



## LAND CONSERVATION OPTIONS

Each decision to conserve a property is a personal one. It involves the landowner's financial and tax circumstances, the land resource itself, and most important, the owner's vision for the future of that land. Because every situation is unique, the Vermont Land Trust offers several different means of conserving those productive and scenic lands that give Vermont and its communities their rural character.

For landowners who share the goals of the Vermont Land Trust (VLT), the options described here may provide means to achieve a personal dream: that of forever protecting an important part of the landscape. Some of these conservation tools involve project costs and long-term stewardship costs. How these costs are covered depends on individual project circumstances.

### **DONATION OF A CONSERVATION EASEMENT**

The conservation easement is the most widely used land protection tool available to landowners. Donating a conservation easement protects the land permanently, yet keeps it in private ownership. Easements are flexible and tailored to meet a landowner's needs. As part of giving a conservation easement, the landowner, working with the Vermont Land Trust, identifies specific permitted uses of the property. These normally include agriculture, forestry, recreation, and other open space uses. The easement limits or prohibits certain activities, including industrial, commercial, and residential development.

Conservation easements are designed to conserve forever the important resource values of each property. An easement may cover portions of a property or the entire parcel. It is legally binding for all future owners and will be monitored and enforced by VLT's Conservation Stewardship staff.

The donation of a conservation easement to VLT normally qualifies as a charitable contribution, which may entitle the donor to a charitable income tax deduction for the easement's value. The value of this type of charitable gift is based on "before" and "after" appraisals—the first assessing the land's value before the conservation easement is in place, the second assessing its value afterwards. The difference between the two appraisals is considered the value of the conservation easement.

### **DONATION OF LAND**

An outright gift of land for conservation is one of the most generous legacies a landowner can make to future generations. Throughout Vermont there are parks, shorelines, forestlands, and scenic open spaces that the public enjoys because of the long-term vision of conservation-minded landowners.

Donating land can have many benefits for a landowner. It can be a relatively simple and quick transaction that:

- assures the permanent protection of a family property;
- provides a charitable income tax deduction for the full fair market value of the land;
- avoids capital gains taxes on appreciated land, which otherwise would be due at the time of a sale;
- removes the property from the donor's taxable estate;
- releases the donor from the expense and the responsibility of managing the land; and
- provides long-term support for VLT.

VLT believes that, in most cases, private owners are the best long-term managers of land. Therefore, when VLT receives a gift of land with conservation value, it places a permanent conservation easement on the property and sells the land. VLT uses the proceeds to protect other conserved lands throughout Vermont. In cases where land provides important public benefit, VLT may convey the gifted property to government agencies to ensure that the public will own and enjoy the property for the long term.

#### **DONATION OF A REMAINDER INTEREST**

A landowner can donate land and continue to live on it during his or her lifetime. This is known as a gift of a remainder interest, or a gift of land with a reserved life estate.

With a gift of a remainder interest, the donors and their beneficiaries reserve the right to continue to live on and continue to use the property during their lifetimes. At the end of the specified life interests, full title and control of the property automatically transfers to VLT. In most cases VLT resells the land, subject to a permanent conservation easement. Thus, the final outcome is very similar to that of an outright gift of land.

The donation of a remainder interest offers several advantages:

- the donors continue to use and enjoy the property throughout their lifetimes;
- the property is permanently conserved;
- the donor may be entitled to an income tax deduction when the gift is made, if the property is a personal residence, farm, or land having conservation value; and
- the proceeds from the sale of the property will support VLT's statewide land conservation program after the life interests conclude.

#### **BEQUEST AND LIVING TRUST**

Many landowners wish to retain maximum flexibility during their lifetimes and choose to carry out their conservation plans through a bequest or a living trust. Landowners can conserve important lands by donating property or donating a conservation easement through their Wills.

A bequest is a provision in the landowner's Will or a codicil (a Will amendment) that instructs the estate's executor to convey land or a conservation easement to VLT. A living trust can achieve the same results but avoids the probate process.

Both the bequest and the living trust can assure the permanent protection of the land, permit the donor to control the property during his or her lifetime, and may reduce the donor's taxable estate. In either case, the terms of an easement can be developed through discussions between the landowner and VLT, to achieve the goals of both.

### **PURCHASE OF CONSERVATION EASEMENTS**

VLT purchases conservation easements primarily on outstanding operating farms that are eligible for the Vermont Housing and Conservation Board's farmland conservation program. VLT has also, in a few instances, purchased easements on land that a community has identified as extremely important. In each of these cases, private contributions and/or public grants make the purchase possible.

A two-step appraisal process determines the purchase price of the easement. The property is valued before and after the land is restricted. The difference between these appraisals is the value of the conservation easement and the amount funders can pay.

### **BARGAIN-PURCHASE OF EASEMENTS AND LAND**

Another approach with advantages to both the landowner and VLT is a bargain-purchase. The landowner sells a conservation property or easement to VLT at less than full market value and donates the remaining value. For the landowner, this combines the income-producing aspects of a land sale with the tax benefits of a donation. The difference between the fair market value (as determined by appraisal) and the sale price is treated as a charitable contribution and can significantly reduce any capital gains taxes payable on the sale. For VLT, bargain purchases make land and easement purchases more affordable.

### **PURCHASE OF LAND**

Occasionally, VLT is called upon to protect a parcel that has exceptional resource value of local, regional, or statewide significance. Such purchases depend on public and private fundraising. VLT rarely retains ownership of the land for the long-term. In some cases our role is to facilitate public ownership—we will convey properties to public agencies to be used as public recreation areas, state wildlife areas, state or national forests, or historic sites. Other lands may be sold to a private landowner subject to a conservation easement that permanently conserves the land's resource values. In rare circumstances, VLT will also use this approach to conserve uniquely important farmland that is at risk of development.

**RIGHT OF FIRST REFUSAL OR OPTION**

These two legal tools provide for future land conservation:

- 1) When the owner of an important conservation property cannot afford to donate or bargain-sell the property to VLT and is not ready to discuss a conservation plan, the owner might consider a right of first refusal. This right provides VLT with the opportunity to match a purchase offer received by the owner at a future time if and when the owner elects to sell the property.
- 2) An option agreement is a contract under which the owner offers VLT a fixed period of time (normally a period of three to twelve months) within which to make a decision to purchase either a conservation easement or the property outright. VLT is not required to exercise its right to purchase but can, instead, use the option period to develop a conservation plan and seek funding sources to conserve the property. The option agreement either specifies a fixed purchase price or identifies a method—such as appraisal—by which the purchase price will be determined. An option can also provide for a bargain-sale of the easement or conservation property.

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