



## CONSERVATION EASEMENT DONATIONS

A donation of a conservation easement protects your land from development for all future generations. The land continues to be privately owned but it carries with it protective restrictions that limit some future uses. These protections are forever upheld by the Vermont Land Trust through its stewardship staff.

A conservation easement is a voluntary legal agreement entered into between a landowner and a qualified conservation organization such as the Vermont Land Trust (VLT), or a government entity. In order to protect the land's natural resource values, each easement permanently limits a property's uses.

Easements accepted by VLT are perpetual. An easement "runs" with the land—it is recorded in the local land records and is binding on both the present and future owners of that property.

Conservation easements offer several advantages to landowners:

- They leave the property in private ownership. Owners may continue to live on the land, may sell it, or leave it to their heirs.
- Most management decisions that usually fall to landowners continue to do so; for example the decision whether to allow hunting, farming, forestry, and public access.
- Easements can reduce income and estate taxes. A conservation easement gift is considered a charitable donation and may provide an income tax deduction. In restricting the overall value of the land through a conservation easement, the landowner also reduces the total value of his or her estate. For some, this can make the difference between having the land sold to pay estate taxes and being able to leave the property to children.
- Easements are flexible and easily tailored to a family's needs. Conservation easements can be written to reflect the special needs and vision of each landowner, as well as the unique features of the land.
- Easements are permanent. Conservation easements remain in force even after the land changes hands. Unlike deed restrictions, a conservation easement is forever upheld by VLT as an interested party whose goal is to protect the easement.

### **LANDS PROTECTED THROUGH A CONSERVATION EASEMENT**

Most of the easements that the Vermont Land Trust accepts cover farmland, managed forestland, recreational land, natural habitat, and open land with substantial scenic or community value. Occasionally VLT also accepts easements on lands with primarily historic value. VLT's decision to accept a conservation easement is guided by a set of project selection criteria.

### **RIGHTS RETAINED BY THE LANDOWNER WITH A CONSERVATION EASEMENT**

The landowner continues to own the property conserved by an easement and retains certain rights of use that the easement specifies. Examples of retained rights include the right to:

- Engage in agricultural pursuits;
- Manage woodlands and conduct maple sugaring operations;
- Build and maintain barns and other farm structures;
- Clear, construct, and maintain trails for non-commercial recreational activities;

- Construct a seasonal camp for personal use;
- The easement may allow a pre-determined number of future residential subdivisions, provided the land's conservation values can be protected.

### **RESTRICTIONS PLACED ON THE LANDOWNER BY A CONSERVATION EASEMENT**

The landowner's use of property conserved by an easement is generally subject to these provisions:

- Uses are commonly limited to those that involve agriculture, forestry, education, non-commercial recreation, and open space;
- Commercial, industrial, and mining activities are prohibited;
- New buildings are prohibited, except those constructed for agricultural or forestry purposes, or house sites specifically negotiated in advance;
- Signs are generally prohibited, except for informational and directional signs related to the property; e.g. "Posted" signs, if desired, by the owner.
- Excavation or any change of topography is not allowed, except when necessary to carry out a permitted use;
- With limited exceptions, subdivisions are generally prohibited; and
- Other unanticipated future uses that are inconsistent with the original owner's conservation goals are prohibited. This ensures that VLT has the ability to carry out the original landowner's intent in perpetuity.

### **CONSERVATION EASEMENTS AND PUBLIC ACCESS**

Conservation easements require the landowner to allow VLT staff reasonable access in order to perform regular monitoring visits, but does not give the general public the right to use the property. However, the landowner may wish to include a specific public access provision in the easement. Examples might include a trail easement for hikers, snowmobilers, and cross country skiers, or fishing access along a river or shoreline.

### **HOW EASEMENTS ARE MONITORED AND ENFORCED**

Recognizing how important it is that all our easements are monitored and enforced over the long term, VLT's Conservation Stewardship Program performs both educating and monitoring functions.

For every easement a baseline documentation report is created before closing describing the land's physical and resource attributes. After the project has closed, the Stewardship staff will annually schedule appointments to visit each property and discuss any changes or future plans with the landowner. VLT also supplements its ground monitoring efforts with aerial monitoring. If a violation is discovered, the stewardship staff will attempt to personally contact the landowner in an effort to correct the problem. If this is unsuccessful, VLT will file a court enforcement action. So far, the few violations of VLT's easements that have been discovered have all been corrected voluntarily.

### **TAX BENEFITS OF DONATING CONSERVATION EASEMENTS**

A charitable income tax deduction may be available for a gift of a conservation easement to a qualified organization like the Vermont Land Trust. Under Internal Revenue Code Section 170(h), deductions may be taken for perpetual conservation easements if they are given "exclusively for conservation purposes."

This requirement can be met if the easement conserves land that:

- Involves significant farmland, forestland and open space that either provides scenic enjoyment for the public, furthers public conservation policies, or includes historical important land or buildings.
- Includes relatively natural habitats for fish, wildlife, plants, or similar ecosystems; or
- Is used by the public for outdoor recreation or education.

The donor may take a charitable income tax deduction for the easement's value, which is determined by a qualified appraisal. A qualified appraiser must prepare the appraisal, and the document must fulfill certain regulatory standards. To secure a deduction, a summary of this appraisal must be submitted on IRS Form 8283 with the donor's income tax return for the year of the gift. For donations valued in excess of \$500,000, the complete qualified appraisal report must be appended to the tax return. The deduction may not exceed 30 percent of the donor's adjusted gross income, but any unused portion can be carried over for up to five more years. Vermont's income tax is a percentage of the federal tax, so an easement donation may also reduce state income taxes.

**Special Incentive for 2006-07 easements. As part of the 2006 Pension Protection Act, Congress created an additional incentive for conservation easements donated in 2006 or 2007. Donors are allowed to deduct up to 50% (instead of 30%) of their adjusted gross income in the year of the gift, and may carry over any unused deduction for up to 15 (instead of 5) years. For more information, contact VLT and consult with your financial or legal advisor.**

Finally, a conservation easement can reduce potential estate tax liability. The value of conserved property for estate tax purposes must take into consideration any reduction in property value resulting from the donation of an easement.

#### **ADVICE LANDOWNERS SHOULD SEEK BEFORE DONATING A CONSERVATION EASEMENT**

The Vermont Land Trust can provide a wide range of information about conservation easements, other conservation options, and the effects of conservation easements on taxes. However, a land trust cannot provide legal or financial advice, nor can it guarantee that a deduction will be realized.

Conservation easements are perpetual and involve a technical area of the law. Each landowner should consult with his or her own attorney to review the conservation easement in detail. If income or estate tax benefits are important, the landowner may also wish to consult with an accountant or tax planner. VLT does not recommend specific advisors but can provide donors with a list of attorneys and accountants who have expertise in the area.

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