

March 11, 2005

Vermont Housing and Conservation Board
CONSERVATION EASEMENT HOLDING AND STEWARDSHIP POLICY

The Vermont Housing and Conservation Board (“VHCB”) makes grants to nonprofit conservation organizations, municipalities and certain state agencies for the purpose of conserving important agricultural lands, historic properties, outdoor recreation opportunities and natural areas. VHCB usually funds the purchase of a fee simple interest and/or the purchase of a conservation easement of perpetual duration. Grantee organizations that develop VHCB-funded conservation projects may, under a limited set of circumstances, co-hold the conservation easement resulting from the project and may also serve as a primary steward of that easement. Prior to assuming an easement co-holding or primary steward role, an applicant must demonstrate that it is participating in a stewardship program approved by Board staff.

This policy clarifies when and with whom VHCB may choose to co-hold conservation easements funded in full or part by VHCB. VHCB will in all cases hold a perpetual legal interest, primarily a conservation easement, in lands conserved by the Board. When VHCB chooses to co-hold a conservation easement with a public or nonprofit partner, VHCB enters into a perpetual partnership in stewardship, and, therefore, will not take the decision to co-hold lightly. This policy also discusses the role of a primary steward of co-held conservation easements and establishes what criteria an organization must meet to function as a co-holder and/or primary steward for a given project.

I. CONSERVATION EASEMENT CO-HOLDING

Farm Easements:

Farm easements encumber working agricultural land, and, while protecting important soil resources of local and statewide significance, also allow for a range of commercial activities and structures associated with diversified agriculture in Vermont. Farm easements generally encumber private land that will be bought and sold many times over the life of the easement. The challenges associated with multiple owners, diverse use of land for agricultural and limited commercial activity, and the potential for several residential and other existing or new structures make the stewardship of farm easements very complicated and demanding; therefore, VHCB co-holds farm easements only with the Vermont Agency of Agriculture, Food and Markets (“Agency”), and either the Vermont Land Trust (“VLT”) or the Upper Valley Land Trust (“UVLT”). Either VLT or UVLT serves as primary steward for farm easements.

For most farm easement projects, VLT, UVLT or the Agency originates the project and brings an application to VHCB for funding. In these instances, co-holder and primary steward status is clear. VLT and UVLT have full-time paid staff, as well as in-house legal counsel, dedicated to easement stewardship. These groups also maintain large, well managed stewardship endowments that will offset the cost of stewardship over the life of each easement. With their established track record and organizational

capacity, VLT and UVLT are currently the only nonprofit partners that serve as co-holders and primary stewards of VHCB-funded farm easements. Under certain limited circumstances, VHCB *may* co-hold easements on agricultural lands with our other approved stewardship partners.

In some cases, however, another eligible applicant may develop a local or statewide farm easement project and bring that project to VHCB for funding. Under this scenario, the applicant should contact VLT or UVLT to determine if either group will be willing to co-hold the easement and serve as primary steward. The Agency will routinely co-hold any farm project funded by the Board. For such projects, the applicant will generally not co-hold the conservation easement. If as a condition of the applicant's involvement, or as a condition of other funding sources, a legal interest in the easement is required, VHCB *may* offer an executory interest in the easement to the applicant or another entity. Since executory interests are not commonly offered, an applicant should discuss their use with VHCB staff very early in the application process.

Non-farm Conservation Easements:

Non-farm conservation easements generally encumber recreation, park, and public lands or sites with rare or endangered species, important natural communities, or significant archeological resources. Lands encumbered by non-farm easements are generally owned by the State of Vermont, a municipality, or a non-profit corporation with tax exempt status. Therefore, the majority of projects in this category will likely have the same owner for the life of the easement, and if these publicly or non-profit owned non-farm properties are sold, VHCB retains the right to review and approve the new owner. A much smaller percentage of VHCB-funded non-farm projects are privately owned. These properties may be sold repeatedly on the open market, over the course of time, without obtaining VHCB approval of the new buyer (though VHCB will reserve a Right of First Refusal over any sale of conservation land funded by the Board).

Most non-farm easements do not allow commercial activity or structures to be built on the land. Non-farm easements that do allow for improvements, such as downtown parks, are generally very specific, or require a management plan that outlines how, where and when these improvements may take place. And unlike most farm easements, which include many discretionary approval rights that require ongoing decision making by the easement holders, the majority of non-farm easements contain fewer holder/landowner interactions actually built into the easement. That being said, VHCB does acknowledge that certain non-farm projects may require an extra-ordinary level of stewardship, particularly municipally owned conservation land; however, the non-farm easements co-held by VHCB tend to involve less active stewardship over time than farm easements.

Because of this consistency of ownership, general restrictions against commercial activity, and fewer discretionary approvals, non-farm easements generally require fewer stewardship resources; therefore,

VHCB may consider co-holding these easements with a wider range of eligible entities. VHCB may also choose to assign the primary stewardship role to an entity other than VLT, UVLT or VHCB for non-farm easement projects. However, VHCB will only co-hold non-farm conservation easements with organizations with an established stewardship program approved by Board staff. Criteria for approval are discussed in Section II, below. VHCB will not co-hold easements with municipalities. If as a condition of a Town's involvement in a project a legal interest in the easement is required, VHCB *may* offer an executory interest in the easement to the municipality. An applicant should discuss the use of executory interests with VHCB staff very early in the application process.

For certain non-farm conservation projects, VHCB may serve as the sole easement holder. VHCB prefers to involve a co-holder as primary steward for all conservation easements, but the nature, scale, and location of some projects prevent such involvement. Applicants should identify early in the application process a co-holder who will steward the easement or discuss the merits of a solely-held VHCB easement. For projects where VHCB is the sole easement holder, VHCB will make every reasonable effort to follow the 2004 LTA Standards and Practices # 11 and #12 and the criteria that VHCB has adopted for approved primary stewardship partners.

Note: This policy does not consider VHCB-funded protection of outstanding historic structures. VHCB co-holds all VHCB-funded historic preservation easements with the Preservation Trust of Vermont. Please see VHCB's '**Historic Preservation Policy**' for information on that topic. For more information on ownership eligibility for purchase of fee conservation projects, see VHCB's '**Fee Acquisition of Conservation Land Policy**'.

II. PRIMARY STEWARD CRITERIA

Organizations interested in co-holding and serving as the primary steward of VHCB-funded easements must be approved by Board staff. The primary steward of co-held easements assumes the lead stewardship role among the holders and is typically assigned the tasks of annual monitoring, Baseline Documentation Report creation, first-contact for landowner inquiries, and serves as the day-to-day steward of the co-held properties. If approved as a VHCB primary steward, organizations must enter into a Stewardship Memorandum of Understanding ("MOU") with VHCB. The MOU is discussed in Section III, below.

Staff applies the following set of criteria during the review process and an organization must meet this set of criteria before they may serve as primary easement steward and receive VHCB stewardship endowment funds:

1. Compliance with 2004 LTA Standards and Practices #11 and #12 (Appendices B and C)
2. Proven Track Record of Responsible Easement Stewardship
3. Organizational Capacity for Stewardship of VHCB Easements (staff and financial)
4. Use of Approved Easement Templates for VHCB projects

5. Fills a Unique Stewardship Niche

Compliance with LTA Standards:

VHCB requires that any primary steward of VHCB-funded easements comply with at least standards 11 and 12 of the 2004 Land Trust Alliance Standards and Practices. The LTA standards and practices strive to establish a uniform set of ‘best practices’ for the conservation community and VHCB supports their recommendations.

Proven Track Record:

Before becoming a primary steward of VHCB-held easements, VHCB prefers organizations have an established stewardship program responsible for the monitoring and enforcement of existing non-VHCB easements. Groups should have a track record of holding and enforcing easements that demonstrates their compliance with LTA standards, their organizational capacity to run a successful stewardship program, and to establish confidence in their ability to serve as a primary steward of VHCB’s interests. Groups should also have existing policies on easement amendments, monitoring, and endowment management.

Organizational Capacity:

Related to the first two criteria, groups interested in serving as primary steward of VHCB easements must demonstrate both the staff capacity and long term financial capacity for stewarding perpetual encumbrances. Groups must have the staff, trained volunteer, or contractors necessary to perform annual monitoring, to create Baseline Documentation Reports for new projects, to field and answer questions from landowners of conserved properties, and to make recommendations to the other co-holders on how best to proceed when faced with a landowner request or a violation situation. For easement monitoring, groups may employ paid staff, board members, volunteers, or any combination thereof, provided the organization can document the professionalism, training, and results of their monitoring efforts.

Likewise, organizations must also maintain a permanent stewardship fund to support their ongoing stewardship work. This fund most often takes the form of an endowment, where the principal largely remains untouched but provides sufficient interest to fund, in whole or part, the organization’s annual stewardship budget.

Use of Approved Easement Templates for VHCB projects:

VHCB has developed a comprehensive set of approved easement templates for the range of conservation projects funded by the Board. It is VHCB’s expectation that primary stewards will draft easements for new co-held projects based on these templates. Individual projects require individual attention and VHCB understands that within the templates details will vary; however, primary stewards should agree that the form and structure of the template will apply to new projects they intend to steward.

Fills a Unique Stewardship Niche:

Many organizations may now, or in the future, meet the above criteria; however, VHCB currently has six (6) existing primary stewards capable of stewarding the majority of VHCB-held easements. These existing primary stewards are listed and described in Appendix A. VHCB may be interested in partnering with new stewards over time, but only with groups that may fill a stewardship niche not covered by an existing partner. Though the opportunity may exist for new primary stewardship partners, VHCB is not encouraging the development of new stewardship MOU's at this time. Applicants who are not already primary stewards for co-held VHCB projects should contact VHCB staff early in the application process to determine what primary steward should be involved in the project's development. That being said, organizations interested in co-holding non-farm easements with VHCB should contact VHCB stewardship staff to discuss the stewardship MOU process and requirements. Exploration of new stewardship partners should take place at the organizational level and outside the context of a specific conservation project.

III. STEWARDSHIP MEMORANDUM OF UNDERSTANDING

If an organization meets the above criteria and is invited to join VHCB as a primary stewardship partner, they will be required to enter into a Stewardship Memorandum of Understanding ("MOU"). The stewardship MOU assigns primary stewardship responsibilities to one of the easement co-holders and sets forth the role of all holders with respect to land owner requests, amendments, violations, enforcement, and so on. Only organizations with a signed stewardship MOU with VHCB are eligible to receive a stewardship endowment from VHCB. VHCB provides a per project payment into the primary steward's endowment to help fund the perpetual stewardship of each co-held easement.

VHCB may choose to co-hold an easement with an organization that has not yet executed a stewardship MOU with VHCB only if VHCB is confident in that organization's ability to establish an acceptable stewardship program and execute a MOU in a reasonable period of time after the easement is executed. In these instances, VHCB will withhold disbursement of the stewardship endowment portion of the grant award and act as the primary easement steward until a stewardship MOU has been signed.

If an applicant has not entered into a stewardship MOU with VHCB, and will not serve as an easement co-holder, VHCB is still willing to involve the organization in the long-term management of the property. VHCB may offer the organization an executory interest in the easement, or simply agree to include the organization in any substantial stewardship discussions involving the property in question. VHCB appreciates the work of all our non-profit partners and is open to creative means of involving project applicants in the long-term stewardship of the lands they've helped to conserve.

VHCB Conservation Easement Primary Stewardship Partners (as of February 2005)

Green Mountain Club (GMC) – VHCB’s primary steward for non-farm conservation projects involving the Long Trail corridor, land adjacent to or significantly affecting the Long Trail corridor, and other conserved hiking lands in Vermont.

Lake Champlain Land Trust (LCLT) – VHCB’s primary steward for non-farm conservation projects involving Lake Champlain islands and shoreline, or projects that may affect the water quality of the lake or the wetland habitats associated with the Lake.

The Nature Conservancy of Vermont (TNC) – TNC serves as primary steward for easements they co-hold with VHCB that protect important natural communities across the state. TNC also serves a more limited stewardship role on TNC fee lands, which are managed as wildlife reserves, and conserved with VHCB-held easements.

Preservation Trust of Vermont (PTV) – VHCB’s primary steward for all outstanding historic structures encumbered by historic preservation easements funded by the Board.

Stowe Land Trust (SLT) – VHCB’s primary steward for projects in the Stowe region developed by SLT. SLT is generally only involved as primary steward on projects they initiate, but may serve as a stewardship resource to other groups working in the area.

Upper Valley Land Trust (UFLT) – One of two primary stewards of VHCB farm projects, as well as steward of some non-farm projects in the Upper Valley. Focus area is the Upper Connecticut River Valley.

Vermont Land Trust (VLT) – One of two primary stewards of VHCB farm projects and steward of non-farm community conservation projects. VLT is a statewide organization.

Land Trust Alliance 2004 Standard #11 and Practices

Standard 11: Conservation Easement Stewardship

The land trust has a program of responsible stewardship for its easements.

Practices

- A. Funding Easement Stewardship. The land trust determines the long-term stewardship and enforcement expenses of each easement transaction and secures the dedicated or operating funds to cover current and future expenses. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose. (See 6G.)
- B. Baseline Documentation Report. For every easement, the land trust has a baseline documentation report (that includes a baseline map) prepared prior to closing and signed by the landowner at closing. The report documents the important conservation values protected by the easement and the relevant conditions of the property as necessary to monitor and enforce the easement. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulations §1.170A-14(g)(5)(i)] are signed by the landowner at closing.
- C. Easement Monitoring. The land trust monitors its easement properties regularly, at least annually, in a manner appropriate to the size and restrictions of each property, and keeps documentation (such as reports, updated photographs and maps) of each monitoring activity.
- D. Landowner Relationships. The land trust maintains regular contact with owners of easement properties. When possible, it provides landowners with information on property management and/or referrals to resource managers. The land trust strives to promptly build a positive working relationship with new owners of easement property and informs them about the easement's existence and restrictions and the land trust's stewardship policies and procedures. The land trust establishes and implements systems to track changes in land ownership.

- E. Enforcement of Easements. The land trust has a written policy and/or procedure detailing how it will respond to a potential violation of an easement, including the role of all parties involved (such as board members, volunteers, staff and partners) in any enforcement action. The land trust takes necessary and consistent steps to see that violations are resolved and has available, or has a strategy to secure, the financial and legal resources for enforcement and defense. (See 6G and 11A.)

- F. Reserved and Permitted Rights and Approvals. The land trust has an established procedure for responding to landowner required notices or requests for approvals in a timely and consistent manner, and has a system to track notices, approvals and the exercise of any significant reserved or permitted rights.

- G. Contingency Plans/Backups. The land trust has a contingency plan for all of its easements in the event the land trust ceases to exist or can no longer steward and administer them. If a backup grantee is listed in the easement, the land trust secures prior consent of the backup grantee to accept the easement. To ensure that a backup or contingency holder will accept an easement, the land trust has complete and accurate files and stewardship and enforcement funds available for transfer. (See 11H.)

- H. Contingency Plans for Backup Holder. If a land trust regularly consents to being named as a backup or contingency holder, it has a policy or procedure for accepting easements from other land trusts and has a plan for how it will obtain the financial resources and organizational capacity for easements it may receive at a future date. (See 11G.)

- I. Amendments. The land trust recognizes that amendments are not routine, but can serve to strengthen an easement or improve its enforceability. The land trust has a written policy or procedure guiding amendment requests that: includes a prohibition against private inurement and impermissible private benefit; requires compliance with the land trust's conflict of interest policy; requires compliance with any funding requirements; addresses the role of the board; and contains a requirement that all amendments result in either a positive or not less than neutral conservation outcome and are consistent with the organization's mission.

- J. Condemnation. The land trust is aware of the potential for condemnation, understands its rights and obligations under condemnation and the IRC, and has appropriate documentation of the important conservation values and of the percentage of the full value of the property represented by the easement. The land trust works diligently to prevent a net loss of conservation values.

- K. Extinguishment. In rare cases, it may be necessary to extinguish, or a court may order the extinguishment of, an easement in whole or in part. In these cases, the land trust notifies any project partners and works diligently to see that the extinguishment will not result in private inurement or impermissible private benefit and to prevent a net loss of important conservation values or impairment of public confidence in the land trust or in easements.
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Appendix C

Land Trust Alliance 2004 Standard #12 and Practices

Standard 12: Fee Land Stewardship

The land trust has a program of responsible stewardship for the land it holds in fee for conservation purposes.

Practices

- A. Funding Land Stewardship. The land trust determines the immediate and long-term financial and management implications of each land transaction and secures the dedicated and/or operating funds needed to manage the property, including funds for liability insurance, maintenance, improvements, monitoring, enforcement and other costs. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose. (See 6G.)
- B. Stewardship Principles. The land trust establishes general principles to guide the stewardship of its fee-owned properties, including determining what uses are and are not appropriate on its properties, the types of improvements it might make and any land management practices it will follow.
- C. Land Management. The land trust inventories the natural and cultural features of each property prior to developing a management plan that identifies its conservation goals for the property and how it plans to achieve them. Permitted activities are compatible with the conservation goals, stewardship principles and public benefit mission of the organization. Permitted activities occur only when the activity poses no significant threat to the important

conservation values, reduces threats or restores ecological processes, and/or advances learning and demonstration opportunities.

- D. Monitoring Land Trust Properties. The land trust marks its boundaries and regularly monitors its properties for potential management problems (such as trespass, misuse or overuse, vandalism or safety hazards) and takes action to rectify such problems.
- E. Land Stewardship Administration. The land trust performs administrative duties in a timely and responsible manner. This includes establishing policies and procedures, keeping essential records, filing forms, paying insurance, paying any taxes and/or securing appropriate tax exemptions, budgeting, and maintaining files.
- F. Community Outreach. The land trust keeps neighbors and community leaders informed about its ownership and management of conservation properties.
- G. Contingency Backup. The land trust has a contingency plan for all of its conservation land in the event the land trust ceases to exist or can no longer manage the property. To ensure that a contingency holder will accept the land, the land trust has complete and accurate files and stewardship funds available for transfer.
- H. Nonpermanent Holdings. When a land trust holds fee land with the intention to sell or transfer the land, the land trust is open about its plans with the public and manages and maintains the property in a manner that retains the land trust's public credibility. (See 8L.)
- I. Condemnation. The land trust is aware of the potential for condemnation, understands its rights and obligations under condemnation, and works diligently to prevent a net loss in conservation values.