

Vermont Housing & 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 either the Vermont Land Trust (“VLT”) or the Upper Valley Land Trust (“UVLT”). Either VLT or UVLT serves as primary steward for farm easements. The Vermont Agency of Agriculture, Food & Markets was a co-holder on all farmland conservation easements until 2016 but now retains an executory interest only.

For most farm easement projects, VLT or UVLT 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. 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 2017 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 2017 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 2017 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 October 2016 )**

**Catamount Trail Association (CTA)** – CTA is the primary steward of trail easements protecting the 300-mile winter trail that parallels the spine of the Green Mountains from Massachusetts to Quebec.

**Cross Vermont Trail Association (CVTA)** – CVTA is the primary steward of trail easements protecting the four-season, multi-use trail that runs the breadth of Vermont from Burlington to Wells River on the Connecticut River.

**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 sole-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 natural area 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 also steward of non-farm community conservation projects, working forests, recreation lands, wildlife habitat and natural area projects. VLT is a statewide organization.

**Vermont River Conservancy (VRC)** – VRC is the primary steward for projects protecting shoreland, swimming holes, gorges, waterfalls, fishing and boating access, paddlers’ trails and river corridors throughout Vermont and occasionally on the New Hampshire side of the Connecticut River.

## Land Trust Alliance 2017 Standard #11 and Practices

### Standard 11: Conservation Easement Stewardship

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

#### Practices

##### A. Funding Conservation Easement Stewardship

1. Estimate the long-term stewardship and enforcement expenses of each conservation easement transaction.
2. Track stewardship and enforcement costs.

##### B. Baseline Documentation Report

1. For each conservation easement, have a baseline documentation report with written descriptions, maps and photographs, that documents:
  - a. The conservation values protected by the easement;
  - b. The relevant conditions of the property as necessary to monitor and enforce the easement.
2. Prepare the report prior to closing and have it signed by the landowner and land trust at or prior to closing.
  - a. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the landowner and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing.
3. When there are significant changes to the land or the conservation easement (such as a result of an amendment or the exercise of a permitted right), document those changes in an appropriate manner, such as through monitoring reports, a baseline supplement or current conditions report.

### C. Conservation Easement Monitoring

1. Adopt a written policy and/or procedure for monitoring conservation easements that establishes consistent monitoring protocols and recordkeeping procedures.
2. Monitor each conservation easement property at least once per calendar year.
  - a. If the land trust uses aerial monitoring, conduct on-the-ground monitoring at least once every five years.
  - b. Promptly document the annual monitoring activities for each conservation easement.

### D. Landowner Relationships

1. Maintain regular contact with owners of conservation easement properties to maintain relationships and avoid potential easement conflicts.
2. Establish systems to track changes in land ownership.
3. When the property changes hands, attempt to meet with the new owner or property manager and provide information in writing about the conservation easement and the land trust's stewardship policies and procedures.

### E. Conservation Easement Enforcement

1. Adopt a written policy and develop written procedures for documenting and responding to potential conservation easement violations.
2. Investigate potential violations in a timely manner and promptly document all actions taken.
3. Involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution.

### F. Approvals and Permitted Rights

1. Respond to landowner required notices or requests for interpretation or approvals in a timely and consistent manner, as specified in the conservation easement deed or in a written procedure.

2. Establish written procedures to guide the land trust's decision-making if using discretionary approvals or if conservation easement deeds contain such clauses.
3. Maintain a permanent record of all notices, approvals, denials, interpretations and the exercise of any significant permitted rights.

#### G. Contingency Strategy

1. Take reasonable steps to provide for the disposition of conservation easements in the event the land trust ceases to exist or can no longer steward and administer them.

#### H. Amendments

1. Adopt and follow a written policy or procedure addressing conservation easement amendments that is consistent with the Land Trust Alliance Amendment Principles.
2. Evaluate all conservation easement amendment proposals with due diligence sufficient to satisfy the Amendment Principles.
3. If an amendment is used to adjust conservation easement boundaries (such as to remedy disputes or encroachment) and results in a de minimis extinguishment, document how the land trust's actions address the terms of J.1. below.

#### I. Condemnation

1. If a conservation easement is threatened with condemnation,
  - a. Take steps to avoid or mitigate harm to conservation values and document the actions taken.
  - b. Have or obtain appropriate documentation of the percentage of the full value of the property represented by the conservation easement.
  - c. Document the land trust's attempts to receive its proportional share of the proceeds and use any proceeds in a manner consistent with the conservation easement deed.

#### J. Partial or Full Extinguishment

1. In the rare case that it is necessary to extinguish a conservation easement, in whole or in part,
  - a. Follow the terms of the conservation easement with respect to taking appropriate action, and obtain judicial or regulatory review when required by law or specified in the easement deed.

- b. Ensure there is no private inurement or impermissible private benefit.
- c. Take steps to avoid or mitigate harm to conservation values and/or use any proceeds in a manner consistent with the conservation easement deed.
- d. Consider the land trust's actions in the context of its reputation and the impact on the land conservation community at large.

Appendix C

### **Land Trust Alliance 2017 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

- 1. Determine the immediate financial and management implications of each conservation property acquisition and estimate the long-term implications.
- 2. Anticipate and track costs associated with long-term land management, stewardship and enforcement of conservation properties.

##### B. Land Management and Stewardship

- 1. Develop a written land management plan for each conservation property within 12 months after acquiring the land to:
  - a. Identify the property's conservation values, including any significant cultural and natural features or those that have significant community value.
  - b. Identify the overall management goals for the property.
  - c. Identify activities to achieve the goals and to reduce any risks or threats to the conservation values.
  - d. Specify the uses that are appropriate for the property, in keeping with the property's conservation values, any restrictions and donor or funder requirements.
    - i. Provide public access opportunities as appropriate to the property and the land trust's mission.

2. Manage each conservation property in accordance with its management plan, and review and update the plan as necessary.
3. Perform administrative duties (such as paying insurance, filing required forms, keeping records) in a timely and responsible manner.
4. Maintain the property in a manner that retains the land trust's public credibility, manages community expectations, and minimizes risk .

#### C. Inspecting Land Trust Properties

1. Determine the boundaries of land trust properties and physically mark them to the extent possible or necessary.
2. Inspect properties at least once per calendar year for potential management problems and promptly document the inspection.
3. Address management problems, including encroachments, trespass and other ownership challenges, in an appropriate and timely manner and document the actions taken.

#### D. Contingency Strategy

1. Take reasonable steps to provide for the continuing protection of conservation properties in the event the land trust ceases to exist or can no longer own or manage them.

#### E. Condemnation

1. If a conservation property is threatened with condemnation, take steps to avoid or mitigate harm to conservation values and document the actions taken.