

EASEMENTS FOR OPEN SPACE

How to Identify and Protect Unprotected Open Space Properties in Rhode Island

**David R. Westcott, AICP
Mason & Associates, Inc.**

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Your community probably contains public open space property that isn't protected.

Your community probably contains open space that everyone thinks is protected but that actually isn't!

High profile public parks are often unprotected.





Citizens learned that Miantonomi Park in Newport , RI, a park since 1929, was unprotected when, in 1970 a part of the property was sold for development.
(This land was not protected until 2005.)



Monastery Property in Cumberland, RI
Purchased in 1972 – Not protected until 2004.
Protection still being challenged.





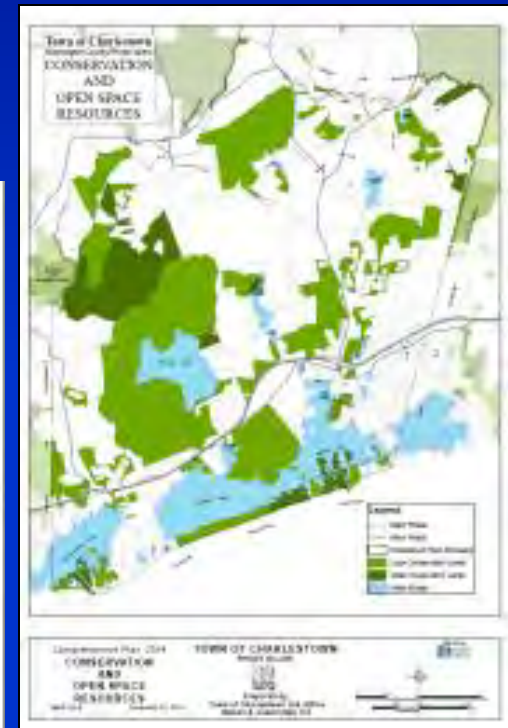
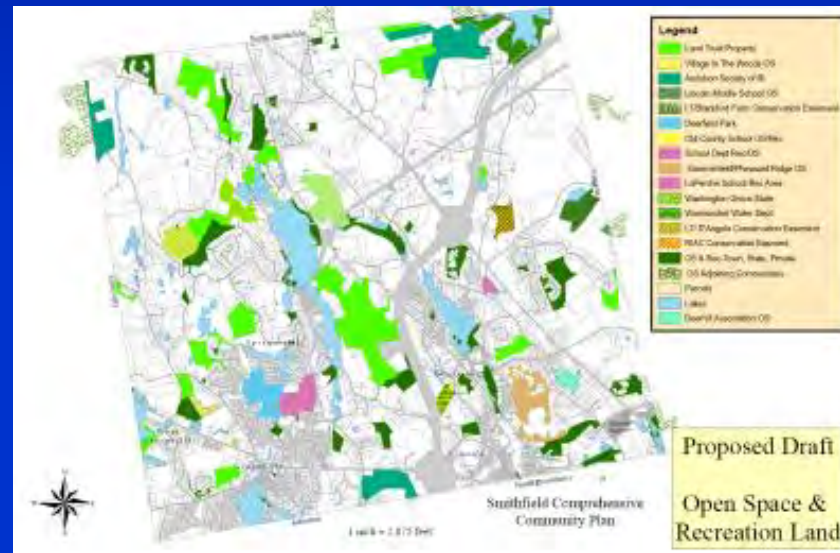
The Randall Reservation – First Public Park in North Providence – 30 Acres

Used as buffer zone for the town landfill. (Still not adequately protected.)

What can you do about that?

1. Inventory all open space and town property

A. Get a GIS list of the properties



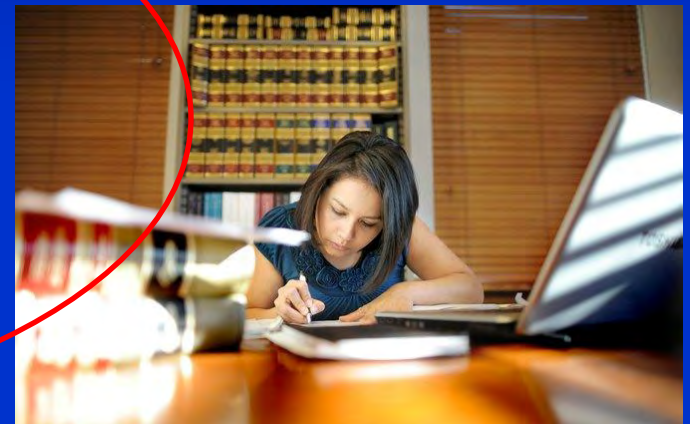
What can you do about that?

1. Inventory all open space and town property

A. Get a GIS list of the properties

B. Research levels of protection

- Properties secured with easements
- unprotected properties
- inadequately protected properties
- properties with unclear levels of protection



Levels of Protection:

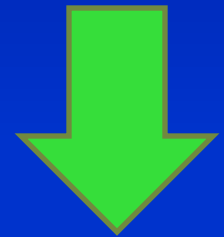
- Easement
 - Conservation
 - Agricultural
 - Recreational
- Deed Restriction
- Conservation Intent
- None of the Above



MORE

PROTECTION

LESS



What can you do?

2. Prioritize the Properties

- Focus on unprotected properties
- high profile properties first
- Choose Larger tracts and sacred cows
- Go for the low hanging fruit
- Early successes help to build momentum
- Use that momentum for the tougher cases



What can you do?

3. Identify and Contact Rights Holders

State Government (RIDEM)

National Private Non-profits

Land Trusts

Local Government

Home Owners Associations (HOAs)

Local Private Non-profits



MORE

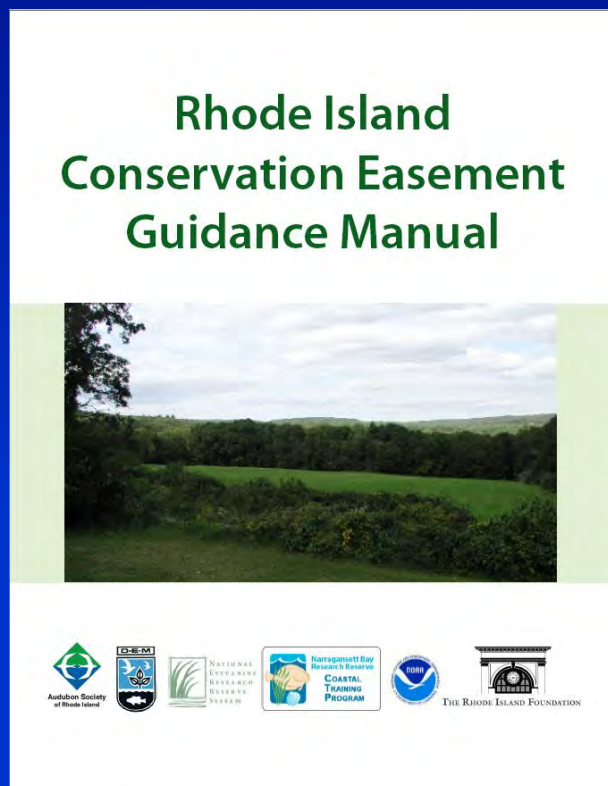
PROTECTION

LESS



What can you do?

4. Draft and Implement Easements



RIDEM Guidance Manual, 2009 helped communities make significant advances in applying easements to properties.

Still some serious weaknesses in the process in many communities.

Weaknesses in the Process:

- Many towns don't place easements on open space land that they acquire.
- Monitoring and enforcement are inconsistent or complaint-driven only.
- Small towns lack resources to manage the properties they hold under easements.
- Expertise and effectiveness of rights holders, especially HOAs, varies widely.

Weaknesses in the Process:

- No standard for what documents must be recorded and filed.
- No process for recording easements and checking what has been recorded.
- No process to manage documents that aren't recorded but are critical to the easement
 - baseline documentation
 - management plan
- Inventories of open space and easement holdings are spotty and often outdated.

Process Prescription

1. Establish Minimum Recording Requirements

- Title Certificate
- ★ – Easement Instrument
- ★ – Legal Description or Reference to Legal Description
- ★ – Class 1 Boundary Survey
 - Show boundaries of site and all easements
 - List all easements by location
 - Place permanent markers at boundaries.
- Baseline Report showing existing property conditions
- Management Plan with monitoring and enforcement procedures



Process Prescription

2. Develop Standard Easement Language:

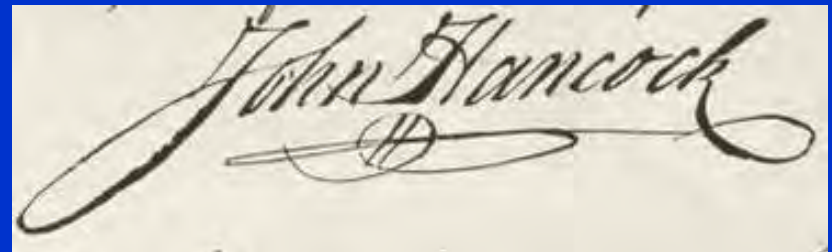
- Put the words “conservation easement” or “conservation restriction” in the title to invoke the definition and protections under the Rhode Island Act
- Identify the conservation easement holder(s) and the landowner(s) who granted the easement
- State the purpose for the easement and list the conservation values to be preserved
- State what rights are reserved to the grantor (if any).



Process Prescription

3. Standard Easement Language (cont.):

- List easement holder(s) rights and duties including:
 - preservation of the conservation values,
 - access to premises for monitoring and inspection, and
 - obligation to enforce the terms of the easement.
- List prohibited uses of the easement area
- Provide rights holders' remedies for monitoring, inspection and enforcement of the easement
- Get signatures from all grantor(s) and grantee(s) to the conservation easement

A close-up image of a handwritten signature in cursive script, which reads "John Hancock". The signature is written in dark ink on a light-colored, slightly textured paper. The letters are fluid and connected, with a prominent loop at the end of the word "Hancock".

Process Prescription

4. Set Standards for Document Storage:



Provide Archival Storage for all Property Records

Process Prescription

5. Adopt a Consistent Recording Process:

- Give guidance to applicants on what to file
- Require electronic and hard copies
- Review & approve prior to recording
- Confirm recording :
 - Signed Checklist
 - Book and Page Cross References
- Condition final approval on Recording

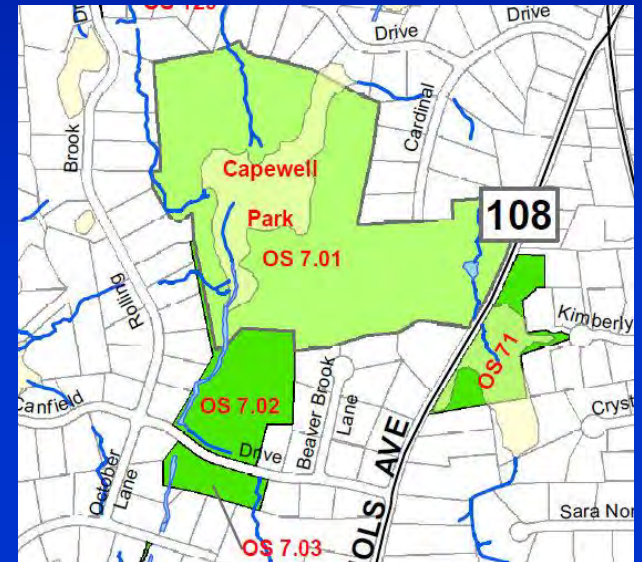


Process Prescription

6. Integrate Recording and Inventory Process:

Add easement property to open space inventory on recording:

- Revise GIS open space coverage
- Include what rights are held
- Indicate who holds those rights
- Update Plat Maps
- Update Zoning Maps



Process Prescription

7. Establish procedures for routine monitoring of all recorded easements:

- Site visit & walkover with photographs
- Brief written report on compliance status
- Inspect during project construction
- After project completion
- Annually thereafter.



Process Prescription

8. Establish Easement Enforcement Procedures:

- How to document Violations?
- How to respond to minor violations?
- Who contacts the violator to negotiate a resolution?
- When should the town solicitor be involved?
- What is the role of the Planner and Planning Board?
- What happens when approval conditions are not met?



Process Prescription

8. Easement Enforcement Procedures(cont):

- Voluntary compliance preferred
- Enforcement should encourage voluntary compliance
- Procedures should request voluntary corrections
- Rights Holders and volunteers can enforce easements
- Easements should expressly allow recovery of enforcement costs from violating landowners, and
- Allow Rights Holders to establish escrow for enforcement



Summary:

Find the unprotected and inadequately protected properties in your town.

Establish protective easements on those properties.

Improve easement recording process in your town so this doesn't happen again.

Monitor, manage, and enforce your easements.

THANK YOU!