map showing where the property is generally located.
- Plans associated with the proposed activity if applicable. Plans should include:
 - North arrow and scale;
 - Name of the plan, entity that prepared the plan, and date the plan was prepared;
 - Labels clearly depicting existing and proposed conditions, boundaries of easement areas, and proposed activities; and,
 - Labels clearly depicting existing and proposed structures, if applicable.

For a courtesy request: If a property owner determines that a proposed activity is allowed by an easement or restriction, the property owner may still *want* CORD, as a courtesy, to confirm that it also believes the proposed activity is allowed. This will avoid confusion, later disagreements, and possible enforcement actions.

CORD is not required to address a request for a courtesy opinion but may choose to do so. If it does decide to address the request, CORD may either concur or disagree by a majority vote. Be aware that CORD opinions or interpretations simply represent the position of CORD. If CORD and the property owner disagree, only a court can resolve the disagreement.

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A property owner requesting a courtesy opinion should provide the same information noted above for activities requiring notification and approval.

For activities not permitted without amendment: If an easement or deed restriction does not allow a proposed activity, the property owner must ask CORD for an amendment. Amendments can only be given in very limited circumstances and will rarely be granted.

CORD may authorize an amendment if the property owner demonstrates the conservation value of the land will still be protected in perpetuity if the easement is granted, and that the proposed amendment:

- Is consistent with agreements entered into with persons with ownership interests in the lands at issue.
- Will still preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire.
- Will still maintain and protect benefits derived from such lands.
- Will maintain public access to the land at issue to the extent CORD deems appropriate.
- Is generally within the scope of actions permitted by RSA 162-C:6 through C:11.
- Does not deviate from the purposes and basic requirements of RSA 162-C:6 through C:11.
- Satisfies the general restrictions described below.

If a property owner wants to take a portion of property out of conservation, this can only be accomplished by exchanging other land. To exchange an interest in land, the property owner must demonstrate that:

- Such an exchange is in the best interest of conservation and protection of the values outlined in RSA 162-C:6.
- The conservation values of the property would be degraded if no action were taken.
- The land being offered in exchange is contiguous to the original acquisition.
- The lands being offered in exchange have equal or greater conservation value than the lands being conveyed from the LCIP program.
- The land proposed to be conveyed from the LCIP program is only those necessary to compensate for the potential degradation identified above.

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A property owner requesting an amendment should provide the same information related to courtesy requests described above plus any other information necessary to determine if the proposed amendment meets the requirements described above.

PROCEDURE FOR ALL REQUESTS

1. Property owners requesting an approval, courtesy opinion or amendment should contact the CORD clerk and ask that an item be added to a future agenda.
2. All requests may be submitted in hard copy or electronically and should be sent to:

Brendan McDowell
N.H. Dept. of Business and Economic Affairs
100 North Main Street, Suite 100
Concord, NH 03301
Brendan.m.mcdowell@livefree.nh.gov

3. The item may be put on a future agenda once the Chair is satisfied that the relevant information is provided. CORD may also forward the information to the municipality, CLSP, or other parties that it determines may be interested. The clerk will tell the property owner if and when the request is scheduled for review.
4. CORD may consider the issue at the scheduled meeting. Please note, this is not a “hearing.” No one is entitled to provide information or speak; however, CORD may allow the property owner to present and may allow other entities to respond.
5. For amendment requests, CORD will determine whether the proposal meets the criteria for approving an amendment. Even if the proposed amendment meets all the objective requirements, CORD may still use its discretion to deny the project if it feels it does not fulfill the objectives or intent of RSA 162-C.
6. If CORD approves an amendment request that requires an exchange of land, it shall provide at least 30 calendar days advance notice to the local governing body and conservation commission and then submit the recommendation to the Governor.

GENERAL RESTRICTIONS

Unless authorized by the original deed or conservation easement, properties shall not be posted against hunting and fishing unless CORD deems it to be necessary to protect the interests of the state and the safety of its citizens, or upon recommendation of the fish and game commission or the division of forests and lands.

Land acquired using the trust fund established pursuant to former RSA 221-A shall be held in public trust and used for the purposes of RSA 162-C:6 through C:11. The sale, transfer,

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conveyance, or release of any such land or interest in land from public trust is prohibited other than in the manner specifically provided.

OTHER APPROVALS

CORD will express opinions and make recommendations only for lands pertaining to LCIP. Property owners must determine whether additional approvals are needed from municipalities, easement holders other than CORD, other contributing programs such as the Land and Community Heritage Investment Program, the NH Dept. of Justice Charitable Trusts Unit, or any other entities.

LEGAL ADVICE

Neither CORD nor the managing agencies can provide legal advice to a property owner.

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