

NEW HAMPSHIRE OPEN SPACE PROGRAM

I. Overview

The State of New Hampshire is 9,304 square miles, including 9,027 square miles of land and 277 square miles of inland water. Five of the great streams of New England originate in New Hampshire and the state is heavily forested.¹ A 2005 report by the Society for the Protection of New Hampshire's Forests, entitled *New Hampshire's Changing Landscape*, concludes the following: state population is expected to grow more than 28 percent from 2000 to 2025, and an estimated 80 percent of that growth will take place on one-third of the land in the state; in 1970, 139 towns were classified as rural, but by 2025, the number will have dropped by nearly half to 72; the state is losing about 17,500 acres of forestland every year; nearly 28 percent of the state is now protected, up from approximately 22 percent in 1998, but 75 percent of all conservation land is in the northern half of the state; many New Hampshire towns have increased their percentage of conservation land since 1998, but nearly half still have less than 10 percent of their land conserved.²

The state enacted the Land and Community Heritage Investment Program (LCHIP) in 2000 "to conserve and preserve the State's most important natural, cultural, and historic resources for this and future generations."³ LCHIP, the State's major open space acquisition program, has protected over 200,000 acres since its inception.⁴

LCHIP has authority to provide financial assistance through grants, block grants, and loans for purposes of acquiring "resource assets." Eligible resources must include ecologically significant lands and habitat for rare species or important wildlife.⁵ Resource assets can be acquired using several criteria, including but not limited to: imminence of threat to the land or property, uniqueness or significance of the resources, and demonstrated ability and plan of eligible applicants to provide stewardship for the resource to be protected.⁶ In addition, state guidance includes "ecologically significant lands" as a priority for purposes of selecting natural resource projects. "Ecologically significant lands" are defined to include "areas of land and/or water that contribute to sustaining certain species, natural communities, physical elements or ecological processes that are necessary to maintain native biodiversity."⁷ LCHIP has not yet specifically integrated the state wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) into its acquisition priorities.

¹ State of New Hampshire, *NH Almanac*, at <http://www.nh.gov/nhinfo/fastfact.html> (last visited Jan. 19, 2006).

² SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS, *NEW HAMPSHIRE'S CHANGING LANDSCAPE* (2005), available at <http://www.spnhf.org/research/papers/nhcl2005es.pdf#search='what%20is%20new%20hampshire%27s%20rate%20of%20land%20development>.

³ N.H. REV. STAT. ANN. § 227-M:1.

⁴ New Hampshire Land & Community Heritage Investment Program, *Welcome*, at <http://www.lchip.org> (last updated Jan. 6, 2006).

⁵ New Hampshire Land & Community Heritage Investment Program, *Criteria, Guidelines, and Procedures*, at <http://www.lchip.org/Reference/CGP.htm> (last updated Jan. 3, 2006).

⁶ N.H. REV. STAT. ANN. § 227-M:9.

⁷ New Hampshire Land & Community Heritage Investment Program, *supra* note 5.

II. New Hampshire's Land and Community Heritage Program

LCHIP is authorized under New Hampshire Revised Statutes Annotated (RSA), Title XIX-A, Chapter 227-M, which states, “[t]he intent of the program is to conserve and preserve this state's most important natural, cultural, and historical resources through the acquisition of lands, and cultural and historical resources, or interests therein, of local, regional, and statewide significance, in partnership with the state’s municipalities and the private sector, for the primary purposes of protecting and ensuring the perpetual contribution of these resources to the state’s economy, environment, and overall quality of life.” The LCHIP Authority, which is governed by an 18-member Board of Directors, administers the program. The LCHIP Board acts as the decision-making body.⁸ LCHIP staff includes scientists.

Program Funding

LCHIP is funded through biannual appropriations. Appropriated funds and interest earned on the funds are used for *grant-making*. In addition, license plate fees (\$6 dollars from sale of each conservation license plate) fund program *administration*. LCHIP funding was highest in FY 2002-2003 at \$12 million (\$5 million and \$7 million for each year respectively) and was level in FY 2004-2005 and FY 2006-2007 at \$1.5 million (\$750,000 per year). The program has spent a total of \$17.2 million since 2000.⁹ LCHIP has statutory authority to provide financial assistance to county governments, municipal governments, and land trusts/conservation organizations through grants, block grants, and loans for purposes of acquiring natural, cultural, or historical resources.¹⁰

State statute requires that applicants provide matching resources of no less than 50 percent of the appraised market value for any resource asset acquisition and no less than 50 percent of any other expense for which financial assistance is sought.¹¹ A minimum of one-half of an applicant’s minimum match requirement must be provided in cash for use in the purchase or preservation of the resource asset. Matching beyond the minimum is encouraged. The Board is authorized for particular projects to either reduce the applicant’s minimum match requirements or to provide financial assistance.¹²

III. Land Protection Strategies

Land Protection Tools

New Hampshire’s LCHIP protects land through multiple mechanisms, including fee simple purchase and conservation easements. LCHIP also funds surveys, appraisals, title work, resource inventories and planning, and other legal or ancillary work and professional services that demonstrate linkage to the permanent protection or restoration and rehabilitation of eligible

⁸ *Id.*

⁹ New Hampshire Land & Community Heritage Investment Program, *Grant Awards To Date*, at <http://www.lchip.org/GrantAwards.htm> (last updated Jan. 3, 2006).

¹⁰ N.H. REV. STAT. ANN. § 227-M:8.

¹¹ N.H. REV. STAT. ANN. § 227-M:8, III(c)-(f).

¹² N.H. REV. STAT. ANN. § 227-M:7.

resources. In some cases LCHIP funds may be used to pay off loans used to protect eligible resources, although such projects are not considered a priority.¹³

Prioritizing Land Acquisition

Eligible projects are scored by the LCHIP Board based on a set of selection criteria outlined in the statute. The statutory criteria for acquiring resource assets include, but are not limited to: “imminence of threat to the land or property, such that the preservation of endangered structures and land conservation projects in densely developed or rapidly developing areas of the state;” “uniqueness or significance of the resource;” “proximity to other protected resources;” “extent to which project meets multiple objectives of the program (natural, historic, and cultural);” “strength of local support, such that project applications accompanied by an affirmative vote of the governing body of the municipality in which the project is located shall receive a higher ranking;” “strength of private support;” “cooperation between or among communities;” “extent of leverage (ability of state funds to attract other public and private funds in a cost-share arrangement);” “demonstrated ability and qualifying stewardship plan of eligible applicant to provide stewardship for the resource being protected;” and “extent to which benefits can be conserved only through fee acquisition of the resource asset, weighed against acquisition through easement interest.”¹⁴ The Board of Directors may also consider a dozen additional criteria including, for example, local/regional participation, project partnerships, number of criteria categories in which the project has scored, match amount, and capacity of applicant to manage the project successfully and provide stewardship. In addition, there are four criteria priorities considered for all project types: community support, financial need, stewardship, and planning.¹⁵

Prior to sending projects to the Board for review, the LCHIP Executive Director evaluates and scores all project proposals using a point system developed to match the Board priorities for each resource category, including for natural resources (as opposed to historic resources or cultural resources). Board priorities for Grant Rounds may be set on a round-by-round basis. General guidance provided by the state for the selection of natural resources projects references several priorities, including, but not limited to “ecologically significant lands, as determined by the [New Hampshire] Natural Heritage Inventory (NHI), or [New Hampshire] Fish and Game Department’s Habitat, Nongame, and Endangered Wildlife Programs (NHFG), or the [New Hampshire] Living Legacy Project.”¹⁶ LCHIP staff convene professional panels in the appropriate resource areas to evaluate and rank proposals for specific projects.¹⁷

Biological information is used in developing land acquisition priorities, including: species locations/inventories; species life history information; natural community/ecosystem delineations; information on wildlife utilization or critical wildlife habitat; information on biodiversity hot spots; hydrology; water quality; stream information; information on ecosystem functions; processes or landscape measures; topography and elevation; and soil types and information. This information is provided by the Natural Heritage Program; the Department of Resources and Economic Development; the State Fish and Game Department; federal agencies, such as the National Oceanic and Atmospheric Administration, Department of Interior,

¹³ N.H. REV. STAT. ANN. § 227-M:8.

¹⁴ N.H. REV. STAT. ANN. § 227-M:9.

¹⁵ New Hampshire Land & Community Heritage Investment Program, *supra* note 5.

¹⁶ *Id.*

¹⁷ *Id.*

Department of Agriculture, and U.S. Fish and Wildlife Service; non-profit organizations, such as The Nature Conservancy; and by private sector entities, such as forest groups.

Biological information is one of several criteria that are used, as multiple types of projects can be funded under LCHIP in addition to natural resource projects, such as historical and cultural projects. For natural resource projects, biological information receives considerable weight and properties that are biologically significant will most likely receive high rankings for purposes of determining which projects to fund. Connectivity or proximity to other protected lands is also taken into account.¹⁸

Protection in Perpetuity

State statutes prohibit the sale, transfer, conveyance, or release from the public trust of any resource asset, except under limited circumstances for purposes of minor expansions, modifications or alterations of existing roads within the state highway system. In such limited cases, the New Hampshire Department of Transportation may obtain interests in lands acquired under LCHIP that are adjacent to state highways. New highway or bypass construction is not covered by the exception. Approval to transfer land from the public trust may not be granted if reasonable and prudent alternatives exist or if individual or cumulative approvals are likely to impair materially the conservation or preservation purposes for which the parcel was originally protected.¹⁹

The state statute requires that all applications submitted for the funding of resource asset acquisitions must contain a stewardship plan and that any resource asset acquired in fee simple must be managed in accordance with any approved stewardship plan.²⁰ The State Criteria, Guidelines, and Procedures for the program provide that such plans must detail how stewardship will be undertaken over the long term and the extent of any existing planned endowments or funds established for the purposes of perpetuating the resource, legal defense funds for easement holders, or similar funds designed for stewardship purposes.²¹

Monitoring endowments are also addressed in the state statute. For every resource protected under LCHIP by an easement interest, a percentage of funds from the program or contributions from the applicant must be provided to the monitoring endowment. Funds added to the monitoring endowment must be used to support monitoring of easement interests acquired by state agencies, local municipalities, and qualifying nonprofit corporations. The monitoring is intended to ensure that the resource protected through the program will be managed according to the legal agreements concerning easement interests in the resource.²²

The State's Criteria, Guidelines, and Procedures for LCHIP provide that deposits or contributions to the LCHIP endowment fund are made in accordance with a schedule, which includes one percent of the appraised value of executor interests on fee simple assets, and either \$7,500 each or 3.5 percent of appraised values of a conservation easement, whichever is

¹⁸ N.H. REV. STAT. ANN. § 227-M:9.

¹⁹ N.H. REV. STAT. ANN. § 227-M:13-14.

²⁰ N.H. REV. STAT. ANN. § 227-M:10-11.

²¹ New Hampshire Land & Community Heritage Investment Program, *supra* note 5.

²² N.H. REV. STAT. ANN. § 227-M:12; N.H. REV. STAT. ANN. § 162-C:8.

greater.²³ Interest generated from the endowment may be used to support monitoring of conservation easements acquired under the program. Upon completion of an annual monitoring report by an easement holder, the LCHIP Authority will request that the state return to the easement holder a portion of the interest generated from the endowment contribution. It is anticipated that a greater percentage of interest earnings will be returned to the easement holder to the extent that the holder continually undertakes stewardship and monitoring responsibilities.²⁴

Stewards that do not undertake monitoring or do not meet monitoring standards will not be compensated and, if necessary, the state will utilize the interest income to undertake the monitoring of the asset. Training sessions and technical assistance will be made available for easement holders who need assistance in developing monitoring programs that meet LCHIP standards.²⁵ The fund currently contains approximately \$400,000 to \$500,000.

IV. State Wildlife Action Plan

Because New Hampshire's wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) was just recently issued, LCHIP has not yet determined how it will use the plan.

V. Summary

LCHIP protects biodiversity of land by authorizing financial assistance through grants, block grants, and loans for purposes of acquiring "resource assets." Eligible resources are defined to include ecologically significant lands and habitat for rare species or important wildlife. Tools used under LCHIP include fee simple purchases and conservation easements. Resource assets are acquired using several criteria, including but not limited to: imminence of threat to the land or property, uniqueness or significance of the resources, and demonstrated ability and plan of eligible applicants to provide stewardship for the resource to be protected. In addition, guidance provided by the state for the selection of natural resource projects references several priorities including, but not limited to, "ecologically significant lands." Although there is not a portion of the LCHIP program used exclusively to purchase lands for their biodiversity values, proposed projects that have high biodiversity value are likely to receive high rankings in determining which projects to fund.

²³ New Hampshire Land & Community Heritage Investment Program, *supra* note 5.

²⁴ *Id.*

²⁵ *Id.*