

New Hampshire Statutes
Chapter 79-D
DISCRETIONARY PRESERVATION EASEMENTS

79-D:1 Declaration of Public Interest. – It is hereby declared to be in the public interest to encourage the preservation of historic agricultural structures which are potentially subject to decay or demolition, thus maintaining the historic rural character of the state's landscape, sustaining agricultural traditions, and providing an attractive scenic environment for work and recreation of the state's citizens and visitors. It is further declared to be in the public interest to prevent the loss of historic agricultural structures due to property taxation at values incompatible with their preservation. The means for encouraging preservation of historic agricultural structures authorized by this chapter is the acquisition of discretionary preservation easements by town or city governments to assure preservation of such structures which provide a demonstrated public benefit.

79-D:2 Definitions. – In this chapter:

I. "Discretionary preservation easement" means a preservation easement of an historic agricultural structure, including the land necessary for the function of the building, granted to a city or town for a term of 10 or more years.

II. "Public benefit" shall have the meaning described in RSA 79-D:3, II.

III. "Historic agricultural structure" means a barn or other structure, including the land necessary for the function of the building, currently or formerly used for agricultural purposes and as further defined by the advisory committee established under RSA 227-C:29.

79-D:3 Qualifying Structures. –

I. Any owner of an historic agricultural structure who wishes to maintain the structure in a use consistent with the purposes of this chapter may apply to the governing body of the municipality in which the property is located to convey a discretionary preservation easement to the municipality.

II. A discretionary preservation easement shall be considered to provide a demonstrated public benefit if it provides at least one of the following public benefits:

(a) There is scenic enjoyment of the structure by the general public from a public way or from public waters.

(b) The structure is historically important on a local, regional, state, or national level, either independently or within an historic district.

(c) The structure's physical or aesthetic features contribute to the historic or cultural integrity of a property listed on or determined eligible for listing on the National Register of Historic Places, state register of historic places, or locally designated historic district.

III. In determining whether an historic agricultural structure demonstrates the necessary public benefit to qualify for a discretionary preservation easement, the governing body shall have reference to guidelines adopted by the advisory committee established under RSA 227-C:29.

79-D:4 Application Procedure. –

I. Any owner of an historic agricultural structure which meets the tests of public

benefit in RSA 79-D:3, II may apply to the governing body to grant a discretionary preservation easement to the municipality, agreeing to maintain the structure in keeping with its historic integrity and character during the term of the easement.

II. No owner of an historic agricultural structure shall be entitled to have a particular structure classified for any tax year under the provisions of this chapter unless the owner has applied to the governing body on or before April 15 of the tax year on a form provided by the commissioner of the department of revenue administration. Such application shall include a map showing the location of the structure to be subject to the discretionary preservation easement, and a description of how the property meets the tests of public benefit in RSA 79-D:3.

79-D:5 Approval, Denial. –

I. If, after a duly noticed public hearing, the governing body finds that the proposed preservation of such historic agricultural structure is consistent with the purposes of this chapter, it may take steps to acquire a discretionary preservation easement as provided in this chapter. In exercising its discretion, the local governing body may weigh the public benefit to be obtained versus the tax revenue to be lost if such an easement is granted. The governing body shall have no more than 60 days to act upon the application.

II. If the governing body denies the application to grant a discretionary preservation easement to the municipality, such denial shall be accompanied by a written explanation. The local governing body's decision may be appealed by using the procedures of either RSA 79-A:9 or 79-A:11 provided, however, that such denial shall be deemed discretionary and shall not be set aside by the board of tax and land appeals or the superior court except for bad faith, discrimination, or the application of criteria other than those set forth in RSA 79-D:3 and paragraph I of this section.

III. The easement shall be a burden upon the property and shall bind all transferees and assignees of such property. An easement granted pursuant to this subdivision shall not be assigned, transferred, or released by the municipality without the consent of the owner, except as provided in RSA 79-D:8.

79-D:6 Terms; Recording. – Any preservation easement acquired by the municipality pursuant to this chapter shall be for a minimum of 10 years. The easement terms shall include the method of assessment pursuant to RSA 79-D:7, the terms of expiration pursuant to RSA 79-D:8, II, and the terms of renewal pursuant to RSA 79-D:8, III. The local governing body shall provide for the recording of such easements with the register of deeds. Any costs of recording shall be the responsibility of the applicant.

79-D:7 Assessment of Property Subject to Discretionary Preservation Easement. –

I. The method of assessment of discretionary preservation easement structures shall be included as a term of the agreement in any discretionary preservation easement acquired by a municipality. Assessment shall fall within a range, one end of which shall be 75 percent of the full value assessment; the other end of the range shall be 25 percent of said full value assessment.

II. The local governing body shall have the discretion to set the value of the discretionary preservation easement at a level within this range which it believes reflects the public benefit conferred by the property under the criteria set forth in RSA 79-D:3, II.

The assessment shall not be increased because the owner undertakes maintenance and repairs designed to preserve the structure.

79-D:8 Release of Easement, Expiration, Renewal, Consideration. –

I. Any property owner who has granted a discretionary preservation easement to a municipality pursuant to the terms of this chapter, after the effective date of this chapter, may apply to the local governing body of the municipality in which the property subject to a discretionary preservation easement is located for a release from such easement upon a demonstration of extreme personal hardship. Upon release from such easement, a property owner shall pay the following consideration to the tax collector of the municipality:

(a) For a release within the first half of the duration of the easement, 20 percent of the full value assessment of such structure and land under RSA 75:1.

(b) For a release within the second half of the duration of the easement, 15 percent of the full value assessment of such structure and land under RSA 75:1.

II. The terms of agreement may include specification of an amount, if any, up to 10 percent of fair market value, to be paid upon final expiration of the terms of the discretionary preservation easement or renewed discretionary preservation easement.

III. Upon the expiration of the terms of the discretionary easement, the owner may apply for a renewal, and the owner and local governing body shall have the same rights and duties with respect to the renewal application as they did with respect to the original application; provided, however, that at the time of the original granting of the discretionary preservation easement, the parties may include, as a term of the agreement, a provision for automatic renewal for the same term as the original. Such a provision may include the specification of the manner in which the tax assessment on the property for the next term is to be determined at the time of renewal.

IV. The tax collector shall issue a receipt to the owner of such property and a copy to the local governing body for the sums paid. The local governing body shall, upon receiving a copy of the above-mentioned consideration, execute a release or renewal of the easement to the owner who shall record such a release or renewal. A copy of such release or renewal shall also be sent to the local assessing officials if they are not the same parties executing the release or renewal.

V. In the event that the structure is destroyed by fire, storm, or other unforeseen circumstance not within the control of the property owner, the preservation easement shall be released without penalty.

VI. If, during the term of the preservation easement, the owner shall fail to maintain the structure in conformity with the agreement, or shall cause the structure(s) to significantly deteriorate or be demolished or removed, the preservation easement shall be terminated and a penalty assessed in accordance with RSA 79-D:8, I(a) and (b).

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