



Vermont Land Trust

CONSERVING LAND FOR THE FUTURE OF VERMONT

CONSERVATION EASEMENTS: GUIDE TO THE LEGAL DOCUMENT

This guide summarizes the standard legal document used by the Vermont Land Trust (VLT) for donated conservation easements. VLT can be flexible about some terms of each conservation easement and VLT staff can assist landowners by preparing a document that meets each landowner's specific needs. This guide only summarizes the conservation easement. Before donating an easement, each landowner must be familiar with the terms of the legal document itself and should seek the advice of an attorney.

Each conservation easement includes the following sections:

A. INTRODUCTION

The easement begins with a series of "whereas" clauses which summarize the public benefit that comes from permanently conserving land in Vermont. All easements held by VLT are perpetual and "run with the land," meaning that the easement remains no matter how the property is transferred or who the future owners are. While an easement can, in theory, be amended with the consent of VLT, such changes are extremely rare and only occur where the amendment does not reduce the protection of conservation values. A "schedule" attached to the easement describes the "protected property" conserved by the document.

B. STATEMENT OF PURPOSES

The easement begins with the statement that the document's primary purpose is to "conserve productive agricultural and forestry uses, wildlife habitats, non-commercial recreational opportunities and activities, and other natural resource and scenic values of the Protected Property for present and future generations." This clause in each easement is tailored to identify the unique attributes of each property. This statement of purposes provides a basis for interpreting the easement.

C. RESTRICTED USES OF PROPERTY

This section of each easement identifies the following limitations on the landowner's use of the conserved property:

1. **General:** A conserved property may be used for agricultural, forestry, educational, non-commercial recreational, and open space purposes only. Unless specified in the easement, no residential, commercial, industrial, or mining activities are permitted.
2. **Rights of Way and Easements:** The easement prohibits rights of way and access easements including driveways, roads, and utility lines unless specifically permitted in the document or unless permission for new easements is obtained from VLT. Existing rights of way and easements are unaffected.
3. **Signs:** Signs are generally prohibited. However, exceptions to this general rule include property identification signs, boundary markers, directional signs, signs posting the property against trespass, memorial plaques, and temporary signs indicating the property is for sale or lease. Signs informing the public that farm or timber products are for sale or are being grown are also permitted. VLT, with the permission of the landowner, may erect signs indicating that the property has been conserved by VLT.
4. **Trash:** The storage of trash, human waste or unsightly material on the property is prohibited unless VLT approves such storage in advance. The storing and spreading of manure, lime and other fertilizer for agricultural purposes is permitted without such approval.

5. **Excavation:** The easement prohibits filling, excavation, removal of topsoil, sand, gravel, rocks, or minerals, or any change to topography unless the change is necessary to carry out the uses otherwise permitted by the conservation easement. Because one purpose of the easement is to encourage agricultural uses, tiling and drainage improvement are permitted (*see paragraph D(5)* below). Surface mining is expressly prohibited. In rare cases and under specific conditions, sand and gravel extraction for forestry or agricultural use on the property may be permitted.
6. **Subdivision:** Subdivision of the property is prohibited unless the owner first secures VLT's written permission, or unless the easement includes the clause described in *paragraph D(9)* below. VLT may allow a subdivision if the transfer would not hinder farm or forestry activity on the retained land. Any subdivided parcel remains protected by the conservation easement.
7. **General Clause:** The easement includes a general clause which ensures that no uses will be made of the property that are inconsistent with the purposes of the conservation easement, as described in *Section B*, above.

D. PERMITTED USES OF THE PROPERTY

This section of each easement identifies the following permitted activities on and uses of the conserved property:

1. **Agriculture:** The landowner may establish, re-establish, maintain, and use fields, orchards and pastures in accordance with generally accepted agricultural practices and sound husbandry principles; however, the landowner must obtain written permission from VLT prior to clearing forestland. Construction and maintenance of farm roads is also permitted by this clause. If a question arises concerning what are "sound agricultural and husbandry practices," VLT will seek the advice of professionals in those fields such as the Soil Conservation Service, UVM Extension System or the Vermont Agency of Agriculture, Food & Markets.
2. **Maple Sugaring and Firewood Cutting:** The landowner may conduct maple sugaring operations and harvest firewood for heating residences and other buildings on the property.
3. **Forest Management:** VLT requires the development of a forest management plan to promote the long-term health and sustainability of forest land. The landowner may harvest timber and construct and maintain logging roads in accordance with a forest management plan which has been approved by VLT. Please see the VLT bulletin entitled "Managing and Harvesting Woodland" for a detailed explanation of forest management plan requirements. The easement may allow "heavy cutting" if consistent with the purposes of the Grant or for silvicultural reasons identified in the forest management plan, or required because of the natural occurrence of fire, wind or insect damage.
4. **Farm Buildings:** The landowner may construct and maintain barns, sugar houses and similar structures on the property (and associated drives and utilities) provided they are used for agricultural or forestry purposes. The owner must obtain prior written approval from VLT, and permission will be granted if the location of new structures is consistent with the easement's purposes as described in *Section B*.
5. **Water Resources:** The landowner may improve and establish sources, courses and bodies of water for uses permitted under the conservation easement. The easement requires that the natural course of existing surface water drainage and runoff not be unnecessarily disturbed, except where required to improve the drainage of agricultural lands. The construction of ponds and reservoirs is permitted with the prior written consent of VLT. Water resources are required to be protected during and after timber harvesting operations by applying Acceptable Management Practices (AMP's) as defined by the Department of Forests, Parks and Recreation.
6. **Trails:** The landowner may clear, construct and maintain trails for non-motorized recreational activities. Snowmobiling, hunting and trapping are left to the discretion of the landowner. Unless the easement specifically provides otherwise [see *Section G(1)*, below], the owner is not required to permit public use of the property.

7. **Existing Homestead:** Any existing homestead is generally excluded from the “protected property” unless it makes a significant contribution to the conservation goals of the easement. When the homestead is included, the easement normally identifies a “Homestead Complex” area, within which the owner is entitled to maintain, repair, renovate, enlarge or rebuild the existing dwelling and associated improvements without VLT’s prior approval. However, no new dwellings can be constructed nor can the Homestead Complex be conveyed separate from the protected property (except as may be provided in *paragraph D(9)* below).
8. **Additional House Sites:** The easement may allow the construction of one or more additional residences with associated improvements, provided the landowner first obtains VLT’s approval for the location of each dwelling. The location of new homes must be consistent with the easement’s purposes as described in *Section B*.
9. **Subdivision:** The easement may allow subdivision of the property to create a parcel for each house site permitted under *paragraph D(8)* above. The location of subdivision boundaries must be consistent with the easement’s purposes as described in *Section B*.

E. ENFORCEMENT OF THE EASEMENT

Under this section of the easement, VLT accepts the responsibility of monitoring the property and, if necessary, enforcing the terms of the easement. If a violation occurs, VLT will attempt to contact the landowner personally to secure voluntary compliance, and VLT is required to notify the landowner by certified mail of the action required to correct the violation. The Vermont Land Trust may enforce the easement in court if the violation is not corrected. VLT will work with the landowner to voluntarily correct any violation of the conservation easement to avoid court enforcement. However, when voluntary efforts fail and a significant violation has occurred, it may be necessary to seek injunctive relief, an order requiring correction of the violation, or an award of monetary damages. The owner may be required to reimburse VLT for its enforcement expenses.

F. MISCELLANEOUS PROVISIONS

Each easement includes the following additional “miscellaneous” clauses:

1. The Vermont Land Trust may request reimbursement from the landowner for extraordinary staff and other costs when the owner seeks prior written approval from the VLT for new structures, ponds, etc., should the review process become unreasonably time consuming or complicated. If a landowner requests written approval as part of the periodic monitoring process and provides the Vermont Land Trust with all information necessary to review the request, reimbursement will not be sought.
2. The easement requires the landowner to comply with any state or local regulations which govern uses of or construction on the conserved property.
3. VLT may only transfer the conservation easement to a state agency, town or a qualified conservation organization which agrees to enforce the easement.
4. In the unlikely event the easement is extinguished by eminent domain or other legal proceedings, VLT is entitled to any extinguishment payment for the value of the conservation easement.
5. Any future deed or lease conveying an interest in the property must refer to the conservation easement. The landowner must also notify VLT of the names and addresses of any new landowner. This assures that new owners are aware of the conservation easement and provides VLT with the opportunity to contact new owners to discuss the easement.

G. OTHER SPECIAL PROVISIONS

Depending on the special circumstances of each conservation property, one or more of the following provisions may be included:

1. **Public access:** A clause permitting public access to the property, normally confined to an identified trail, for such purposes as walking, skiing or gaining access to a water body or other feature of public interest. Improvement of any such access and general public use cannot occur until a responsible organization has been identified to manage the access.
2. **Historic preservation easement:** When structures or sites with rare historical or archeological value are present, special provisions protecting those structures and sites may be included in the easement.
3. **Habitat protection:** When specialized habitats are located on the property such as a deer wintering area or bear habitat, easement language can be added to protect the habitat from intrusive activities/

H. OTHER IMPORTANT INFORMATION

1. **Encumbrances:** All mortgages, liens or similar encumbrances on title to the property must either be discharged or subordinated to the conservation easement. This prevents termination of the easement in the unlikely event of a foreclosure.
2. **Tax Deduction:** A landowner who seeks a charitable income tax deduction for the gift of a conservation easement must comply with a variety of Internal Revenue Code and regulatory requirements. Please refer to VLT's bulletin entitled "Tax Benefits of Donating Conservation Easements."
3. **Independent Advice:** The donation of a conservation easement can involve a variety of legal, tax, estate and family issues. Donors should obtain the advice of qualified legal and financial advisors before making such an easement donation.

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