

MUNICIPAL CONSERVATION FUNDING SIMPLIFIED AND CONSERVATION COMMISSIONS GIVEN MORE FLEXIBILITY TO CONSERVE LAND

by Steven Whitley, Esq.

In May of 2008, the State Legislature passed Senate Bill 381 to provide much needed clarification to RSA 36-A, the statute governing municipal expenditures on land conservation transactions in which a third-party conservation organization is the primary beneficiary. The revised law, which went into effect January 1, 2009, would allow a municipal Conservation Commission to use its Conservation Funds to pay a land trust's transaction costs when a private landowner wishes to convey a conservation easement to that land trust. Previously, many municipalities and their respective counsel interpreted the statute as requiring the municipality to acquire a legal interest in the final conservation easement in return for its financial contribution. Some conservation easements were not completed because many municipalities, despite the ability to make these contributions, did not want or need such a property interest or the responsibility that comes with its ownership. Others were not done because the addition of another party to the easement transaction was perceived as too cumbersome for all parties involved.

Under the revised law, municipal Conservation Commissions are now able to use their Conservation Funds to support third-party transactions without the municipality being required to obtain a legal interest in the land, provided that the legislative body of the municipality first passes a one-time warrant article at its annual meeting authorizing such expenditures. RSA 36-A:4-a. Without passage of a warrant article to authorize the use of these optional powers, municipalities must continue to acquire a legal interest in conservation transactions. The revised law specifically includes contributions made to offset the costs of legal fees, surveys, stewardship contributions, etc., as well as outright contributions to support the purchase of easements or land by qualified conservation organizations. The revised law also allows municipal Conservation Commissions to purchase property interests *outside of* municipal boundaries, subject to the approval of the municipality's local governing body. RSA 36-A:4-a, 1(a).

For a Conservation Commission to utilize either of the optional powers under RSA 36-A, the ability to support third-party conservation transactions without having to

obtain a legal interest and the ability to obtain a legal interest in a conservation project outside of municipal boundaries, the statute requires that specified language for each optional power be placed as a warrant article for the voters to approve at its annual meeting. RSA 36-A:4-a, II(a-b). Once the warrant article has passed, Conservation Commissions are NOT required to obtain local governing body approval before any specific expenditures are made. However, prior to exercising either of these optional powers, the Conservation Commission must hold a public hearing with notice. RSA 36-A:5,II. If a Conservation Commission does wish to obtain a legal interest as part of a conservation transaction, either inside or outside of the municipal boundary, local legislative body approval is required before expending any funds. RSA 36-A:4 and 36-A:4-a, I(a).

The State Legislature intended for the important work of Conservation Commissions to continue, and this intent is evident in the expanded powers afforded to the Conservation Commissions and the express statement that contributions that protect the State's natural resources are "declared to be a public purpose." RSA 36-A:4-a, I(b). Purchasing and caring for conservation land has substantial costs in money, time and legal responsibilities in perpetuity. Partnering with an established Trust will almost always be the most efficient way that a Conservation Commission can permanently protect land. This revised law also takes into account the fact that natural resources often cross municipal boundaries and so provides the means to acquire land outside of those boundaries to adequately protect those resources. RSA 36-A seeks to optimize the effectiveness of Conservation Commissions by allowing them to protect land in a fiscally responsible manner by stretching the reach of every dollar, encouraging cooperative projects, and eliminating the perpetual liability that municipalities were required to take on when contributing to conservation transactions in the past.

For further information, contact the New Hampshire Association of Conservation Commissions. If you are not sure whether RSA 36-A is applicable to you, your organization, or your municipality, and/or you are not sure how it applies, please feel free to contact the experienced attorneys at Baldwin & Callen, PLLC, for a free 30 minute consultation regarding your concerns.