

Vermont Land Trust Stewardship Systems

**White Paper Prepared by
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BACKGROUND

The mission of the Vermont Land Trust (“VLT”) is to conserve land for the future of Vermont. VLT conserves land statewide in Vermont, and currently holds legal interests in almost all of Vermont’s 251 towns. Landowners living in central Vermont created VLT 28 years ago, when they became concerned about changes in Vermont’s rural character. VLT started in 1977 as a volunteer, eight-town land trust, and evolved into a fully staffed, statewide land trust by 1990.

VLT has focused primarily on the conservation of productive (farm and forest), community and family lands. Individual projects have protected wildlife habitat, natural areas, recreation lands, public watersheds, and scenic areas. Some have even made provision for affordable housing and village growth, where that was appropriate. VLT has a close working relationship with The Nature Conservancy of Vermont, and many local and regional land trusts in Vermont. VLT also works with over 1,100 landowners plus many land managers. Landowners donated half of the easements VLT holds. Conservation easement purchases, gifts of land, and purchases of land constitute the remainder of VLT’s portfolio.

VLT stewards 1,357 parcels of conserved land totaling approximately 378,629 acres. VLT owns an additional 29,100 acres. Vermont’s land base is approximately 6 million acres, so VLT has helped conserve approximately 8 percent of the state. VLT’s portfolio includes 629 agricultural parcels covering 139,382 acres. Conventional cow dairy farming dominates the land use of these agricultural parcels. Beef, horse, goat, and sheep farming are also increasing in Vermont and on conserved land, as is organic farming of all types. VLT has a unique arrangement of co-holding agricultural conservation easements with the Vermont Agency of Agriculture, Food and Markets and the Vermont Housing and Conservation Board, which are both state entities. VLT is the lead steward on these co-held easements, representing all three easement holders’ interests with landowners in accordance with a written agreement.

STEWARDSHIP SYSTEMS

VLT employs 40 people, of which ten work in stewardship. These ten people represent a seven person full time equivalent. Six of the stewardship staff work in separate regions of Vermont preparing baseline documentation reports and visiting owners of conserved land annually. We consider these staff half time on project work (documentation) and half time on stewardship work (visiting). VLT also has a full time forester and a full time agricultural coordinator. Most of the land conserved with VLT is either forest or agriculture, so we have experts in both areas on the stewardship staff. These two staff are responsible for everything except annual visits in their respective resource areas. They work statewide. Previously, VLT’s agricultural director

worked with stewardship half-time to provide agricultural expertise on stewardship decisions for farms. As VLT's farm portfolio grew to be about half of the conserved parcels, we decided to divide the support functions. This year, we shifted staff support to the current system. A stewardship director handles the remainder of the conserved properties, provides legal support, and handles administration and overall policy. The stewardship director reports to VLT's management team. A special stewardship assistant works part-time on unusual projects such as database improvements.

Vermont Land Trust believes that having good relationships with landowners is the most effective near- and long-term method to preserve the integrity of our conservation easements. We focus our stewardship program, therefore, on building and maintaining good relations with owners of conserved land. We want owners of conserved land and communities to experience us as accessible, efficient, and trustworthy. We want them to understand their conservation easement, to feel part of the land conservation community, and to act as ambassadors for conservation. We acknowledge our obligation to explain to landowners that the conservation easement is a binding legal document that limits how they use their land. We do our best to accommodate landowner needs and wishes within those limits.

One of the ways VLT implements this conservation philosophy is by visiting every parcel of conserved land and talking with every owner of conserved land at least once annually. VLT also has a system of welcoming new conserving owners and new successor owners to the VLT stewardship program. We personally visit every new successor owner as soon as possible after the owner purchases conserved land. We welcome new conserving owners with a package of informative and easy to use material to help them remember their conservation easement. We encourage all landowners to call us on our toll free phone number before they build anything, sign any legal document affecting their land, or if they need help with any aspect of land management.

VLT has written guidelines on annual visits, recordkeeping, approvals of reserved rights, amendments, violations, endowment funding, and stewardship philosophy (copies attached). We maintain a database that we query to answer funder, legislative, board, and media questions, as well as track landowners, annual visit results, approvals, amendments, and violations. We prepare all our documentation reports and maps at the same time as we prepare the conservation easement. Landowners review and sign all three documents at closing, so that stewardship receives a complete package. VLT uses the same process with stewardship endowments. We do not accept any conservation easement without providing for an addition to the stewardship endowment and the legal defense fund.

The current system allows VLT to implement Land Trust Alliance Standards and Practices and, just as importantly, helps VLT maintain good relationships and open communication with landowners. VLT invests significant resources in our stewardship program. We also carefully manage how we spend our time and allocate our resources so that we deliver timely and appropriate services to landowners, and preserve the intent of each conservation easement. VLT is fortunate to have a broad funding base and a strong stewardship endowment. At the most recent height of the market, VLT's stewardship endowment income paid for 85 percent of the stewardship program. After the market decline a few years ago, the value of the investments

dropped. In 2005, after completion of our successful capital campaign and allocation of a third of the revenue from the capital campaign to the stewardship endowment, we anticipate that the income generated will cover 75 percent of the annual cost of the stewardship program. VLT's stewardship budget for fiscal year 2004-2005 was \$437,000. We expect the fiscal 2005 budget to be only slightly higher. This budget does not include administrative support from headquarters, or half of the salaries and benefits of the field assistants who prepare documentation reports, which we categorize as a project rather than a stewardship expense. VLT's legal defense fund has more than \$500,000 in funds to cover legal defense costs. The defense funds come from a portion of the stewardship endowment on each project.

Having enough money to fund stewardship systems is always a challenge. Other systems challenges include getting landowners to call us first before exercising reserved rights, getting landowners to return our phone calls for annual visits, keeping track of landowners addresses and changes, landowner education and resource services, keeping the database accurate and current, keeping the paper files accurate, lean and current, electronic archiving of paper files, especially 28 years of accumulated paper files, balancing staff work load, staying current on systems improvements and evolving policy and economic issues, saying "yes" to everything we can while preserving the overall intent of the conservation easement, maintaining good public perception of our work, and addressing third party violations.

One of our largest systems time expenditures is asking landowners for feedback about their relationship with VLT. Gathering and responding to landowner feedback is also one of the most valuable services we provide. Landowner comments help us anticipate issues and provide better services. For example, after hearing from farmers how some small, farm-based businesses could not fit into the definition of "home occupations" or "accessory uses," VLT worked with NRCS, VHCB and VAAF to change the agricultural easement language to allow rural enterprises that would provide financial support for the family but not interfere with the operation of the farm. Landowner feedback also helps us identify and correct misunderstandings about the conservation easement, and connect landowners to useful services such as Natural Resources Conservation Service cost share programs. Overall, we believe that VLT has achieved a very high satisfaction rating among landowners, farmers and the general community.

We also believe that VLT's low violation rate is directly connected to the high satisfaction level among landowners. A specific program of visiting successor owners of conserved land has helped build positive relationships with them. Early explanations of their conservation easements have reduced the number of violations. Everything the stewardship program does is crafted from a point of view of being helpful to landowners, and making all our interactions as easy for landowners as possible. For example, when a landowner exercises a reserved right, but forgets to call us first to get the paperwork in place, we make sure they get the right paperwork and a friendly reminder to call us first. We consider these types of mistakes to be technical deficiencies rather than violations. We use this as an opportunity to remind the landowner to call us first, using our toll free number to make it easier.

VLT uses four categories of violations: (1) Technical deficiencies. We do not consider these to be violations because they have no resource impacts. Usually, the only response required is that

we go over the easement with the landowner, and issue the necessary paperwork. (2) Minor violations. These have only minimal or transitory resource impact and do not normally require mitigation. We use these to remind the landowner of the conservation easement and make sure that the activity ceases. (3) Moderate violations. These have some significant resource impact that requires remediation or some other appropriate response. (4) Major violations. These have serious, and possibly permanent, resource damage. VLT has required remediation to the extent possible, and has initiated legal action to recover damages and costs.

VLT has also experienced easement violations by third parties, which have generally occurred without the landowner's prior knowledge or consent. The most significant violations have been ATV use and illegal tree cutting. VLT offers "No ATVs" signs to landowners without cost, and works with the State of Vermont to develop legislation to address larger ATV issues. We have also joined the landowner in enforcement actions on some major violations where the violator could be located.

In 2004, we found 17 minor violations by landowners and one moderate violation. Landowners caused no major violations. We found 28 violations by third parties in 2004. Of these, 22 were minor, five moderate and one major. The major violation involved cutting trees.

Stewardship systems are expensive. More expensive, however, is the cost of litigation that could have been prevented by good relationships with landowners and good systems to support that relationship. Even more costly is the loss of public good will and credibility if we fail to preserve the intent of conservation easements. Good relationships and credible systems will help preserve public confidence in land trusts and conservation easements.

SIGNIFICANT CHANGES AND FUTURE CHALLENGES

VLT expects that the cost of the stewardship program will increase as we address the many new challenges, especially those relating to commercial agriculture. We believe we have addressed the systems challenges discussed above. In addition, we see six general areas of significant policy challenges in agricultural stewardship.

Housing. Housing of all types continues to be a difficult issue. VLT sees a trend of farmers asking to keep the house and sell the farm. On occasion we approve such a subdivision when the effect on the conserved farm is neutral or beneficial. Some of the farmhouses and barns are in such bad repair or so antiquated that separating them from the farm increases viability. Because of farm consolidation, we also see the reverse where a farmer wants to keep the land and sell the house and barns, even though the buildings are in good repair. Sometimes, the conservation easements do not anticipate sufficient housing for changed circumstances. Housing for farm employees and for family returning to the farm also is a major issue. Financing houses for adult children wanting equity in their own home is a difficult issue. Lenders are often unwilling to lend on anything except a free-standing subdivided lot. On occasion, we have exchanged another house right or a subdivision right for more land conservation, an affordability option or some other tangible right that benefits the conserved farm.

Farm Conversions. Conversion of cow dairy farms to other agricultural uses, and the different structures those new uses need, is an increasing issue in Vermont. Horse farmers have converted

several old dairy farms to serious horse operations over the last few years. We see this as an increasing trend that affects farm affordability and also requires different structures, such as indoor riding arenas. Vegetable and horticultural operations also are taking over some smaller dairy farms. These farmers need movable greenhouses and we need to adapt to veggie farming methods of moving greenhouses around on farm fields, rather than having them fixed in building envelopes.

Affordability. We have recently focused on farm affordability in developing new policy on how conservation easements are structured, right of first refusal exercise, and negotiations around subdivision and amendment requests. Vermont continues to see increased development pressure, and increases in folks from out of state investing in Vermont real estate. Both of these trends put pressure on agricultural land prices. We are seeing a continued trend of conversion of farms to low-use agriculture, such as hay production, or to non-farmers wanting to get into low-use agriculture with a few beef and horses. Prices generally have shifted up, but overall are not yet unaffordable. The trend is in that direction however.

Subdivision and Amendment Requests. Requests by farmers to reconfigure their farms or their easements, and the challenges faced by the easement holders in doing so, have become more frequent and more difficult. Farmers demand nimbleness and flexibility so that they can respond to economic and family changes. VLT strives to balance the legitimate needs of farmers to change their operations with the overall obligation to preserve the intent of the conservation easement. We have worked with our farm conservation partners, Vermont Housing and Conservation Board and the Vermont Agency of Agriculture, Food and Markets, to respond appropriately to the economy, and to preserve long-term conservation results. For example, to allow farmland to change ownership more easily, we now write separate conservation easements for non-contiguous parcels in the same ownership. We also now generally exclude the house and barns from the easement with enough room for expansion.

Diversification. The trend toward greater diversification in Vermont agriculture and changes in farm economic cycles has required the development of new initiatives and new policies to address the requirements of diversified and small acreage farms. VLT now actively seeks opportunities to encourage diversified and value-added farm operations, and adapts our policies to accommodate the special needs of these farmers.

Community “Oversight” Community scrutiny of stewardship decisions has increased. Select boards and planning commissions are asking more questions and watching how stewardship handles changes. Communities also expect us to respond to community needs and individual farmer needs thoughtfully and flexibly while also preserving the intent of the conservation easement. Funders and regulators might have different perspectives on what is the central intent of the conservation easement, and what constitutes reasonable flexibility. Balancing these issues over time requires creativity, collaboration, and change.

These six examples of the issues that VLT’s Conservation Stewardship Program is contending with today are but a symptom of an even greater challenge that all successful land trusts will face in the future, especially if they hold easements on working farms. The challenge is that, over time, **everything changes**. Landowners change. The business of agriculture changes. Information and

technology change. Species change. Community needs change. Even the climate changes. Lewis and Clark were on their way west just two hundred years ago. Imagine what an 1805 farmland easement would look like today, and then project ourselves forward 200 years.

Vermont's farmland conservation program has two objectives. First, to preserve the best agricultural soils in the state, so that they will be available for present and future generations of farmers. Second, to allow these soils to remain in production, so that Vermont will continue to reap the economic, environmental, and cultural benefits of its working landscape. For the farms that have been conserved, the first goal has been achieved. Ensuring we keep achieving the second goal will be a far greater challenge, given the constant change which our farmers and we face.

The Vermont Land Trust does not know how it and its partners, including farmers, VHCB, VAAFM and NRCS, should address all the problems caused by change. The solutions will require repeated creativity and collaboration by all concerned parties. We look forward to this perpetual endeavor with our partners and with owners of conserved land.



Vermont Land Trust provides technical and legal assistance to individuals, communities, and local land trusts, helping them achieve local conservation objectives. Leslie Ratley-Beach is director of VLT's Conservation Stewardship office, which is responsible for the long-term monitoring of easements to ensure that the conservation goals are upheld in perpetuity.

Appendices

Annual Visit Standards & Practices

Records Philosophy

Request Approval Principles & Considerations

Amendment Principles

Violation Principles

Philosophy, Outcomes & Principles

Subdivision Principles & Considerations



Philosophy: Building relationships with and providing services to landowners, not enforcement is the best immediate and long-term method to guarantee that conservation easements are upheld. Key to these stewardship services is the process of visiting conserved land and the owners of the land every year.

Annual Visits: The annual visits are to regularly gather information about a conserved property, and the people who own it. This builds a relationship with the owner especially if the same staff returns to the property every year, and assists the owner to work with the conservation easement and understand the parameters of the conservation easement. All conserved properties are visited at least once annually in person on the ground. More frequent, informal drive-by visits of properties with a greater potential for violation may occur, but landowners can expect one regular visit a year. VLT also views conserved properties annually using aerial imagery.

Steps. The Conservation Field Assistant who visits follows basic steps for the annual visit:

1. Call the landowner, to inform him or her of the visit to invite them to accompany the CFA.
2. Review the stewardship file, especially the baseline documentation, map and conservation easement, and past visit reports to note problems to check or information to gather. View the most current aerial imagery for the property.
3. Have copies or list of all approvals, changes and unusual easement clauses that need to be checked.
4. Visit the conserved property. An adequate visit includes seeing the principal parts of the property that have made its conservation significant, and a check of all structures. Use your judgment about periodic view of the land not visible from roads and lanes.
5. Fill out a visit report, providing a written documentation of what was seen and heard, and file in the permanent stewardship file, in electronic archives and in the database. Use photos and maps as appropriate.
6. Talk with the landowner to build the relationship, verify visual information and addresses, phones, changes in ownership and other identified information. This is a good chance to also ask if there is anything about the program that the landowner has questions about or is bothered by and for things we could do differently.
7. Talk with the stewardship director about any potential conservation easement violations, questions, or requests for changes or approvals by the landowners. Be sure to respond to all of these appropriately and rapidly.



Vermont Land Trust Conservation Stewardship Program Records Philosophy

Philosophy. VLT's Conservation Stewardship Office is the repository of all the completed conservation work of the organization. Our paper and electronic records serve the organization's legal and information needs regarding all conserved land and its owners. We also exist to serve owners of conserved land and maintain records in order to answer inquiries promptly regarding their conserved land. Our records must exist in perpetuity to fulfill our conservation easement stewardship responsibilities as well as legal needs. We keep only those records that are essential to these functions in paper and electronic form.

Principles

1. All paper files are stored in one-hour fire-safe four-drawer file cabinets and archived electronically.
2. All paper files remain in the stewardship office except copies designated for field use.
3. All files are organized for completeness of pertinent information only, ease of use and compact storage.
4. Only essential information is stored. Essential information is determined by reference to our guiding philosophy and to the conservation easement or other conservation document.
5. No drafts are kept as the conservation easement and supporting documentation must stand or fall based on the four corners of the documents. If we have made an error, then we take responsibility for the error and learn for the future to do better work.

Records Organization and Considerations:

Paper Files are organized into Legal Files and Monitoring Files alphabetically by Town and within Towns by the conserving landowner name. Electronic data is organized in a relational database with the Project Cost Code as the unique identifier and has three sections of tables: budget tables, parcel tables and stewardship tables. The database is backed-up and is stored off-site in a secure network. Fully electronic files and secure archiving are the challenges we are working on now. Our goal is to have all current work in electronic form for ease of transmission to field offices and to allow original paper files to be stored in permanently secure storage. All archived paper documents are accessible within a few days of request. The detailed organization of the paper files and database has been important in order to serve our internal and external customers and so is here in list form.

Legal File: Legal size hanging folder with file name on tab at right front corner; holds legal size manila folder (with two-prong fasteners front and back)

Front: Original recorded or legal documents or copies of originals, as appropriate, for waivers and subordinations only. Approvals, permissions, key correspondence, etc. go in monitoring.

Back: Recorded originals with recording stamps (or copies of recorded originals); includes: conservation easement, transfer return, title policy, partial release of mortgage, etc.

Monitoring File: Letter size hanging folder with file name on tab at right front corner; holds letter size classification folder (six sections with two-prong fasteners and two pockets) and green vinyl protector (for use by monitors in the field)

Section 1: Monitoring forms – each annual report added

Section 2: FIS, Grand List Description, Project summary, news clippings, key letters;
personal

information about owner

Section 3: Conservation Easement copy plus any amendments

Section 4: Approvals, permissions, appraisal summary

Section 5: Management Plans (forest, agricultural, recreation)

Section 6: Baseline Documentation Report (BDR) - original

Pockets: Folded maps

Protector: Copies of portions of BDR, approvals and plans; for use by monitors in the field

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Vermont Land Trust Conservation Stewardship Program Request Approval Principles & Considerations

Philosophy. Approval requests that satisfy an expressed landowner need, have a better or at least neutral effect on the resources conserved, and are consistent with the overall purposes of the conservation easement are generally permitted. Our goal is to be as flexible and permissive as is consistent with the conservation easement and with applicable laws.

Principles and considerations:

- (a) is it consistent with the overall purposes of the conservation easement;
- (b) will it enhance the resource values conserved or have a neutral effect;
- (c) are there any feasible alternatives available to achieve a similar purpose;
- (d) will denial cause undue hardship over which the landowner had no control;
- (e) are there any issues regarding private benefit;
- (f) is it consistent with any other written expressions of the original Grantor's intent;
- (g) if there are conservation easement co-holders, is it consistent with their policies;
- (h) is it a current policy to permit the use or structure but the clause is not included in an older easement;

Private Benefit Test. Conferring benefit (from a legal perspective) upon private parties without those private parties reciprocating with an equivalently valued public benefit to the VLT could threaten the tax-exempt status as an organization that is federally recognized as "operated exclusively" for charitable purposes. Generally, exercise of discretionary approvals is not considered to create any private benefit. Some consideration may be given to this issue when approving subdivisions.

Requesting an Approval. Any landowner seeking an approval shall write or call staff at VLT's Conservation Stewardship Program stating what is being sought and the specific reasons for it.

Staff Costs. The landowner shall pay all extraordinary staff costs pertaining to reviewing an approval request. We do not charge for anticipated approvals where there is a reserved right in Section III of the conservation easement unless there are extraordinary costs created by the landowner.

Stewardship Endowment. Usually, there is no additional endowment requested for approvals, except for subdivisions. We always request an additional \$2000 for subdivisions so that we can support the additional services for the additional landowner.

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Vermont Land Trust Conservation Stewardship Program Amendment Principles

Philosophy. Amendment requests that satisfy an expressed landowner need, have a better or at least neutral effect on the resources conserved, and improve ease of implementation and administration for stewardship staff and the landowner may be recommended for VLT Board approval. To be recommended for approval, stewardship staff must reconcile any conflicting values or multiple goals of the conservation easement. To do this stewardship staff considers all the facts and circumstances and examines the following principles and considerations. There may be other considerations relevant in individual circumstances and those will be examined too. The following principles and considerations, and any additional ones, will be weighed as appropriate to each individual circumstance. No conservation easement has only one goal. With multiple goals there will be tensions. Amendments can redefine the balance among multiple goals over time or to reflect changes in policy.

Principles and considerations.

- (a) it is consistent with the overall purposes of the conservation easement;
- (b) it will enhance the resource values conserved or have a neutral effect;
- (c) there are no feasible alternatives available to achieve a similar purpose;
- (d) denial will cause undue hardship over which the landowner had no control;
- (e) there are no issues regarding private benefit or any issues can be adequately addressed;
- (f) it is consistent with any other written expressions of the original Grantor's intent;
- (g) conservation easement co-holders approve of the amendment;
- (h) the likelihood of land ownership by those working the land is increased or the economic sustainability of the agricultural or forestry operation on the land is increased;
- (i) it is consistent with one of the below circumstances.

Circumstances of the Requested Amendment. VLT's Conservation Stewardship Program will recommend an amendment to a conservation easement in the following circumstances:

- I. **Prior Agreement.** In a few cases, a conservation easement has included a specific provision or an unrecorded agreement or letter allowing modification of the restrictions at a future date under specified circumstances. Such agreements must be set forth in the conservation restriction document or in a separate document signed by all parties including VLT at the time or prior to when the conservation easement was executed. The amendment must be consistent with the terms and conservation intent of the original agreement.
- II. **Upgrade Standard Language and Format.** The standard language and format of conservation easements are periodically revised to reflect new standard clauses, statutory changes, changes in policy, or to improve enforcement and administration, or enhance the protection of the conservation values of the protected property, or consolidate the legal documents in order to simplify the protection regime. Amendments for any of these purposes will be recommended so long as the changes are consistent with the intent and objectives of the original conservation easement.
- III. **Correct an Error or Ambiguity.** An amendment may be recommended to correct an obvious error or oversight that was made at the time the conservation easement was entered into. This may include correction of a legal description, inclusion of language that was unintentionally omitted, or clarification of an ambiguity in the easement in order to avoid litigation over the interpretation of the document in the future, or to cooperate in a boundary adjustment based on a survey or in an exchange of land if the resource values of the land to be received are at least equivalent to the land exchanged.
- IV. **Settle Condemnation Proceedings.** VLT may recommend a settlement agreement with the condemning authority where it appears that the land to be taken has little or no resource value, is not central to the purpose of the conservation easement and where condemnation power would be properly exercised for a recognized public purpose. If the condemnation proposed is significant, affects valuable resources and is central to the conservation easement, and there is no other better alternative site for the proposed facility,

VLT may still recommend a settlement agreement with the condemning authority if the public health, welfare and safety significantly outweighs the conservation resource values, but will do so only with great caution. In reaching such an agreement, the intent of the original conservation easement must be preserved to the greatest possible extent.

V. Amendments to Leverage Additional Conservation. VLT welcomes amendments to add additional land to a conservation easement. VLT also welcomes the return of reserved rights by landowners.

VI. Amendments to Reconfigure Conservation Easements: Modifications or additions of reserved rights in exchange for rights of substantially equivalent value or additional land conservation may be recommended provided that the above principles and other considerations are substantially met.

VII. Amendments Consistent with Conservation Purpose. Other amendments of a conservation easement may be recommended where the modification is consistent with the goals of the original conservation project, there is no or only incidental private benefit, the amendment is substantially equivalent to or enhances the resource values protected by the conservation easement and any additional burden on the Stewardship staff is outweighed by the increased conservation value. Requests made under this section will be reviewed carefully.

Private Benefit Test. Conferring benefit (from a legal perspective) upon private parties without those private parties reciprocating with an equivalently valued public benefit to the VLT could threaten the tax-exempt status as an organization that is federally recognized as “operated exclusively” for charitable purposes. Treasury regulations set forth the “private benefit test” and reflects the legal requirement that VLT be “primarily engaged in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3)” – that it be operated exclusively for charitable purposes and not confer benefit on private parties. Private benefit issues must be resolved before an amendment can be approved.

Conflict of Interest: Any conflicts of interest or potential conflicts must be resolved before an amendment can be approved. The conflicts of interest procedures must be followed.

Requesting an Amendment. Any landowner seeking an amendment shall write or call staff at VLT's Conservation Stewardship Program stating the change being sought and the specific reasons for it.

Staff Costs. VLT may request the landowner to pay all staff costs pertaining to reviewing the change, visiting the site, and preparing the paperwork but only if the amendment is approved. The Stewardship Director may waive some or all costs for the following reasons: hardship, contributing errors by VLT, costs covered through a separate project or other grant especially if additional land is conserved.

Stewardship Endowment. VLT may request the landowner to pay an additional stewardship endowment sufficient to generate income to cover staff costs likely to be incurred under the new provisions. The usual endowment formula will be consulted to determine this amount. The Stewardship Director may elect to apply for grant funds to cover the endowment if the amendment is to conserve additional land.



Vermont Land Trust Conservation Stewardship Program Violations Principles

Philosophy. Landowner education and relationship building not litigation are the best immediate and long-term methods to guarantee that conservation easements are upheld. We work with owners of conserved land to help them understand their conservation easement and continue to be good stewards of their land. We use this philosophy to determining what is a violation of a conservation easement and what is the appropriate response to that violation, we apply the following principles and considerations. We also promptly and diligently pursue substantial violations to assure integrity of the conservation easements that we hold.

Application. There is a continuum of responses to violations (discussed below in Section C). We elect the response based on the combination of the resource impact of the violation (see Section A below) and the mitigating circumstances present (see Section B below). This results in a dynamic among all these factors that makes each response unique and individual for each landowner’s circumstances.

Principles and considerations.

A. Levels of Violations

1. Technical deficiencies are not counted as violations. Technical deficiencies are “paperwork deficiencies”, such as failure to give notice of a sale of the conserved land, that have no tangible physical impact. These issues are not central to the conservation purposes of the conservation easement.
2. Minor violations have only a transitory or minor resource impact such as an old trash dump that is no longer used and has no evidence of hazardous materials. These violations are not central to the conservation purposes of the conservation easement.
3. Moderate violations have a moderate physical impact on those resources protected by the conservation easement and are central to the conservation purposes of the conservation easement, for example extensive tree cutting in a buffer or locating a large mixed use agricultural and commercial structure in an area that has a negative effect on the farm . The factors considered are distance outside the complex, extent of the mixed use, size of the structure, and amount of rated agricultural soils affected, and seriousness of the negative impact, as well as the landowner intent.
4. Major violations have a major resource impact on those resources protected by the conservation easement and are central to the conservation purposes of the conservation easement. For example, a 100-acre clear-cut on a 1000-acre forestland easement property in violation of an approved plan.

B. Matrixes to Assist Decision Making:

1. What Physical Impact and How Central is the Damaged Resource to the Conservation Purposes

CRITERIA	Scaled low to high
How central to conservation purposes of development rights and core resource values?	
How much of the parcel is affected? How large an area?	
How significant in adverse impact? How easy to fix? Does it involve soil loss, water quality, scenic attributes or other resources?	
Would the activity or action be permitted under our current form of easement?	

2. Degree of Mitigation

CRITERIA	Scaled low to high	Weight of Factor low to high
How intentional was the action? Was it a mistake?		
Did the landowner halt the action when first requested?		
Was the landowner willing to fix the violation?		
Have we had to file an action in Court? Seek injunctive relief or otherwise file in Court?		

What limits are there with our remedies: education, legal, financial, other?		
What mistakes did we make and how significant? (delay, miscommunication, drafting lack of clarity and so on)		
Is remediation possible and effective?		
Are there special circumstances that cause us to feel more compassion or flexibility is appropriate?		
Does the landowner have a history of violations?		
What degree of relationship benefits in pursuing education rather than litigation?		
Is it a violation or possible violation of law?		
What was the conserving landowner intent?		
What are our co-holder and other partner opinions?		
Was it a third party violation? How do the circumstances rank on these criteria?		
How will this affect public confidence in conservation?		
What are the community relations costs?		
How much money and time did it take us to fix?		

C. Continuum of Response

1. For all technical and minor violations regardless of degree of mitigating circumstances we pursue landowner education and relationship building. Some technical violations have no response at all, for example the failure to give notice of the sale of the conserved land. Other minor violations can be approved based on principles or waived because of minimal or minor nature and do not require an amendment to resolve.
2. Most minor violations may not even require a site visit and only a modest reminder to the landowner about talking with us first in the future.
3. For all moderate violations regardless of degree of mitigating circumstances we pursue landowner education and relationship building with problem solving and payment of costs as needed. These types of violations usually require one or more site visits to assess the situation and develop a solution. The solution can involve an amendment or other adjustment.
4. Moderate to major violations could also involve other forms of mitigation to correct including restoration where feasible or payment of damages as appropriate to the level of mitigating circumstances.
5. A notice of violation and request to halt the activity and return the site to its prior condition is the next level of response if the landowner has not been responsive to cooperative efforts.
6. Litigation or enforcement by a government agency is considered if the landowner will not cooperate and other alternatives have not worked.
7. Temporary court orders may be necessary in some circumstances to prevent irreparable harm if the landowner will not halt the activity after our verbal or written request to do so.
8. If the violation is severe or significant enough, court action or litigation could be the first response or if there is major irreparable damage to a resource that is central to a conservation purpose— for example a 100 acre clear-cut in violation of an approved plan.

Learning and Data Collection. We collect what we learn from experiencing violations and feedback from landowner, and then we discuss the information with project staff and legal staff to improve how projects development and conservation easement drafting. Stewardship staff reports regularly on these experiences and what we are learning. We also collect this information so we can identify trends and issues, and track the effectiveness of responses.



Vermont Land Trust Conservation Stewardship Program Philosophy, Outcomes & Principles

Vermont Land Trust believes that good relationships with landowners not enforcement is the best immediate and long-term method to guarantee that the integrity of conservation easements are preserved. To that end, the goal of the Conservation Stewardship Program is to build relations with owners of conserved land. The outcomes of the Conservation Stewardship Program are best described in terms of how we want conserved landowners and communities to experience us. From their perspective we want to be viewed as: accessible, efficient, and trustworthy. As a result of holding this view, we hope owners of conserved land will understand their conservation easement, feel part of a land conservation community, and act as ambassadors of conservation. In addition, we have an obligation to explain to landowners that the conservation easement is a binding legal document that limits how their land is used. We will do our best to accommodate landowner needs, however, there will be some requests that we cannot approve.

To achieve these outcomes, our program is designed to:

1. work with landowners to ensure that the purposes of the conservation easements are achieved
2. establish good relationships with owners of conserved land and serve as a source of valuable information to landowners
3. provide timely, responsive service particularly as it relates to review and approval of landowner requests
4. ensure that violations do not occur or if they do they are voluntarily corrected

Our actions and decisions are guided by the following principles:

1. How we operate is visible. The policies, procedures and guidelines that govern our decisions are written and available.
2. Our focus is on protecting the resource values stated in the conservation easement.
3. We act in service to landowners. Even though providing amendments and approvals is a significant part of our work, we wish to act as partners in problem solving and not be seen as just a source of approvals.
4. Issues and problems are resolved through collaboration to the greatest extent possible. Our goal is to maximize landowner choice and control. We wish to be seen as a source of information and solutions not just a source of approvals or enforcement.
5. Our interactions are based on positive assumptions about landowners: that their actions are in good faith and that landowners have the most knowledge of their property. Unless proven otherwise, these assumptions inform all of our interactions and decisions.
6. Our interactions and decisions are proportional to the resource value.
7. We seek solutions that are the simplest available so that landowner needs are met with a minimum of bureaucratic red tape and conditions while still protecting the resource values explicit in the conservation easement. We understand that over time what is currently understood to be a best management practice will change. As a result, the consistent application of principals is balanced with flexibility and individual treatment. Consistency in and of itself is not a goal, rather precedence only serves as a starting point.
8. We use our and the landowner's time and resources efficiently.
9. We seek to avoid being seen as an entity to be dealt with, or adversarial in our interactions.

10. If the landowner is not prepared to resolve issues that arise cooperatively, then we will explore all other alternatives in order to preserve the resource values of the conservation easement.

Implications of these principles:

1. For Stewardship staffing: We cannot be experts in all aspects of resource management. Therefore, our education efforts are related to conservation easements not land management. In our clearinghouse function our emphasis is on resource referral, not direct technical assistance.
2. For our conservation partners: VLT has a variety of conservation partners. Vermont Housing and Conservation Board and the Vermont Agency of Agriculture, Food and Markets are the two partners with whom we co-hold many conservation easements. We recognize that our partners may have different values and philosophy that may result in different decisions about requests from landowners. We work diligently to keep the effects of these differences from resulting in divergent treatment of similarly situated landowners based merely on who funded the purchase of their conservation easement.
3. For systems and work design: Stewardship is downstream of much of our work. Internally, feedback from Stewardship helps inform Field Team, CCC, and Development and Communications decision making. Our database of completed work is both a tool to help carry out our stewardship work, inform organizational decision making, and to help “tell our story.”
4. For communications: The existence of the Conservation Stewardship Program is one of the ways we establish and increase the credibility of our conservation work. To that end, we seek to include the stewardship message in appropriate organizational communications with an appropriate level of emphasis. The stewardship message and the conservation message are not discrete. Our best messages include how the two relate.
5. For the long-term: Our work exists in perpetuity. We do not and cannot fully comprehend the task of our successors. We are open, therefore, to new methods and practices to help develop and share what we believe to be a best practice.

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Vermont Land Trust Conservation Stewardship Program Subdivision Principles & Considerations

Philosophy. Subdivision requests that are discretionary approvals for VLT and that satisfy an expressed landowner need, have a positive or at least neutral effect on the resources conserved, and improve ease of implementation and administration for the Stewardship staff and the landowner usually are approved if they meet the following principles and considerations.

Principles and considerations:

- (a) is it consistent with the overall purposes of the conservation easement;
- (b) is it consistent with the Boards' Means Limitations;
- (c) will it enhance the resource values conserved or have a neutral effect;
- (d) are there any feasible alternatives available to achieve a similar purpose;
- (e) will denial cause undue hardship over which the landowner had no control;
- (f) does it clarify uncertain property boundaries, otherwise assist the land title records, or is a minimal boundary adjustment with no resource impact;;
- (g) are there any issues regarding private benefit;
- (h) is it consistent with any other written expressions of the original Grantor's intent;
- (i) will all the parcels of conserved land qualify for State sponsored tax abatement programs;
- (j) if there are conservation easement co-holders, is it consistent with their policies;
- (k) does it avoid fragmentation or significant harm to conservation goals which is determined based on the land resource and in consultation with internal experts:
 - 1. if farmland, then after the subdivision each parcel can stand alone as a viable farm unit or units based on project selection criteria, or will be conveyed into the ownership of another conserved farm unit or conserved Farmstead Complex
 - 2. if forest land, then after subdivision each parcel can be effectively and economically managed for long-term rotations of sawlogs consistent with project selection criteria
 - 3. if mixed use land typical of a donated conservation easement resource, then after subdivision each parcel can qualify for the State sponsored use value program or has a minimum of at least 25 acres of land;
 - 4. if recreation land, then after subdivision the recreation uses are not adversely affected;
 - 5. if natural area or habitat protection land, then after subdivision those uses are not adversely affected.
- (m) is consistent with one of the below circumstances.

Circumstances of the Requested Subdivision. VLT's Conservation Stewardship Program may approve a subdivision in the following circumstances provided that the above-applicable considerations are adequately addressed:

I. Administrative Subdivisions: as necessary for public highway and bridge improvements, boundary adjustments and boundary dispute settlements, and other subdivisions of a similar nature may be permitted if the subdivided land contains no rated (agriculture or forestry) soils or the loss of the subdivided land will not significantly impact or reduce the productive utility of the conserved land.

II. Bring a Lot into Compliance with Local or State Regulations: to add land to a lot that is not in compliance with local ordinances or state subdivision rules may be permitted if the Landowner provides a certificate from a qualified engineer or soils professional that the new larger lot is the only feasible alternative.

III. Subdivisions of Individual Structures: an existing individual house from the remainder of the land may be permitted in circumstances that create a hardship to continue the upkeep of the house or otherwise make it uneconomic to maintain the house with the conserved land and the potential future ownership of the parcel by individuals who are not associated with the remaining land does not conflict with the continued viability

of the conserved land. Subdivisions with a future house right may also be permitted if it will allow all the parcels of productive conserved land to qualify for the State sponsored current use tax abatement programs and does not fragment agricultural or forestry soils.

IV. Subdivisions Separating Land from Infrastructure: the primary portion of the agricultural or forestry soils from the infrastructure may be separated if it will add conserved land to other conserved land, if all the parcels created remain in productive agricultural or forestry use, and if there is no reasonably feasible alternative such as removing obsolete buildings and rebuilding in the same area.

V. Subdivisions Separating Non-Farmland from Farmland: separating natural, forested, scenic, recreation and other non-farmland from the farm may be permitted if the subdivided land would be equally well or better managed if not part of the conserved farm operation, or the viability of the conserved farm would be enhanced without the burden of taxes and maintenance on the other land.

VI. Separating the Productive Unit: splitting the primary productive soils into two or more parcels, each parcel with significant agricultural or forestry soils, may be permitted if resulting parcels can each stand as viable productive units, or will be conveyed into the ownership of another conserved productive unit.

VII. Conserving More Land as Part of another Project: These requests will usually be approved as they leverage more conservation, provided that the additional land conserved is at least equivalent in value to the private benefit of the subdivision that is permitted.

Private Benefit Test. Conferring benefit (from a legal perspective) upon private parties without those private parties reciprocating with an equivalently valuable public benefit to the VLT could threaten the tax-exempt status as an organization that is federally recognized as “operated exclusively” for charitable purposes. The public benefit in exchange for the subdivision may be measured in actual conservation value – either additional land conserved that has resource value or additional restrictions that have equivalent value. Treasury regulations set forth the “private benefit test” and reflects the legal requirement that VLT be “primarily engaged in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3)” – that it be operated exclusively for charitable purposes and not confer benefit on private parties. This determination may need to be confirmed by an opinion from a professional appraiser. The appraisal must be paid for by the requesting landowner. If the subdivision requested is consistent with the purposes of the conservation easement and if the subdivision is a discretionary approval expressly stated in the conservation easement, then there may not be any additional benefit conferred and the appraisal and compensation may be waived.

Requesting a Subdivision. Any landowner seeking a subdivision shall write or call staff at VLT's Conservation Stewardship Program stating what change is being sought and the specific reasons for it.

Staff Costs. VLT may request the landowner to pay all staff costs pertaining to reviewing the change, visiting the site, and preparing the paperwork only if the amendment is approved. The Stewardship Director may waive some or all costs for the following reasons: hardship, contributing errors by VLT, costs covered through a separate project or other grant especially if additional land is conserved.

Stewardship Endowment. VLT may request the landowner to pay an additional stewardship endowment sufficient to generate income to cover staff costs likely to be incurred under the new provisions. The usual endowment formula will be consulted to determine this amount.