



New Hampshire Council on Resources and Development

APPROVED MINUTES – June 23, 2022

MEMBERS PRESENT

Taylor Caswell, Chairman, Commissioner, NH Department of Business and Economic Affairs
 John Martin, Designee, NH Department of Health and Human Services
 Jack Ruderman, Designee, NH Housing Finance Authority
 Mark Doyle, Designee, Department of Safety
 Amy Clark, Designee, Department of Education
 Stephen Labonte, Designee, NH Department of Transportation
 Jared Nylund, Designee, NH Department of Administrative Services
 Tracey Boisvert, Designee, NH Department of Natural and Cultural Resources
 Betsy McNaughten, Designee, NH Fish & Game

OTHER PARTICIPANTS

Stephanie Verdile, NH Office of Planning and Development (CORD Staff)
 Alvina Snegach, NH Office of Planning and Development (Recording Secretary)
 Christopher Aslin, CORD Attorney, Department of Justice
 David Rosenboom, The Bearcamp Center
 Lianne Prentice, The Bearcamp Center
 William Warren, DTC Lawyers
 Christine Fillmore, Drummond Woodsum
 Michael Summerlin, NH Department of Environmental Services, Waste Remediation Bureau
 Charlotte Harding, NH Conservation Land Stewardship Program
 Steven Walker, NH Conservation Land Stewardship Program
 Louis Barker, NH DOT Bureau of Trails

I. ROLL CALL AND INTRODUCTIONS

The meeting was opened at 3:03 P.M. by Chairman Caswell. Council members and guests then introduced themselves.

II. MINUTES

A. Approval of March 10, 2022, draft minutes

MOTION: *On a motion by Mr. Martin, seconded by Ms. Boisvert, the March 10, 2022, minutes were approved by the majority of the Council with Ms. McNaughten, Ms. Clark, Mr. Labonte, Mr. Doyle, and Mr. Ruderman abstaining.*

III. LAND CONSERVATION INVESTMENT PROGRAM (LCIP)

A. Tamworth- Perkins Easement for a Landowner Request for Easement Amendment (Continued from March 10, 2022).

Commissioner Caswell asked Attorney Aslin to provide a brief overview of the issue and any updates. He also noted that there may be a few people present who would like to speak on the issue as well before CORD can resume its discussion.

Attorney Aslin said that there is a proposal before the Council regarding the issue that arose around a conservation easement held by the Town of Tamworth over the property that had been originally conserved under the auspices of the Land Conservation Investment Program (LCIP). The easement language stipulated that the property should remain under one owner if and when transferred, which unfortunately was not the case when the two of the three parcels under the easement were conveyed out to the third party. Attorney Aslin said that there has been some confusion on the part of the Town and the landowner on whether this was allowed; however, the transfer took place, which was later determined by the Department of Justice and its Charitable Trust Division a violation of the easement provision. Mr. Aslin added that in attempt to resolve the situation a proposal has been brought forward to consider allowing the transfer to continue in exchange for the landowner releasing some of their rights to the property. There would be two new Conservation Easements that will include the proposed changes and will supersede and replace the original easement. There is also the Amendment Agreement drafted that asks all the parties involved to acknowledge all the facts that have occurred and to confirm that this proposed solution is acceptable to them and essentially resolves the issue.

Chairman Caswell asked if there was anyone present who would like to address the Council on the issue.

Attorney William Warren from DTC Lawyers said he was representing the Bearcamp Center, and he is appearing in place for Attorney Christopher Boldt who was unable to attend this meeting due to a scheduling conflict. Attorney Warren said that it was his understanding that the Council met in March of this year to initially discuss the facts of the matter and continued that discussion to the meeting today to further consider the facts and the proposal that has been made. There have been extensive communications between the attorneys for CORD, Town of Tamworth, and Bearcamp since then to work out a compromise and deliver the current proposal to make up for the mistake that had occurred with the transfer of these properties. There are four separate documents that Attorney Boldt had provided to the Council:

- a) Amended Agreement which provides a description of what had transpired and provides the opportunity for the parties involved to acknowledge the facts, as well as sets forth how the parties propose to resolve the issue.
- b) Corrective Deed from the Bearcamp Center to the buyer (Zeromile Farm, LLC) which would need to be recorded as the original deed from the Bearcamp center did not contain adequate reference to the original easement.
- c)&d) Two new Conservation Easements to be granted by Bearcamp Center and Zeromile Farm, LLC in order to preserve the land and to continue the original conservation easement over the property.

Attorney Warren said there is no change from the original conservation easement except for the one where Bearcamp Center would relinquish its right to develop the gravel pit on its remaining lot as well as the right to periodically close the road to the pond nearby. Mr. Warren said he is ready to answer questions regarding these documents and reiterated that Attorney Boldt is unable to attend but is willing to answer questions via phone if needed.

Christine Fillmore, with Drummond Woodsum, said she is representing the Town of Tamworth and said there were two major concerns during the previous meeting discussion, one of them being the desire to make sure that if the two easements were allowed to proceed, it would be made very clear that something weird has occurred here and this would not be allowed to repeat; therefore, no precedent would be set. Attorney Fillmore said she felt that the proposed documents addressed this very well and with that, the Town is satisfied with the proposed solution.

Steve Walker with NH Conservation Land Stewardship Program addressed the Council with a statement of the following:

” Good afternoon,

I have given a lot of thought to the topic of Conservation Easements and CORD because I see it as fundamental to who Conservation Land Stewardship is and what CLS does, as we do our work for you. What I have to share is a compilation of CLS thoughts, experiences, opinions, and how we conduct our business. I also have comments related to the Tamworth-Perkins case which is why we are here today. CLS has no decision-making authority, nor am I here to tell you what you ought to do, and cannot, as that is not our purview. I do share concerns that from a policy perspective I think CORD might find useful in their deliberations and decisions, with the idea of helping CORD to avoid negative ramifications, and produce positive results. CORD members are constantly changing as well so this is an opportunity to share some important insights into CLS. DOJ has articulated nicely what the CORD authority is. However, I am reminded that not all CORD members are going to know of, or understand, the world of conservation easements.

If I can leave you with one lasting impression it is this. The consequences of your decisions on what can appear to be a simple straight-forward topic, can be hugely consequential and far reaching. Take whatever time you need to make sure you are getting the best and most complete information possible, and deliberate carefully so that you end up with the best decision.

CORD has received a lot of material regarding the specifics of the Tamworth-Perkins easement violation. I am happy to answer any questions regarding the topic. More so, today I want to speak more to the overarching principles of CLS, how it has functioned since its inception, and what our understandings are.

Much of what I have to share is what I have learned from the previous two program directors. As operations go, we have continued to follow in their footsteps largely using their time-tested model and methods. We are also a partner with other State agencies who have higher authorities than CLS, and we defer to them often.

- The bar for amending / changing a conservation easement was set very high. That is the message we have delivered scores, if not hundreds of times, across three decades. The framers knew that over time, the never-ending succession of landowners would constantly be seeking to nip away at the edges. They knew that this would likely result in an incremental erosion, and insidious demise, of the natural resource protections of LCIP conservation lands, and indeed conservation protections in NH in general. The State invested public dollars in these resources to be held in the ‘public trust’.
- To date I believe only six amendments have occurred. These have typically been for public benefit types of circumstances and often involved traffic safety. I do not recall an

amendment of this sort ever being considered. The Canaan-McKee subdivision violation in 2008, with extremely similar circumstances, was vigorously fought by the State and in the end the original Property condition was reinstated. We do not understand why the Tamworth-Perkins situation is different, as has been posited. As a standard procedure, CLS has never invited the opportunity for landowners to submit a request for an amendment. Where the Use Limitation clearly and unequivocally said “No”, it meant No. I am certain that CLS would not bear up well if we invited amendments for every request we receive. I am of the opinion that CORD and the DOJ would be challenged mightily as well.

- Easements have stated purposes, and many cans (Reserved Rights), and many cannots (Use Limitations). The general rule of thumb across the realm of land conservation easement is; do not mess with them, unless absolutely necessary. As a general rule, “high risk” items should be avoided altogether. As CORD deliberates, it is extremely important to be mindful of any possible IRS implications as well.
- By and large the municipal conservation property monitoring is done by volunteers. I filled that role in my town for a period, and do so for a land trust currently, so I have familiarity with how volunteer commissions can work. These are good people doing the best they can. It can be a thankless task. We respect them. The CLS role is to try and support them in their efforts within the confines of our program. Our work has been likened to pushing the commissions with a rope. To that end, when I became the CLS director I saw the need to create a guidance resource for towns because they also need to push themselves. It was distributed to every CLS contact in June of 2020. The goal was to help them to understand the importance of the work they do and how to do it well, and seek counsel if they are in any way unsure. The guide can be found on our website.
 - It is imperative to remember that in the case of municipal conservation easements, the Town is the Grantee interest, and first in line as being responsible. The State, and CLS are simply not. Our role has always been one that emphasizes technical support. To the extent possible, we also keep a watchful eye on the conservation properties, primarily through annual communications (encouraging annual monitoring) and occasional Field Visits by CLS staff, every 4-6 years.
 - Regarding the CLS role, and what could be described as an insinuation that CLS is somehow at least partially responsible for the subdivision occurring, I reject that notion whole-heartedly. I prepared and will submit a separate document to CORD explaining my position on that point. It is a brief timeline of our 2020 and 2021 calendar years.
 - The charge of conservation commissions where a neighbor must (or chooses to) monitor another neighbor has built in pitfalls, conflicts of interest can be difficult to avoid in small-town NH. This is just the case with Tamworth-Perkins.
 - CORD might consider gathering more information on the machinations and decision making that transpired within the town by the conservation commission and the select board. It could be very useful to understand how the proposed subdivision concept was addressed and why it was not elevated to a higher level

of scrutiny. Subdivision is one of the more consequential actions that can happen to a conservation property. It is a doubling factor, a 100% increase in terms of landowner relations and responsibilities. It has lasting consequences.

- There are many in the conservation arena who firmly believe that municipalities should not have Grantee interests in conservation easements.
- In order for CORD to make an intelligent and sound decision of any kind, much more information should be gathered. I struggle to understand why a 30 year-old non-profit organization, with a Board of Trustees, would NOT hire their own legal counsel for a decision of this magnitude. It might be enlightening to know what specifically went into the decision not to do so. We view this as an extremely serious omission.
 - It would be equally, or more interesting, to understand why the counsel that was retained was by, and for, the buyer. In general, for a transaction such as this that involved a conservation easement, a specific and narrow area of law, hiring a NH attorney would have been the prudent approach, and vastly more intelligent. The role of the Title Company might be worth looking into as well. The poorly executed legal documentation is another red flag in our view.
 - The sale, as it was pointed out to CLS by Charitable Trust Unit, also had an inherent, and serious, conflict of interest. The buyer was a sitting Board member, and apparently the CTU should have been notified. CLS is not following this situation.
- The plaintiff's attorney made a few assertions, and nuanced their position, to the benefit of his client, quite naturally.
 - My experience has taught me that there is always much more to the story than is being told. Here again, one needs to read between the lines, or better yet, seek other more objective sources of information. The details can be revealing.
 - One very key item is that Attorney Boldt, using the CTU Amending Documents guide, made it sound as if all is copacetic and that their proposed amendment would handily pass muster with CTU. What I do not recall being mentioned is the following on page 9 of the CTU guide. It states:
 - *Examples of high risk amendments include those that:*
 - Permit prohibited subdivision or residential or commercial development of the land.

This is a very important point that should be paid close attention to. Perhaps we might all benefit by hearing directly from Tom Donovan at CTU, who wrote the first violation notification letter to the town, what exactly this means.

- Should CORD choose to make an amendment or change, there should be very defensible, rock-solid reasons for doing so. Mitigations are best if they are very meaningful if you want to avoid whiplash and a potential cascade of other new

problems. I am of the opinion that the three mitigation concepts offered by the Perkins plaintiff are meaningless at best, and the gate removal can be harmful.

- Consistency has been an imperative for CLS, a hallmark of our work. If you start cutting deals for each landowner / situation that comes down the pike, you do so at great peril. To say no to one person, and yes to another will not work in CLS' or CORD's favor. Easements are in perpetuity. Landowners, land managers, non-profits, etc. they will come and go. Arguably, the most important tool that CORD can, and should, employ is consistency, across the years.

“No” is not an easy answer to deliver, but in my nearly four decades of involvement with land conservation it has invariably been the correct one, the smartest one, and the safest one. To do otherwise can amount to opening Pandora’s Box and expose CORD to other problems.

If CORD does want to consider some sort of mitigating maneuver, such as an amendment, I have given serious thought as to what CLS thinks would be advisable and smart. I would be happy to share those if you find yourself in that situation. Just ask.

When conservation easements are created, it is for the purposes of protecting a natural resource. While a Grantor(s) may also derive some benefits, it is the conservation values that are behind the effort and allow easements to exist. Landowners come and go. As I have always been lead to believe, it is the conservation resource that CORD is charged with protecting, not any individual. A conservation easement is a legally binding contract, in perpetuity, binding on all Grantors and their successors. CORD should pay close attention to the boundary between their duty to the protection of the conservation resource, and that of any given landowner’s personal situation. I have never understood CORD’s role to be a social safety net. Within the greater conservation community, the conservation violation policy stance that I have observed over time tends to be: ‘You broke, you fix it’. Begging forgiveness is not a good model to engender.

Finally, CLS staff are just temporary features. Easements and the State live on. CLS, originally LCIP, has been a continual education for me. I thank you for your patience and forbearance as I work my way through the ever unfolding learning process. I hope I too have not crossed any bounds, as I work to be respectful of them. My intent, and hope, is always to do the best for the program, now agency, and keep it true to the course that was originally charted. Each year we submit to CORD an annual report of our activities. For new CORD members, you might find value by visiting our website to learn more. It is a really easy one to navigate. I always encourage critique, and to anyone interested, please join us on a field day.”

Ms. Boisvert asked if the Town of Tamworth had taken an official vote in support of the proposed solution.

Attorney Fillmore responded in the affirmative and added there have been multiple versions discussed prior to arriving at the final proposal, that has been approved by the Town Conservation Commission and the Selectboard. Ms. Fillmore also noted that it is very important to address a very serious accusation that has been raised about a conflict of interest. She said there has been a conflict of interest identified but it was dealt with before it actually arose. Lianne Prentice, the Executive Director of the Bearcamp Center is the current sitting member on the Tamworth Selectboard to which she was elected in March of 2022. She was only involved

with the Tamworth Conservation Commission and Selectboard as a member of the public prior to her election. She was informed by the Board of Selectmen prior to her election that she is running unopposed and would very likely be on the Board, at which point Attorney Fillmore contacted Attorney Boldt to let him know there may be a conflict of interest issue for his client. Ms. Fillmore also made the Conservation Commission and the Board of Selectmen fully aware of this issue. According to Ms. Fillmore's knowledge Ms. Prentice has recused herself from all Selectboard conversations, non-public sessions, and has not been privy to any legal advice provided to the Selectboard throughout this process.

Ms. Boisvert said that the reason she asked the question is because usually it is the town that would bring the request to the Council and not a landowner, which is what this is, and it creates a policy and precedent concern for how the Council operates. She asked if the Town was ready to take on the role of the requestor for this proposal.

Attorney Fillmore responded that she was not authorized to answer that; however, she can say that the Town, since the beginning, has been in contact with the Charitable Trust Unit seeking guidance and is prepared to do what is necessary in this situation. The Town has been actively involved in finding a solution. When the Bearcamp Center retained counsel and brought up the first proposal, the Town was not comfortable with accepting it because it did not address the issue of creating precedent. Attorney Fillmore continued to say that as it stands now, the Town does approve the amendment that is proposed and if it does not get approved, the Town is willing to work with the State to figure out what it needs to do next.

Mr. Nylund asked Ms. Fillmore if she was aware whether the Town had the baseline easement documents on file. She said she believed it did but could not confirm that. Mr. Nylund asked if the Council could get a copy of the documents, and Ms. Fillmore answered affirmatively. Mr. Nylund also asked if there has been any sort of agricultural management plan proposed by the Zeromile Farm, LLC or the Bearcamp Center as required by the easement. Ms. Fillmore responded that the management plans were not discussed during this process.

Lianne Prentice from the Bearcamp Center answered that the Bearcamp Center continues to carry out the management plan, however, the forest management part of it is no longer relevant, as the land the Center retained is not forested. Zeromile Farm is in the process of developing their own plan and they have the original documents from the Bearcamp Center and all the relevant contacts. Ms. Prentice added that the plans also depend on the resolution of this process, as it will determine who will retain ownership of the land.

Chairman Caswell said that the Council is being asked to consider an amendment to the conservation easement and asked the members whether there was a potential motion that could be made prior to the Council continuing discussion.

MOTION: Ms. Boisvert made a motion that the Council is NOT in favor of endorsing the current amendment that is before it. Mr. Doyle duly seconded.

Mr. Doyle said that he is new to the Council and is not privy to any discussion that happened, and, although he reviewed a lot of materials, he neither feels comfortable making a decision predicated upon little information, nor does he see a basis where the Council has standing to make a decision. Mr. Doyle said that in his view it is the Town that should be making a decision on how to move forward, and that Town's decision would become the basis for the Council to

act. He added that to him it sounds like the Council is in the middle of something it has no desire to be in the middle of, because nobody has made a decision yet, and it does not seem that it is the CORD's decision to make.

Ms. Boisvert said she can see the Town has vetted the proposed solution and is fully onboard with it; however, DNCR is concerned with the precedent this may set. There are other easements that are controlled by various entities that have the exact same language in them, and the potential stream of similar issues from requestors under similar circumstances. Ms. Boisvert said they would like to at least see the Town make another attempt to find another creative solution that would result in the property being put together and come back to the Council with additional information.

Mr. Nylund stated that usually when a conservation easement is proposed to be amended, the amendments have to do with enhancement or at least no deterioration of conservation values. He is not sure whether the mitigation that is offered has been considered by the Town as equivalent to the conservation values that have been lost, or if the Town considers that the violation of the unified ownership/no subdivision clause of the easement as a loss of a conservation value. Mr. Nylund added that the Town has a fiduciary responsibility as the enforcer of this easement to be fully engaged in its stewardship and the Town should be taking full lead in this process.

Ms. McNaughten added that NH Fish & Game is also concerned with the proposed amendment of the conservation easement. She added that taking the path of least resistance and amending easements is concerning to the Department and it is a slippery slope. Attorney Aslin left at 3:43 PM.

Ms. Boisvert noted that this provision is found quite often in conservation easements and it is important to make sure this is not treated as some administrative issue. When the property is protected by a conservation easement it is intended to be managed as a whole and in this case there are wetlands on one parcel, trails on the other, and the old homestead, that has historical importance, on the third parcel, and all are protected by this one easement, therefore it is very important to uphold this provision.

Chairman Caswell called the vote on the motion, reiterating that the motion was made that the Council does not accept this amendment at this point.

Motion carried with a unanimous vote in favor.

IV. SURPLUS LAND REVIEW

- a) 2021 SLR 006 (Continued from March 10, 2022) Request from the NH Bureau of Rail and Transit to lease approximately 40,000 sq ft of railroad line in the Town of Londonderry to an abutter for the storage of landscape materials per RSA 228:57, which allows the leasing of State-owned properties to landowner's property that abuts the railroad property, and the proposed use does not adversely impact the use of the property by the State or other authorized users.**

Ms. Verdile introduced 2021 SLR 006 and noted it was continued from the March 2022 meeting. Louis Barker from the NH DOT Bureau of Trails described the proposal and noted there was a

pre-existing encroachment on the rail trail owned by the state by the existing abutters who proposed to lease that portion of the state-owned railroad right of way. Mr. Barker provided a brief history of the railroad corridor in that area and answered questions about right of way width, any obstructions, the location of the lease area, etc.

Ms. Boisvert spoke about the SLR review process and what it entails.

***MOTION** made by Mr. Nylund, seconded by Mr. Ruderman to recommend approval of the lease approximately 40,000 sq ft of railroad line in the Town of Londonderry to an abutter for the storage of landscape as outlined in the 2021 SLR 006 application materials. The motion was adopted with an 8:0:1 vote by the Council with Mr. Labonte abstaining.*

b) 2021 SLR 007 (Lunenburg, Vt)

Request from the Bureau of Rail & Transit to propose to grant an easement over a parcel approx. 1320 sq ft of railroad land in the Town of Lunenburg, Vermont to Green Street Power Partners, a lessee of an abutting property, for installation, use, and maintenance of an overhead electrical facility per RSA 228:57, which allows for leasing of state-owned railroad property to a railroad operator or other public use.

Ms. Verdile read the item into the record and said Mr. Barker is going to be speaking about this application. Mr. Barker from the NO DOT Bureau of Rail and Transit presented the details of the application and explained why a lease option was not suitable to the company due to their long term funding requirement for a more secure option in terms of ownership, which the easement is. He also spoke about the applicant agreeing to abide by all the necessary clearance requirements and horizontal offsets for the poles.

***MOTION** was made by, Mr. Ruderman, seconded by Mr. Doyle, to recommend approval of granting the easement of approximately 1320 sq ft of railroad land in the Town of Lunenburg, Vermont to Green Street Power Partners as outlined in the 2021 SLR 007 application materials. The motion was adopted with an 8:0:1 vote by the Council with Mr. Labonte abstaining.*

c) 2022 SLR 001 Request from the New Hampshire Department of Administrative Services (NHDAS), on behalf of the New Hampshire Department of Environmental Services (NHDES), to lease two abutting parcels of land that were a former gravel pit and waste disposal site acquired by the State in the early 1980's. The parcels have gone through the remediation process under the Federal Superfund program the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The proposal is to lease the property to a special purpose entity that will construct, install, and operate a commercial solar farm.

Ms. Verdile read the item into the record and explained that the site is a former gravel pit and a waste disposal site that has gone through remediation. Proposed use is a solar farm. Mr. Nylund said he can present this application which was submitted on behalf of NHDES and added that this was a former Superfund Site, in which NHDES retains an interest. The company is proposing to build an above ground commercial solar power generation facility. Mr. Nylund emphasized that part of the deal is that all the equipment will be installed above ground. The

lease maximum term is up to 47 years and that is with all possible extensions. The company will be required to remove all equipment once the lease is up.

Mr. Nylund answered questions about the NHDES authority and state ownership of the land.

***MOTION** was made by Mr. Caswell, seconded by Ms. Boisvert, to recommend approval of to lease two abutting parcels of land that were a former gravel pit and waste disposal site as outlined in the 2022 SLR 001 application materials. The motion was adopted with an 8:0:1 vote by the Council with Mr. Labonte abstaining.*

V. LAND & COMMUNITY HERITAGE INVESTMENT PROGRAM (LCHIP)

A. Nothing at this time.

VI. OTHER BUSINESS

- **Conservation Land Stewardship Program-CORD Custodial Account Agreement finalization**

Chairman Caswell noted that under Other Business there was the Conservation Land Stewardship Program – CORD Custodial Account Agreement.

Steve Walker spoke about his understanding of the agreement being an agreement between CORD and the Treasury to manage the endowment, and he does not believe that CLS is really involved in this process except when it comes to receiving information and reports. Mr. Walker explained how he got involved in the process and what has happened since he did. He added that he does not think he should be listed on page two as one of the people receiving the reports; however, in his opinion, DNCR and DAS probably should be. Ms. Verdile added more to the background of the issue and said she had also invited a representative from the Treasury to attend the meeting. Ms. Verdile added that there is no strict deadline for the Council to make a decision on this. After a brief back and forth on the details of the endowment management and background it was decided there should be a more in-depth discussion at the next CORD meeting when a representative from State Treasury can attend.

- **Future CORD meeting dates.**

Members discussed possible dates and agreed to schedule the next meeting for August 11, 2022, at 3:00 PM. Tentatively a subsequent meeting date was chosen to be October 13, 2022, pending what happens at the August meeting.

Members also discussed the need to draft a formal letter with the decision on the Perkins easement. Ms. Verdile said she will circulate a draft once she prepared it and ran it by Attorney Brooks or Aslin.

Mr. Walker said he would like to address Attorney Fillmore's comment made earlier about an accusation of conflict of interest, which he thought was not a correct reference. Mr. Walker explained that he was speaking about the board membership of the land buyer that was identified by the Charitable Trust Unit as a conflict of interest, and NOT Lianne Prentice's role on the Tamworth Selectboard. He said he just wanted to clarify it for the record.

With business completed, the meeting was adjourned at 4:15 PM.

Approved as presented on September 29, 2022.