



## Drinking Water and Groundwater Trust Fund Source Water Protection Grant Program



# Deed Language and Stewardship Requirements for Land Protection

In 2016, RSA 485-F established the Drinking Water and Groundwater Trust Fund (DWGTF) *“to ensure the continued availability of safe drinking water for all New Hampshire citizens.”* RSA 485-F also established the Drinking Water and Groundwater Trust Fund Advisory Commission (Advisory Commission) to consult with and advise the New Hampshire Department of Environmental Services (NHDES) in the proper administration and management of the Trust Fund. The Source Water Protection (SWP) Grant Program was established by the Advisory Commission to provide grants to permanently protect important drinking water supply lands in New Hampshire.

The DWGTF SWP Grant Program requires specific deed language and stewardship requirements to protect our drinking water resources. Grant recipients are encouraged to begin drafting deed language early in the process to give plenty of time for review and feedback.

Rules governing the SWP Grant Program are dispersed across three rule sets. They follow a specific hierarchy whose terms take precedence over the rules below it. For a complete read of the rules governing the grant program, begin with the DWGTF Advisory Commission Rules and apply the cited Env-Dw 1300 rules. Then, read only the cited Env-Dw 1002 rules from Env-Dw 1300 that apply to this grant program.

1. [DWGTF Advisory Commission Rules for the Source Water Protection Grant Program](#)
2. [Env-Dw 1300](#) Administrative Procedures for Grants and Loans from the Drinking Water and Groundwater Trust Fund.

NHDES is authorized to administer the program and establish additional rules as needed to support the work of the Advisory Commission.

3. [Env-Dw 1002](#) Water Supply Land Protection Grant Program rules.

The Env-Dw 1002 rules govern the processes, legal mechanisms by which grant recipients must protect and steward the land. Only the sections of the Env-Dw 1002 rules cited in the DWGTF Advisory Commission Rules and the Env-Dw 1300 rules, some of which are listed below, apply to the SWP program.

This reference document was created to assist project managers in finding the relevant rules governing deed terms and stewardship requirements for a property protected with a grant from the DWGTF. This document is NOT intended to replace reading the full [Advisory Commission Rules](#) and the applicable Env-Dw 1300 rules and Env-Dw 1002 rules, it is the applicant’s responsibility to fully read all relevant rules.

## Deed Language Requirements for Lands Protected with a DWGTF Grant

### DWGTF Advisory Commission Rules

#### Conditions

1. The property to be protected must be free of contamination and potential sources of contamination or must be restored to such a condition as a condition of the grant. Contamination includes but is not limited to any exceedance of ambient groundwater quality standards (AGQSS) adopted by the Department unless naturally occurring and may include any instance in which the Commission determines that an AGQS is likely to be violated in the future based on the presence of nearby contamination.

2. The property to be protected must be undeveloped or must be restored to an undeveloped condition as part of the project.

[...]

4. The project must permanently protect the property through either:
  - a. A conservation easement to be held by a municipality, state agency, federal agency or not-for-profit land trust or conservation organization that has adopted Land Trust Alliance Standards and Practices. All easements not held by a state agency must include a third-party right of enforcement in favor of the State of New Hampshire.
  - b. A deed restriction with third-party right of enforcement in favor of the State of New Hampshire or other appropriate State agency.
  - c. A grant agreement recorded in the registry of deeds that requires the recipient to execute a conservation easement or deed restriction as described in (a) or (b) above when the recipient transfers fee interest in the eligible land to another party.
5. If the property does not provide protection of an existing active source for an active community or non-transient, non-transient, non-community public water supply source, either the conservation easement or the deed restriction must ensure that the property may be used to site a public water source in the future.
6. For property (e.g. agricultural land) not in a natural state and whose eligibility is predicated on the protection of a surface water source, a vegetated buffer shall be established and maintained. The Department will make recommendations regarding the size and condition of the vegetated buffer required by the Commission on a site-specific basis, taking into account the hydrology and topography of the site, as well as applicable best management practices.

[...]

8. Public access to property protected with grant money is not required.

[...]

#### *Other Requirements and Additional Costs*

1. An environmental review may be required as part of the grant disbursement process in the manner determined by the Commission. Negative environmental impacts may be a basis for withdrawing funding.

[...]

#### *Signage and Publicity*

Unless otherwise specified by the Commission, all recipients will be required to place a sign with the program logo as approved by the Commission at the project site. The Commission may also determine appropriate conditions regarding placement and maintenance of signage. Signage specifications will be provided by the Department. Costs associated with required signage shall be considered eligible project costs.

#### **Env-Dw 1303.09 Requirements for Land Acquisition**

- a. Prior to requesting any funds for disbursement relative to any land acquisition, the recipient shall comply with the requirements listed in (b), below, provided that:
  1. Any reference to “applicant” or “grantee” shall mean recipient; and
  2. Any reference to **Env-Dw 1002.19** shall mean **Env-Dw 1303.09**.
- b. The requirements for which (a), above, requires compliance shall be as follows:

1. **Env-Dw 1002.21** Property Survey Requirements;
  2. **Env-Dw 1002.22** Appraisal Requirements, except that the date referenced in **Env-Dw 1002.22(e)** shall be no earlier than one year prior to the date of a binding purchase and sale agreement;
  3. **Env-Dw 1002.23** Title Examination and Opinion Requirements;
  4. **Env-Dw 1002.24** Conservation Interest Instrument Requirements, except that land surface alterations may occur in conjunction with wildlife habitat management in addition to the reasons listed in **Env-Dw 1002.24(b)(2)**;
  5. **Env-Dw 1002.25** Snowmobile Trail Plan Approval;
- [...]
7. **Env-Dw 1002.27** Final Approval, Execution, and Deed Recordation.

### **Env-Dw 1002.24 Conservation Interest Instrument Requirements**

- a. Each conservation interest instrument shall:
  1. Uphold the conservation purposes of **RSA 486-A** in perpetuity;
  2. Protect the quality and sustainable yield of ground and surface water resources associated with the property;
  3. Safeguard the environmental values of the property that are dependent on water quality and quantity; and
  4. Convey the right to the State of New Hampshire to enforce the conditions and restrictions of the conservation interest and to recover the costs of such enforcement from the easement holder or property owner, or both, if the easement holder and property owner fail to enforce the conditions and restrictions.
- b. Each conservation interest instrument shall contain, at a minimum, the following restrictions:
  1. No industrial or commercial activities or improvements shall occur on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, subject to such conditions as are specified in the instrument;
  2. No land surface alterations shall occur on the property, such as filling, excavation, mining, and dredging, except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, and only to the extent that they do not degrade or threaten to degrade the quality and sustainable yield of ground and surface water resources associated with the property;
  3. No wastes generated off the property shall be disposed of, stored, or discharged on the property;
  4. No substances that would be hazardous waste if discarded or abandoned shall be disposed of on the property, and no such substances shall be stored or applied on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, and provided that the storage and use do not threaten water supply protection and are specifically allowed by the instrument, subject to such conditions as are specified in the instrument;
  5. No motorized vehicles shall be allowed for recreational purposes, provided that snowmobiles as defined in **RSA 215-A:1, XIII** may be allowed if they are operated:
    - a. Only on snow and ice outside the sanitary protective area of public water supply well(s);
    - b. More than 250 feet from a surface water body being used as a public water supply;

- c. More than 100 feet from tributaries contributing to such water bodies; except when crossing such tributaries; and
  - d. Only on designated snowmobile trails depicted on a plan approved by the department in accordance with **Env-Dw 1002.25**;
6. No acts or uses shall occur on the property that would:
- a. Degrade the water quality such that the standards set for public drinking water by the department would be threatened;
  - b. Cause an unsustainable quantity of water to be withdrawn; or
  - c. Harm state or federally recognized rare, threatened or endangered species; and
7. Allowable activities, such as community drinking water supply, agriculture, forestry, and outdoor recreation, shall be conducted in accordance with a plan, best management practices, or conditions set forth in the instrument.
- c. If the instrument is conveying a conservation easement, all other customary rights and privileges of fee ownership shall be retained by the fee owner, including the right to privacy and to carry out all regular agricultural and forestry practices that are not prohibited by the restrictions.

### **Env-Dw 1002.25 Snowmobile Trail Plan Approval**

- a. Designated snowmobile trails described in **Env-Dw 1002.24(b)(5)d** shall be shown on a plan submitted to the department prior to the conservation interest document being filed.
- b. The plan shall:
  - 1. Show all existing and proposed trails; and
  - 2. Describe how users of the trails will be educated regarding the need to protect the conservation values of the property over which the trails run.
- c. If a new trail is added or an existing trail is moved after the original plan is approved, a modified plan shall be submitted to and approved by the department prior to the new or relocated trail(s) being used.
- d. The department shall review the plan and issue a written decision to approve or deny it within 30 days of receipt of the new or modified plan.
- e. The department shall approve the plan if the trails meet the criteria specified in **Env-Dw 1002.24(b)(5)a-c** and users of the trails will be educated regarding the need to protect the conservation values of the property over which the trails run.

## Stewardship Requirements

This list is to assist conservation project managers in drafting the stewardship plan and determining the financial resources needed to monitor and enforce the deed requirements.

### **DWGTF Advisory Commission Rules**

#### *Other Requirements and Additional Costs*

[...]

- 5. The Recipient shall ensure that the property conserved is monitored to determine compliance with easements and deed restrictions, and shall report annually to the Department as required by **Env-Dw 1002.26**. The State,

through the Department shall have a third-party right to enforce all relevant easements and deed restrictions. All documents shall include language acknowledging this right.

### **Env-Dw 1303.09 Requirements for Land Acquisition**

- a. Prior to requesting any funds for disbursement relative to any land acquisition, the recipient shall comply with the requirements listed in (b), below, provided that:
  3. Any reference to “applicant” or “grantee” shall mean recipient; and
  4. Any reference to **Env-Dw 1002.19** shall mean **Env-Dw 1303.09**.
- b. The requirements for which (a), above, requires compliance shall be as follows:

[...]

  6. **Env-Dw 1002.26** Stewardship Requirements; and

[...]

### **Env-Dw 1002.26 Stewardship Requirements**

- a. The grantee shall be responsible for ongoing stewardship of each conservation interest acquired, [...] as grant property [...].
- b. The grantee shall:
  1. Determine the financial and management resources needed to monitor and enforce the terms of the conservation interest for each grant property [...];
  2. Establish that it has or can obtain funds to monitor and enforce the terms of the conservation interest;
  3. Develop and submit to the department a stewardship plan to meet the requirements of (d), below; and
  4. Implement the stewardship plan to safeguard the drinking water source.
- c. Prior to acquisition, the grantee shall prepare and submit a baseline documentation report that describes, in writing and with photographs, the condition of the property at the time of acquisition, including water quality and quantity data.
- d. The stewardship plan shall require the grantee to:
  1. Inspect the property annually to confirm that boundaries are being maintained and land is being appropriately protected according to the terms of the conservation interest and for the purpose of **RSA 486-A**;
  2. For property not held in fee simple, contact all landowners annually to inform the landowners of their obligations under the easement;
  3. Prepare and submit the annual stewardship report required by **RSA 486-A:7, II(e)** to the department, prior to January 31 of each year, containing the following:
    - a. A description of the site inspection conducted;
    - b. A map or sketch of the property, which may be a copy of the survey plan submitted pursuant to **Env-Dw 1002.21**, with the approximate route taken during the site inspection clearly delineated on the map or sketch;
    - c. A description of any physical changes to the property;

- d. A description of any landowner contact conducted;
  - e. A description of any conditions that violate or may violate the provisions of the deed or easement or the intent of the conservation interest;
  - f. A description, including current status of any violations witnessed and remedial steps taken; and
  - g. The name or position title and contact information of the individual responsible for sending the annual stewardship report to the department;
- 4. Notify the department of any change to the information required by 3(g), above, within 60 days of the change or by December 31 of the year in which the change occurred, whichever is earlier; and
  - 5. If snowmobiles are allowed by the conservation interest instrument, ensure that individuals using snowmobiles comply with the snowmobile trail plan approved pursuant to **Env-Dw 1002.25**.
- e. The grantee may contract with a person having expertise in conservation land management to perform one or more of the requirements of this section, however the grantee shall retain ultimate responsibility for all requirements.