



Land Protection Methods and Costs for Source Water Protection

New Hampshire's landscape is a patchwork of protected lands, large and small from the White Mountain National Forest to backyard woods, wetlands and fields. Landowners, municipalities, land trusts and publicly supported state conservation programs have established a tradition of permanently protecting our state's natural landscape.

New Hampshire's protected lands support our economy through forestry, agriculture and tourism. They sustain and stabilize our communities and provide clean air, water and a healthy environment. New Hampshire municipalities, public water systems and land trusts are deepening their commitment to protecting our drinking water through land protection methods.

Land protection methods

The two most common types of land protection methods are: 1) conveying the fee interest (or in-fee simple) to a land trust or municipality; and 2) placing a conservation easement on the property.

In-fee simple with deed restrictions: The landowner sells or donates (or some combination) their land to a municipality or land trust. The municipality or land trust assumes ownership of the land and places certain restrictions on the land to protect its drinking water supply resources. The land trust or municipality manages the land for drinking water source protection, and other agreed-upon compatible uses, such as agriculture, forestry and outdoor recreational activities.

Conservation easement: A permanent, legally binding agreement between the landowner and municipality or land trust to permanently limit the use of the land, to protect its drinking water supply resources. The landowner continues to own the land and can sell it at any time for any price. The landowner voluntarily gives up their intensive uses of the land, prohibiting subdivision and residential and commercial development, mining, and disposal of solid and hazardous wastes. The conservation easement stays with the land forever and all future landowners are subject to the conservation restrictions placed on the property.

Land protection costs

Grants to protect land are often limited and highly competitive, and land transaction costs can often be substantial. Transaction-related costs typically include appraisal, title search, environmental site assessment, boundary surveys, baseline documentation reporting, legal fees and a one-time contribution to a long-term stewardship fund. Brief descriptions of the most common expenses covered by the Drinking Water and Groundwater Trust Fund (DWGTF) Source Water Protection Grant Program are described below.

Land acquisition: The process of making offers to landowners and transferring the voluntarily sold interests to a land trust or municipality. These costs include the price to purchase the land or conservation easement.

Appraisal: Determines the fair market value of the land or the value of the conservation easement. The fair market value is the price a buyer is willing to pay a seller for the fullest and best use of the property, including development rights. The fair market value refers to the value that the property would sell on the open market. Fair market values are part of a comparative market analysis, which takes into consideration current market trends. The Source Water Protection Grant Program requires appraisals be conducted by an appraiser who has at least two-years' experience in water supply land appraisals or conservation interest appraisals. Not every appraiser is qualified to conduct water supply land or conservation easement interest appraisals.

Survey: A formal means of measuring and defining the boundaries of a property. Surveys must be conducted by a New Hampshire-licensed surveyor to include the boundaries and acreage of the property and document the method and accuracy of the survey. The surveyor creates an electronic copy of the property survey, and marks the boundary line and all turning points, so an individual who wishes to walk the boundary can do so. The survey is an important tool to accurately describe the size and shape of the property and determine if the property is properly managed over time.

Environmental site assessment: A requirement when known contamination or potential contamination is suspected on a property. Contamination includes, but is not limited to, any exceedance of ambient groundwater quality standards as defined in RSA 485-C:7 – Potential Contamination Sources and adopted by the New Hampshire Department of Environmental Services (NHDES) in New Hampshire Code of Administrative Rules Env-Or 602 – Contaminated Site Management. An environmental site assessment must include:

- A history of land use from present day to when the property was first developed or to 1940, whichever is earlier; a description of the site inspection.
- A review of all NHDES records relating to site investigation or other environmental assessments for all properties within 1,000 feet of the property.
- A description of the review of all NHDES records, including who conducted the review and the date of review.
- A description of the findings from the above-mentioned review of NHDES records.
- An opinion by the consultant as to the contamination concerns, if any, on the property.

Title examination: Identifies who legally owns the property and helps identify any possible issues with the ownership of the land. The title examination, also referred to as a title review, identifies any other parties that may hold rights, such as rights-of-way or restrictions, that could jeopardize the land transaction. A title review makes sure the chain of ownership is correct and complete and that all loans, mortgages or back taxes have been paid and/or released.

Baseline documentation report: A report that describes in writing and with photographs the condition of the property, including water quality and water quantity data. The Baseline Documentation Report (BDR) is prepared by a person with knowledge of the property at or near the time of closing. The BDR is

typically prepared by a land trust and is a collection of maps, photographs and a written description of the property, its natural features, and the conservation values for which it is being protected. The BDR provides a point of comparison of the property for which to evaluate and compare change over time and identify potential future violations. BDRs must be complete and accurate to fulfill their purpose. The BDR is signed by the person preparing the report, and the landowner at or prior to closing.

Stewardship: The promise a land trust or municipality makes to ensure that the land is permanently protected as a drinking water supply and not degraded over time, no matter who may own the property in the future. Land trusts and municipalities are obligated to determine and obtain the financial and management resources needed to enforce the conservation restrictions; develop and implement a stewardship plan to safeguard the drinking water source; and annually monitor the land or conservation easement. The key to achieving lasting conservation is to set aside sufficient funding to annually monitor the property and for any legal expenses that may be necessary to enforce the terms of the easement.

Timing

Land protection efforts can take many years to complete. To apply to the DWGTF for Source Water Protection Grant funding, be sure to have:

- A purchase-and-sales agreement or acknowledgement letter from the landowner describing their commitment to the project and willingness to accept the program conditions.
- Preliminary title search.
- An appraisal prior to applying.

A purchase and sales agreement is a formal agreement between the landowner and land trust or municipality that defines general roles, responsibilities, timeline and other terms, such as sale price and activities to be undertaken before exchanging a deed for money.