

# Protection of Forest Management Opportunities in an Open Space Subdivision in the Northeast

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## Introduction

Urban sprawl resulting in forest land parcelization and fragmentation is eroding the working forest land in southern Maine at a rapid pace. The address this concern, the Town of Freeport, ME, and other towns have developed an open space subdivision (OSS) ordinance that attempts to address sprawl by clustering houses in a tract of land slated for subdivision while protecting the remaining, undeveloped land (open space) in the tract under a permanent conservation easement. Open space subdivisions in Freeport allow landowners to develop and preserve land at the same time. The number of lots allotted for an open space subdivision is the same as a conventional subdivision, except that the open space lots are smaller and the balance of the undeveloped land becomes open space. Since a new OSS ordinance for subdivisions was adopted in Freeport in 2004, over 350 acres of land have been permanently preserved from development at no cost to Freeport taxpayers. Landowners have several options: have the subdivision homeowner's association own the open space jointly, donate the open space to the town or local land trust, or continue to own the land but without any development potential. The open space that is preserved must be a combination of land that can be developed as well as undevelopable land, such as wetlands and steep slopes. When smaller building lots are being used, it has been important that wells and septic systems be allowed in the open space. Smaller lots and reduced road frontage requirements also make shorter roads possible. (Information obtained from Donna Larson, Town Planner, Town of Freeport, Maine).

### Did you know?

A statewide strategy for conserving wildlands and woodlands in Massachusetts complements "smart growth" activities that concentrate residential and commercial development and permanently protect the surrounding forest.

The strategy, "Wildlands and Woodlands: A Vision for the Forests of Massachusetts," employs a two-pronged approach in which wildland reserves and managed woodlands together form continuous expanses that are protected from development and provide the full range of ecological and social benefits. More information about this effort is available on the Internet at <http://harvardforest.fas.harvard.edu/wandw/>.

Lands protected with an open space subdivision ordinance are managed under terms of a conservation easement that includes the purposes, restrictions, and reserved rights for the land. The terms are developed during discussions between the grantor and grantee. These terms may range widely; for example, depending on the purposes listed in the conservation easement, activities on the protected land could range from forest management to retention of "undisturbed" conditions. Forest management on these protected lands, if performed in a sensitive, professional manner—especially because of the proximity of the subdivision—can enhance the entire range of multiple values that these forests provide, including wildlife, recreation, aesthetics, water quality, and timber. Several publications that address this include a DVD produced by the Small Woodland Owners Association of Maine ("Woodlots and Wildlife –

Managing Your Woodland for Timber and Habitat”) and “A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners”, which can be ordered from the Natural Resource, Agriculture, and Engineering Service Web site (<http://www.nraes.org/>). In the Town of Freeport, the OSS ordinance has created undisturbed buffers along stream and public water supplies, preserved wildlife habitats, kept managed woodlots active, and has provided desired buffers between the new development and existing houses. (Information from Donna Larson).

As an example of how the OSS ordinance is implemented in Freeport, let’s look at the Mitchell Ledge Farm owned by Mary and Andy LeMaistre. (For more information about the LeMaistres, see the sidebar article). Part of the farm was approved as an open space subdivision by the Freeport Planning Board in 2005, the second such subdivision approved in the Town. The 62-acre tract includes 20 acres that have been subdivided into 15 1-acre building lots and roads, with the remaining 42 acres permanently protected from development by a conservation easement (figure 1). Forest management is allowed in the protected area under the terms of the easement (figure 1). Since allowing forest management in the conservation easement has not been typically associated with subdivisions in the past, it is instructive to examine some of the forest management provisions under the easement. This may help other landowners in their deliberations to conserve their working forest land.

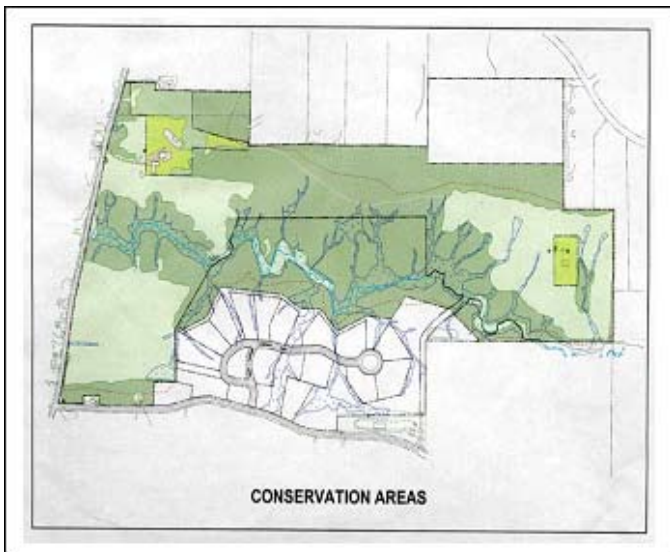


Figure 1.—This map depicts open space subdivision approved for the Mitchell Ledge Farm. The green-colored area adjacent to the house lots and enclosed by a dashed dark line is protected by a conservation easement donated by the owners. The easement is included within the entire 62-acre subdivision area, which also includes the house lots.

The Agricultural Conservation Easement for the Mitchell Ledge Farm lists conservation purposes that apply to the protected property. (I have underlined specific references to forestry.) These purposes include:

1. To provide public benefit by protecting the Protected Property’s agricultural soils for the production of food, forage, seed, and fiber; and preventing the conversion of farmland to nonagricultural uses that would reduce or destroy the Protected Property’s diversified agricultural and forest productivity; and
2. To allow the Protected Property to remain available for commercial agricultural and forest management, provided that such activities are consistent with conserving the agricultural soils, agricultural productivity, and natural resource values of the Protected Property; and
3. To preserve and protect the natural condition, wildlife habitat, and scenic and open space values to the extent the same are consistent with the primary agricultural preservation purposes stated herein, and no activity which significantly impairs those values shall be permitted; and
4. To conserve water quality, wetlands, and riparian values of the Protected Property; and
5. To preserve in perpetuity the scenic and traditionally open views of the fields, pasture, and woodlands on the Property as enjoyed by the general public who travel along Flying Point Road and the trails that are located on the Protected Property and adjacent protected lands of Grantor while allowing for continued commercial agricultural and forest management activities on the Property; and
6. To preserve the traditional farming and forestry heritage and rural character of Freeport, Maine, as identified in the Freeport Comprehensive Plan; and
7. To protect rare and endangered species habitat, rare and exemplary natural communities and other significant wildlife values (including, without limitation, fisheries habitats), and the natural, scenic, educational, scientific, recreational, historical, and archaeological features of the Property identified in the baseline documentation while allowing for continued commercial agricultural and forest management activities on the Property; and

8. To assure the availability of the Property for traditional non-intensive outdoor recreation by the general public including a recreational trail system to be constructed and maintained by Grantee in accordance with the terms of this [conservation easement] and applicable laws and regulations.

### **Conservation of the Mitchell Ledge Farm – Mary and Andy LeMaistre**

Mitchell Ledge Farm contains approximately 185 acres. This working farm, Freeport's largest, is used to raise registered Belted Galloway cattle. Some permanent conservation of the farm was long sought by the LeMaistres and the Freeport Conservation Trust (FCT). In 2005, the FCT successfully concluded a 2½-year project to conserve the farm. FCT raised more than \$900,000 to purchase a conservation easement on 105 acres of the farm. In addition, the LeMaistres donated a 27-acre easement. Funds were secured through the Land for Maine's Future Program, USDA Natural Resources Conservation Service's Farm and Ranch Lands Protection Program, and local donors, including Freeport residents, the Town of Freeport's Land Bank Fund, Morton-Kelly Charitable Trust, Davis Conservation Foundation, and the Libra Foundation.

The farm is enrolled in Maine's Farm and Open Space tax program, and includes forested land in the Tree Growth Program that is managed under a Forest Management Plan with help from a consulting forester. Major conifer species include white pine, eastern hemlock, and red spruce; major hardwood species include red maple, red oak, white ash, and yellow and white birch. Sustainable harvests have occurred over the 34 years that the LeMaistres have owned the farm, and, in most cases, Andy has personally executed the timber harvests for sawlogs, pulp, and firewood after the trees were marked by the forester (the LeMaistres use up to 10 cords of wood a year to heat their farmhouse).

Mary and Andy LeMaistre are members of the Small Woodland Owners Association of Maine and the Freeport Conservation Trust.



Now, let's focus on some of the major restrictions and reserved rights that pertain to forest management on the protected property. The list includes:

1. "Grantor reserves the right to cut, harvest, and process trees on the Protected Property, in accordance with the applicable laws of the State of Maine and ordinances of the local municipality, for the following purposes only:
  - a. To conduct agricultural management activities reserved by Grantor in this Easement;
  - b. To control insects and diseases;
  - c. To prevent personal injury and property damage;
  - d. To supply firewood and other domestic uses on the Property, including construction of permitted buildings and fences on the Property;
  - e. To remove invasive species and to restore native species;
  - f. To enhance wildlife habitat;

- g. To mark boundaries;
  - h. To clear land for cultivation or use of livestock, provided that any such land clearing is conducted in accordance with the NRCS Conservation Plan and with the forest management plan...;
  - i. To establish unpaved recreational trails in accordance with Section 6.4 E;
  - j. To conduct commercial forest management including the harvesting and sale of timber, provided that any such activity shall be conducted on a “sustainable yield basis,” as defined in a forest management plan (consistent with this easement) prepared and certified by a Maine licensed forester (“Forest Management Plan”);
  - k. Commercial forest management of the property is currently being conducted in accordance with a Forest Management Plan prepared by a licensed forester which shall be incorporated into the baseline documentation.” (Section 6.5.E.)
2. “Grantor reserves the right to use the Protected Property for traditional non-intensive outdoor recreation and may in its discretion, grant permission to the public for such uses, so long as such uses are consistent with the Conservation Values of the Protected Property and do not interfere with agricultural operations or the agricultural purposes and other natural resource purposes of this Easement.” (Section 6.5.B.)
  3. “Grantor reserves the right to prohibit trespass upon the Protected Property by any person, except for limited public access rights provided for in Sections 11.E.2. including any unauthorized member of the public and the right to take such lawfully permitted action as is necessary regarding same, subject to the terms of this Easement.” (Section 6.5.B.1)
  4. “It is forbidden to dispose of or store rubbish, garbage, building debris, unserviceable vehicles

and equipment or parts thereof, hazardous or other waste, hazardous or toxic substance, or other unsightly or offensive waste material on the Protected Property, except that agricultural products, animal wastes, organic matter, compost, farm irrigation and equipment parts, pesticides, herbicides, soil and crop amendments, fuel and other chemicals required for the operation and maintenance of agricultural and forestry equipment, and incidental scrap metal held in storage for future farming uses, and logging debris may be used, stored, or disposed of in a manner not detrimental to the conservation values of the Protected Property.” (Section 6.1.C)

5. “Grantor has the right to use the Protected Property for agricultural management, agricultural enterprises, commercial forest management, and home-based enterprises...”
6. “Grantor has no affirmative obligation to actively farm any portion of the Property. Provided, however, that fields (identified on Exhibit B)... shall not be allowed to become forestland, but shall be kept open by periodic mowing, haying, bush-hogging, the grazing of livestock, agricultural uses such as gardens or orchards, or by any other means mutually agreed to by Grantor and Grantee.” (Section 6.1.G)

## Conclusion

Implementation of the OSS ordinance as applied to the Mitchell Ledge Farm may serve as a model for other forest landowners who want to develop some of their land and protect the rest at the same time. The language in the conservation easement is critical to allow for proactive stewardship of the land, as opposed to a hands-off scenario. The former is more flexible because it can respond quickly to such issues as changes in forest health brought on by such factors as disease, insects, invasive plants, maturation of the trees, and recreational and storm damage over time. The language referred to in this article is just an example of how forest management can be assured in perpetuity on land protected by a conservation easement, but obviously it must be customized for the particular situation faced by individual landowners.

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Mary and Andy LeMaistre, Mitchell Ledge Farm  
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