

Vermont Land Trust Productive Timberlands Conservation Easement Guide

http://www.vlt.org/productive_timber_guide.html

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This guide summarizes the “Grant of Development Rights and Conservation Restrictions” (“Conservation Easement”) which will encumber timberland tracts (referred to as “the Property”). This guide is only a summary. This guide is not a substitute for the legal instrument and the terms and conditions of that instrument will be controlling.

INTRODUCTION

The Conservation Easement will be held by the Vermont Land Trust, Inc. (VLT). VLT will be the steward for the conservation easement, serving as the Landowner’s contact. The easement is perpetual and will be enforceable against the buyer and all future owners. Two schedules will be prepared as attachments to the easement: A “Schedule A” description of the Property, and a “Schedule B” description of easements and use restrictions of record.

I. STATEMENT OF PURPOSES

The Statement of Purposes serves as a guide for the Landowner, the land manager or forester, and the VLT stewardship office. Forest management plans and other proposed activities will be reviewed and approved based on consistency with these purposes. The document’s primary and secondary purposes are as follows:

- a) “The principal objectives of this Grant are to establish and maintain productive forestry resources on the Protected Property and, in consideration of the contribution timber products make to the economy and communities of the region and the State, to encourage the long-term, professional management of those resources, and to facilitate the economically sustainable production of forest resources in a manner that minimizes negative impact and the duration of impact on surface water quality, recreational benefits to the public, wildlife habitat, and other conservation values (the “Principal Objectives”); and
- b) The secondary objectives of this Grant are to encourage sustainable management of soil resources, to conserve scenic [if applicable] and natural resources associated with the Protected Property, to improve the quality of life for Vermonters, and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside (the “Secondary Objectives”).”

The Statement of Purposes also includes detailed “Forest Management Objectives” and a description of the Property’s physical attributes. This statement of purposes provides a basis for interpreting the easement and is the basis for Holders’ review of certain activities of the owner.

II. RESTRICTED USES OF THE PROPERTY

This section identifies the following limitations on the Landowner’s use of the Property:

1. General: The Property may be used for forestry, educational, non-commercial recreational, and open space purposes only. Except as otherwise 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 except as specifically permitted in the document or unless permission for new easements is obtained from the Holders. 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, memorial plaques, and temporary signs indicating the Property is for sale or lease. Signs informing the public that timber products are for sale or are being grown are also permitted. The Holders, with the permission of the Landowner, may erect signs indicating that the Property has been conserved by the Holders.

4. Trash: The storage of trash, human waste or unsightly material on the Property is prohibited unless the Holders approve such storage in advance. This provision does not apply to routine, organic logging slash.

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. Surface mining is expressly prohibited, except sand and gravel extraction for forestry purposes as provided in paragraph III(10) discussed below.

6. Subdivision: No subdivisions will be permitted without the Holder's written approval. The Holder has sole discretion over whether or not the subdivision approval is granted.

7. General Clause: It is not possible to predict all possible future uses of the Property or future technologies. This clause requires that any such unanticipated use or technology be consistent with the easement's purposes.

III. PERMITTED USES OF THE PROPERTY

This section identifies the following permitted activities on and uses of the conserved Property:

1. Maple Sugaring and Firewood Cutting: The Landowner may conduct maple sugaring operations and harvest firewood for use on the Property, without submitting a forest management plan.

2. Forest Management: Forest management and timber harvesting are a matter of right, subject to:

a) Forestry Plan requirements discussed under Section V, below;

b) Supervision by a professional forester;

c) Employing applicable practices described in Vermont's "AMPs";

d) Meeting with Holders on an annual basis to review forestry activities.

3. Forestry Roads: The Landowner is entitled to maintain, repair and replace existing forestry roads. The Holders may permit the construction of new roads if they are consistent with the easement's purposes, are necessary to provide reasonable forestry access, and will not impair water quality, public recreational access, or habitat and conservation values.

4. Forestry Structures: Temporary wood processing facilities are permitted, subject to prior reasonable review and approval of the Holders. Permanent structures may be permitted by Holders in their sole discretion.

5. Motorized Equipment: The use of motorized equipment including portable mills and all terrain vehicles is limited to forest management purposes.

6. Permanent Structures: The right to construct or maintain sugar houses or structures for forestry purposes provided permission of the Holder is obtained.

7. 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. The construction of ponds and reservoirs is permitted with the prior written consent of the Holders.

8. Trails: The Landowner may clear, construct and maintain trails for non-commercial recreational activities. Such trails cannot interfere with public access to trail corridors that may be a negotiated component of a conservation easement.

9. Ability to Permit Others to Use Roads for Forestry Purposes: The landowner is able to permit others to use forest management roads on the Property. provided that:

a) such roads are used by others exclusively in association with forest management activities on lands near the Protected Property;

b) the permission afforded by Grantors consists of a short-term license to use the road system for a period not to exceed 12 months, and is not a longer term license, right-of-way, easement or other permanent legal interest; and

Grantors shall remain responsible for any such licensee's compliance with this Grant.

10. Sand and Gravel Extraction: The Landowner may extract sand and gravel exclusively for use on the forestry road system.

11. (Negotiated Option) Camps: assuming a provision is included in the easement, the Landowner is entitled to maintain, build, replace, but not expand a recreational camp on the Property, provided:

a) Utility service is not provided to the camp;

b) The camp is not occupied as a year-round residence;

c) The structure does not exceed 800 square feet (excepting existing, larger camps).

IV. SURFACE WATER BUFFER ZONES

The provisions of Section IV establish a no operation, no harvest zone within all mapped streams, rivers or ponds.

- Wetland, stream, river and pond buffers of at least 50' must be maintained.

- Stream crossings are exempt, but must be kept to a minimum and must include erosion control devices recommended by Vermont's AMPs.

V. FOREST MANAGEMENT PLANS AND FORESTRY PROVISIONS

The Vermont Land Trust has required the preparation, and prior approval of forest management plans for more than 20 years. VLT has a forester on its stewardship staff who is responsible for this review function. Lands managed for timber investment purposes are a growing part of VLT's easement inventory.

1. General Requirements: The Landowner must conduct all forestry activities (including road construction) in accordance with a Forest Management Plan prepared by a professional forester, and reviewed and approved by Holders. Forestry Plans must be updated every 10 years.

2. Plan Requirements: The Forestry Plan must be consistent with the easement purposes and must include the elements outlined in this section of the easement. Please also see the Vermont Land Trust Technical Bulletin Managing and Harvesting Woodland Conserved by the Vermont Land Trust for a detailed explanation of forest management plan requirements.

3. Harvesting Restrictions:

a) "Heavy Cuts" may be disapproved by Holders in their discretion, if such cuts would not be consistent with easement purposes.

Annual Conference (optional clause depending on project size or ownership): The Landowner and Holders will meet annually to review the past year's forestry activity and the ensuing year's work plan.

VI. PUBLIC ACCESS

Access provisions may be negotiated for individual properties. Access requirements are highly individualized and the sample easement provides an example of an approach providing dispersed pedestrian access.

VII. ACCESS FOR MONITORING AND ENFORCEMENT PURPOSES

Addresses Holder's need to access the property for monitoring and enforcement purposes.

VIII. ENFORCEMENT OF THE EASEMENT

Under this section of the easement, the Holders accept responsibility for monitoring the Property and, if necessary, enforcing the terms of the easement. If a violation occurs, the Holders will attempt to contact the Landowner personally to secure voluntary compliance and the Holders are required to notify the Landowner by certified mail of the action required to correct the violation. The Holders may enforce the easement in court if the violation is not corrected. The Holders 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 the Holders for their enforcement expenses.

IX. MISCELLANEOUS PROVISIONS

The Conservation Easement includes the following additional “miscellaneous” clauses:

1. The Holders may request reimbursement from the Landowner for extraordinary staff and other costs when the owner seeks prior written approval from the Trust for new structures, ponds, etc., should the review process become unreasonably time consuming or complicated.
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. The Holders may only transfer the conservation easement to a state agency, 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, the Holders are entitled to any extinguishment payment for the value of the conservation easement.
5. Any future deed conveying an interest in the Property must refer to the conservation easement. The Landowner must also notify the Holders of the names and addresses of any new Landowner. This assures that new owners are aware of the conservation easement and provides the Holders with the opportunity to contact new owners to discuss the easement.
6. Holders are entitled to rerecord the conservation easement in future years to maintain its viability, as may be required by Vermont’s Record Marketable Title Act.