

Eastern Trail Management District

Land Use Agreement Policy

Purpose: To outline the minimum standards or provisions that must be included in a Land Use Agreement for the Eastern Trail before it is executed so that standards for construction use, operation and maintenance shall be consistent along the entire trail from Kittery to South Portland.

I. Definitions

As used in this Policy, the following terms have the meaning indicated:

Land Use Agreement – Refers to any type of agreement wherein a Grantor provides the Holders with the rights to construct, operate and maintain the Eastern Trail or one of its spur trails; to include, but not limited to: Trail Easements; Limited Use Agreements; and Co-Location Agreements.

Trail – Refers to the Eastern Trail and any of the spur trails that are managed and operated as part of the Eastern Trail.

II. Holders

A. Eastern Trail Management District (ETMD)

In order to meet federal and state funding requirements and to fulfill management and maintenance obligations, the ETMD must be named as a Holder on all Land Use Agreements.

B. Member Municipality (Town)

In order to meet the requirements of Article 9 of the Membership Agreement for the Eastern Trail Management District and so that the town is authorized to assist the ETMD with construction, maintenance and management of the Trail, a town must be named as a Holder on all Land Use Agreements that fall within its boundaries.

C. Eastern Trail Alliance

The Eastern Trail Alliance may be named as a Holder on any Land Use Agreement. Grantor must understand that the ETA has no binding agreements between state, federal or municipal governments that authorize it to construct, operate or maintain the Trail. Grantor must understand that the ETA in some cases is not able to meet the binding requirements sent upon the Holders of an agreement such as level of insurance or maintenance obligations.

III. Land Requirements

A larger easement area is always preferred because it simplifies access for construction and allows more flexibility to avoid problem areas when laying the trail out. A Land Use Agreement shall meet or exceed the minimum listed below:

A. Width

- 1. Old Eastern Rail Corridor** – 66 feet, except for road crossings.
- 2. Other Properties** – 66 feet preferred a minimum of 30 feet accepted, except for road crossings.

B. Length – As needed

C. Vertical Clearance – A minimum of 10 feet of vertical clearance is required over the Trail and its shoulders.

IV. Trail Design

If a description of the trail is required in a Land Use Agreement the following standards shall apply. This policy is a guideline so it is understood that a specific section may require a slight modification from what is defined here.

A. Main Trail Corridor

1. **Primary Design** - A 12-foot wide trail with a five-foot grass shoulder (nearest the gas pipeline if present) and a two to three foot shoulder on the opposite side that blends with the existing conditions.
2. **Secondary Design** – When site conditions demand or the size of the easement area is small the Trail design can be reduced to: A 12-foot wide trail with two or three foot loamed shoulders that blend with the existing conditions.

B. Spur Trails

1. **Major Spur** – A six to eight foot wide trail with two or three foot loamed shoulders that blend with the existing conditions
2. **Minor Spur** – A four to six foot wide trail with two or three foot loamed shoulders that blend with the existing conditions

V. Trail Access

A. Authorized Uses

1. The general public shall have the right to access and use the Trail.
2. Most non-motorized uses are permitted on the Trail as long as such use does not endanger property, other users or utility facilities, create a nuisance, or be incompatible with other authorized uses of the area.
3. Uses shall include at a minimum and without limitation: walking, jogging/running, hiking, cycling, equestrian, snow-shoeing, cross country skiing and motorized wheelchairs.

B. Prohibited Uses

1. **Background** - The state and federal funding sources that are being used to construct the Trail currently prohibit one or all of the uses listed in Section V.B.2. In addition, Granite State Gas Transmission, Central Maine Power and local sewer and water districts have expressed concern and/or imposed restrictions on some or all of those same uses.
2. **Prohibited Uses** – In general all motorized vehicles are prohibited on the Trail. All-Terrain-Vehicles (ATV), dirt bikes, snowmobiles and other off-road vehicles shall not be allowed to operate on the Trail. Use of the Trail by automobiles shall be prohibited unless limited access is required by the Grantor in order to meet current sanctioned use of the property. This Section shall not apply to motorized wheelchairs or uses as defined in Sections VI and VII.
3. **Camping** – Camping shall not be allowed along the area under agreement.

VI. Trail Construction

1. **Access** – The Holders and their designees shall have the right to fully access, with construction equipment, the area for which an agreement has been provided. When necessary for ease of construction, additional

temporary access should be negotiated with the Grantor. This policy does not waive the obligation of the Holders to follow weight restrictions that may be necessary for the safety of existing utility lines.

2. **Improvements** – The Holders shall have the right to install improvements such as culverts, ditches, berms, erosion control measures, bridges, boardwalks, retaining walls, improved trail surface, kiosks, railings, fences, plant material, gates, bollards waste stations, traffic control devices and signage.

VII. Maintenance & Management/Operation of Trail

A. Maintenance

1. **Access** – The Holders and their designees shall have the right to fully access the area for which the Agreement has been provided and shall be exempt from Section V.B in order that they may carry out the obligations associated with the maintenance of the Trail.
2. **Utilities** – This acknowledges that utilities that have an interest along the Trail will also require access to their facilities and are therefore exempt from Section V.B.

B. Management & Operation

1. **Access** – The Holders and its designees shall have the right to fully access the Trail and shall be exempt from Section V.B. in order to manage and operate the Trail.
2. **Enforcement** – A Land Use Agreement shall essentially include the following provision:

The Holders and its designees, including emergency services such as police, fire and medical personnel, are hereby given the right to access and enforce all applicable federal, state, municipal and Trail rules and regulations and to enforce the terms and conditions of this Agreement. Such enforcement to include, but not limited to the issuance of warnings, summons, tickets, the towing of vehicles and arrest of individuals.

VIII. Insurance, Liability & Indemnification

A. Insurance

1. **ETMD Insurance** – The ETMD shall not be required to carry a general liability insurance policy greater than a Three Million Dollars (\$3,000,000.00) per occurrence combined single limit for bodily injury (including death), personal injury and property damage liability with a deductible of no more than ten thousand dollars (\$10,000.00).
2. **Town Insurance** – A Town shall not be required to maintain any insurance that exceeds the single occurrence limit that is granted under the Tort Claims Act, M.R.S.A. § 8101, et seq. as said statute may be amended and any successor provisions thereof.
3. **Additional Insurance** – A Land Use Agreement shall not include any additional insurance requirements until such time as the ETMD Board of Directors has voted to purchase and maintain such additional insurance.

B. Liability

A Land Use Agreement shall contain the following provision:

Each party hereto claims statutory and/or sovereign immunity from liability under the Land Owner Liability Act, 14 M.R.S.A. § 159-A, et seq.; and/or the Tort Claims Act, M.R.S.A. § 8101, et seq. as said statutes may be amended and any successor provisions thereof; and under any other applicable provision of law, and no party hereto waives any rights to any limitations of liability provided to owners and operators of land available to the

public for recreational use without charge. The provisions of this paragraph shall survive beyond any termination of this Agreement.

C. Indemnification

A Land Use Agreement shall contain essentially one of the following provisions. The attempt should be made to first adopt the provision for mutual indemnity and if a consensus is not able to be reached the provision for single indemnity shall be adopted. Regardless of specific wording the prevailing provision must include language that makes it clear that the **Grantor is liable for damages caused by its own negligence.**

1. **Mutual Indemnity** - The ETMD agrees to indemnify and hold harmless the Grantor and Town for and against any loss, cost, damage or expense arising from any negligent act or omission of the ETMD in connection with this Agreement. The Grantor agrees to indemnify and hold harmless the Holders for and against any loss, cost, damage or expense arising from any negligent act or omission of the Grantor in connection with this Agreement. The Town agrees to indemnify and hold harmless the ETMD and Grantor for and against any loss, cost, damage or expense arising from any negligent act or omission of the Town in connection with this Agreement. The indemnities in this paragraph shall not apply to any consequential or punitive damages. Nothing in this paragraph shall be deemed to be a waiver by the Holders or Grantor of statutory and/or sovereign immunity from liability under the Land Owner Liability Act, 14 M.R.S.A. § 159-A, et seq.; and/or the Tort Claims Act, M.R.S.A. § 8101, et seq. as said statutes may be amended and any successor provisions thereof; and under any other applicable provision of law, and no party hereto waives any rights to any limitations of liability provided to owners and operators of land available to the public for recreational use without charge.

2. **Single Indemnity** – The Grantor and its directors, officers, employees, agents, contractors, successors and assigns shall not be liable for, and Holders hereby release them from, all claims of any kind or nature, including but not limited to claims for loss of life, personal injury or damage to property sustained by Holder or any person claiming through Holder resulting from any accident, occurrence or condition in or upon the Premises or related to this Agreement, except for damages caused solely by negligent acts of Grantor. The indemnities in this paragraph shall not apply to any consequential or punitive damages. Nothing in this paragraph shall be deemed to be a waiver by the Holders or Grantor of statutory and/or sovereign immunity from liability under the Land Owner Liability Act, 14 M.R.S.A. § 159-A, et seq.; and/or the Tort Claims Act, M.R.S.A. § 8101, et seq. as said statutes may be amended and any successor provisions thereof; and under any other applicable provision of law, and no party hereto waives any rights to any limitations of liability provided to owners and operators of land available to the public for recreational use without charge.

IX. Other Provisions

It is contemplated that each Land Use Agreement negotiation may require individualized terms and conditions. The ETMD will negotiate in good faith such terms and conditions, but shall not accept any term or condition that will substantially alter the purpose of this Policy.