



OPERATING FARM EASEMENTS: GUIDE TO THE LEGAL DOCUMENT

This guide summarizes the standard legal document used by the Vermont Land Trust (VLT) for conservation easements that are donated or sold to VLT to protect operating farms. The Vermont Land Trust can be flexible about some terms of the Permitted Uses section of the conservation easement and VLT staff can assist farmers by preparing a document that meets each landowner's specific needs. When conservation easements are purchased by VLT with the financial assistance of the Vermont Housing and Conservation Board (VHCB), final approval of the document rests with VHCB. This guide only summarizes the conservation easement. Before donating or selling an easement, each landowner must be familiar with the terms of the legal document itself and should seek the advice of an attorney as early in the process as possible. Each conservation easement typically includes the following sections:

A. INTRODUCTION

Conservation easements on operating farms are usually purchased by VLT with the assistance of VHCB. In these cases, VLT, VHCB, and the Vermont Agency of Agriculture (VAAF) are “co-holders” of the easement. All such easements are perpetual and “run with the land,” meaning that the easement remains no matter how the farm is transferred or who the future owners are. While an easement can, in theory, be amended with the consent of the co-holders, 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. PURPOSES OF THE GRANT (SECTION I)

This section defines the “Purposes of the Grant” which govern virtually all the decisions made in interpreting the conservation easement. The easement begins with the statement that the document's primary purpose is to “conserve productive agricultural and forestry lands and soil resources in order to facilitate active and economically viable farm use . . . now and in the future.” The easement's second objective is to “conserve scenic and natural resources . . . to improve the quality of life for Vermonters, and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside.” This section then goes on to identify the unique attributes of the particular farm.

C. RESTRICTED USES OF THE PROTECTED PROPERTY (SECTION II)

This section 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 structures or residential, commercial, industrial, or mining activities are permitted.
2. **Agricultural Use:** In the event farmland falls into disuse, the owner must cooperate in efforts VLT might undertake to keep the land in open, agricultural use.
3. **Rights of Way and Easements:** The easement prohibits rights of way including driveways, roads and utility lines unless specifically permitted in the document or unless permission for new easements is first obtained from VLT. Existing rights of way and easements are unaffected.
4. **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 or hunting, 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. Also, political or religious signs are allowed; as are signs that indicate a rural enterprise that VLT has approved. The Vermont Land Trust, with the permission of the landowner, may erect signs indicating that the property has been conserved by VLT, VHCB, and VAAFM.

5. **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. No permission is required for temporary storage of trash generated on the property.
6. **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 improvements are permitted [see paragraphs D (1) and (4), 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 with VLT's approval.
7. **NRCS Conservation Plan:** Currently, the easement requires the landowner to cooperate with the Natural Resources Conservation Service ("NRCS") in developing and implementing a conservation plan for highly erodible land. The easement provides that, in the event of noncompliance with the NRCS conservation plan, NRCS shall work with the landowner to explore methods of achieving compliance. If the NRCS standards and specifications for highly erodible land are changed after the date of the easement, NRCS and the landowner will work cooperatively to develop and implement a revised conservation plan.
8. **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 I (1), below. VLT may allow a subdivision of the farm—transfer of a pasture to a neighboring farm, for example—if the transfer would assist the neighboring farm operation without hindering farming activity on the retained farmland. Any subdivided parcel remains protected by the conservation easement.
9. **General Clause:** The easement includes a general clause ensuring that no uses will be made of the property that are inconsistent with the Purposes of the Grant, as described in Section B above.

D. PERMITTED USES OF THE PROTECTED PROPERTY (SECTION III)

This section 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 principals. Approval from VLT is needed to clear-cut forestland to establish fields, orchards and pastures. Construction and maintenance of farm roads and fences 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 Natural Resource Conservation Service, UVM Extension System, or the Vermont Agency of Agriculture.
2. **Forest Management:** The landowner may harvest timber and conduct maple sugaring operations, along with the right to construct and maintain logging roads for those purposes. The harvesting of timber must be in accordance with a forest management plan that has been approved by VLT. However, a plan is not required for maple sugaring operations or harvesting firewood, along existing woods roads only, for heating residences and other buildings on the

property. Generally, if a forest management plan is prepared by a professional forester and is approved by the County Forester, it will be approved by VLT.

3. **Farm Buildings:** The landowner may construct and maintain barns, sugarhouses 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 may be granted if the location of new structures is consistent with the Purposes of the Grant as described in Section B above. VLT may require that new structures be located in a complex. Under current NRCS requirements, no more than 2% of the total conserved land can be covered by impervious surfaces. If the farm has river frontage, VLT may restrict new structures in the area where the river may change its course.
4. **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 and reduce soil erosion, and that all applicable laws and regulations be followed. The construction of ponds and reservoirs is permitted with the prior written consent of VLT. The landowner must notify VLT before putting a structure into a stream or “armoring” a streambank.
5. **Trails:** The landowner may clear, construct, and maintain trails for non-motorized, non-commercial recreational activities. Snowmobiling, hunting, and trapping are left to the discretion of the landowner. Unless the easement specifically provides otherwise (see Section I (3) below), the owner is not required to permit public use of the property.
6. **Farmstead Complex:** The easement may create a “Farmstead Complex” area or the easement may exclude the entire farmstead area. The boundaries are depicted on a plan prepared before the easement is signed. If the farmstead complex is included within the easement, no approval is required when the owner renovates, repairs, or enlarges existing farm structures or constructs new non-residential structures, as long as these improvements are normally associated with farming. The landowner need only notify VLT that a new structure of this sort is to be constructed. However, no new dwellings can be constructed nor can the Farmstead Complex be sold separately from the protected farm. Farm buildings can be constructed outside the Farmstead Complex, but approval from VLT is required (see Section D (3), above). If the farmstead complex is excluded, then the area is completely unrestricted.
7. **Farm Labor Housing (FLH):** On occasion, the easement may allow additional residences for farm labor or farm owner family use. Other non-residential structures such as a tool shed can be built within the FLH Complex. Most farm easements allow the addition of one farm labor housing unit, provided the landowner first obtains VLT’s approval of the location of the new unit. This new housing cannot be sold separately from the farm and must be occupied by a farm employee or member of the landowner's family. When not needed for farm labor or family members, the housing may be rented only on a short-term basis (one year or less) so the housing can periodically become available for farm labor use.
8. **Rural Enterprises:** With VLT’s prior approval, the landowner may conduct a variety of rural enterprises or non-agricultural businesses as long as they are consistent with the Purposes of the Grant, subordinate to the agricultural business and they are located in a way that minimizes negative impact on existing and future agricultural uses. New buildings for rural enterprises must also be approved in advance and certain restrictions on size, location and appearance would apply.
9. **Septic Systems and Wells:** If it is not possible to locate a state approved septic system or well for a permitted use within a Farmstead Complex (see Section D (6), above), or for a single-family

dwelling on a parcel of land either subdivided with VLT's approval (see Section I (1), below) or excluded from the easement, then VLT may approve the placement of such a system or well on the Protected Property.

E. ENFORCEMENT OF THE RESTRICTIONS (SECTION IV)

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. VLT 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. OPTION TO PURCHASE AT AGRICULTURAL VALUE (OPAV) OR RIGHT OF FIRST REFUSAL (ROFR) (SECTION V)

Each conservation easement includes either a right-of-first-refusal or an option to purchase the property at its agricultural value. This section would include one of these clauses but not both. Both rights are perpetual and apply every time the property is offered for sale. However the right does not apply to any gift or bequest of the property, sale to a family member, or mortgage of the property. In the case of an OPAV, sales to a "qualified farmer" are exempt. Their purpose is to give VLT the opportunity to purchase the land and offer it for resale to another farmer and/or to keep the land affordable for future generations.

OPTION TO PURCHASE AT AGRICULTURAL VALUE gives VLT the right to purchase the property at its agricultural value when it comes up for sale. The agricultural value of the land is set by the appraisal when the property is conserved. At resale, the agricultural value can be adjusted for inflation or a new appraisal can be used to determine the current agricultural value. The value of any structures on the property would be determined by appraisal. VLT and its co-holders have 30 days to respond once an owner notifies them that they have a written offer to purchase the property that they intend to accept. A more complete description of how the OPAV works is available from VLT staff.

RIGHT OF FIRST REFUSAL gives VLT the right to match any purchase offer the owner accepts. VLT and its co-holders have 90 days to respond once a written offer is received.

G. CONTINGENT RIGHT OF THE UNITED STATES OF AMERICA (SECTION VI)

In order to comply with the NRCS funding requirements, the conservation easement currently contains a provision obligating VHCB to monitor and enforce compliance with the terms of the easement. If it fails to do so, the USDA may step in to take enforcement action.

H. MISCELLANEOUS PROVISIONS (SECTION VII)

1. VLT may request reimbursement from the landowner for extraordinary staff and other costs when the owner seeks prior written approval from VLT for unexpected, non-routine requests. VLT will provide written documentation of any action taken on a request for an approval.

2. The easement requires the landowner, at his/her own expense, to comply with any state or local regulations that govern uses of or construction on the conserved property.
3. The easement confirms that the property is accurately depicted on the map and Baseline Documentation Report prepared by VLT and signed by the landowner at closing.
4. VLT may only transfer the conservation easement to a state agency, town or a qualified conservation organization that agrees to enforce the easement.
5. 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.
6. 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.
7. VLT is entitled to rerecord the easement from time to time to avoid termination of the easement by operation of Vermont's Record Marketable Title Act.
8. The conservation easement may be exercised by all or any combination of the three holders. However, action taken by one holder will bind the others.
9. The easement defines what is meant by the words "Grantors," "Grantees," and "family."
10. The easement requires that the landowner continue to pay all real estate taxes.
11. The landowner certifies that there are no known hazardous wastes or substances on the property.
12. The landowner will be responsible for any liability imposed on VLT in the event hazardous waste or substances are released onto the property.
13. If one co-holder acquires the property under the ROFR or OPAV (see Section F, above), then another co-holder shall enforce the easement.
14. Vermont law will govern if the easement needs to be interpreted in court and if one part of the easement is found to be legally invalid, that will not affect the rest of the easement.

I. OTHER SPECIAL PROVISIONS

Depending on the special circumstances of each conserved farm, one or more of the following provisions may be included in the easement:

1. **Subdividable house sites:** Occasionally a landowner may reserve the right to construct a new dwelling and sell that dwelling separately from the farm. The "building envelope" within the subdivided house site will usually be released from the operation of the easement but, if it is sufficiently large, the remainder of the subdivided lot may still be covered by the conservation easement after it is transferred.
2. **Historic preservation or archeological provisions:** In the case of farms that have structures or sites with rare historical or archeological value, special provisions protecting those structures and sites may be included.

3. **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 water 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.
4. **Seasonal Camps and Minor Structures:** Depending on the property, a landowner may reserve the right to construct a non-residential, seasonal camp or other minor structures. Certain restrictions normally apply such as location, size limitations, no utility or improved road access and no commercial use.
5. **Special Treatment Areas.** If unique wildlife habitat or rare and endangered plants exist on the property, provisions may be included that give the area special protection. Additional restrictions may include logging restrictions, a no-plow buffer along a fragile streambank, or other restrictions to protect the integrity of a waterway or fragile natural area.
6. **Right to farm clause for excluded land.** If adjacent land is excluded from the easement, and the land is eventually subdivided and sold separately from the protected property, VLT may require a right to farm clause in the new deed for the benefit of the conserved landowner. The purpose is to give the holders the opportunity to reconnect property to the farm and to prevent conflict with future farming operations.

J. OTHER IMPORTANT INFORMATION

1. **Appraisal:** If the conservation easement is being purchased, an appraisal must be prepared by a qualified appraiser to establish the value of the property before and after the easement is in place. VHCB and/or VLT may contribute to the cost of this appraisal.
2. **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.
3. **Tax Deduction.** A landowner who seeks an income tax deduction for a gift (either a “bargain-sale” or a gift of a conservation easement) must comply with a variety of Internal Revenue Code and regulatory requirements. Please refer to the VLT bulletin entitled “Tax Benefits of Donating Conservation Easements.”
4. **Independent Advice:** The sale or donation of a conservation easement on an operating farm can involve a variety of legal, tax, estate, business, and family issues. Landowners should obtain the advice of qualified legal and financial advisors, and should consult with their lenders before making any decision to sell or donate a conservation easement.

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