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# **The Challenges of Purchasing Development Rights in Transportation Corridors:**

## **Lessons from Vermont and Beyond**

**Draft**

**April 10<sup>th</sup>, 2003**

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|  |    |
|--|----|
| EXECUTIVE SUMMARY AND RECOMMENDATIONS.....                                   | 4  |
| <i>Findings and Recommendations</i> .....                                    | 4  |
| INTRODUCTION.....  | 8  |
| METHODOLOGY.....   | 10 |
| <i>Defining “development hotspots”</i> .....                                 | 10 |
| <i>Review of conserved lands</i> .....                                       | 10 |
| <i>Collect a sample of unsuccessful transactions</i> .....                   | 10 |
| <i>In-Depth Interviews</i> .....   | 11 |
| <i>Interviews with PDR administrators around the Country</i> .....           | 12 |
| VALUING CONSERVATION EASEMENTS: A PRIMER.....                                | 13 |
| <i>Conservation easements and development rights defined</i> .....           | 13 |
| <i>The legal framework and the origins of conservation easements</i> .....   | 13 |
| <i>Appraisal methodology</i> .....   | 14 |
| <i>The before and after approach to valuing conservation easements</i> ..... | 14 |
| <i>The three standard appraisal approaches</i> .....                         | 15 |
| <i>The critical highest and best use determination</i> .....                 | 15 |
| <i>Role of public values</i> .....   | 15 |
| APPRAISALS OF THE FARM LAND AT EXIT 11.....                                  | 16 |
| <i>Overview</i> .....  | 16 |
| <i>Methodology used</i> .....  | 17 |
| <i>Highest and Best Use Determinations</i> .....                             | 17 |
| <i>Determination of the “after” value</i> .....                              | 19 |
| <i>Other possible approaches to valuation</i> .....                          | 19 |
| FINDINGS.....  | 21 |
| <i>Perceived Value vs. Real Value</i> .....                                  | 21 |
| <i>The appraisal process is here to stay</i> .....                           | 21 |
| <i>Importance of the appraiser/landowner interaction</i> .....               | 22 |
| <i>Clear guidelines for appraisers</i> .....                                 | 23 |
| <i>Maneuvering room on purchase price</i> .....                              | 24 |
| <i>Sometimes, there’s nothing that can be done</i> .....                     | 25 |
| <i>Other possible approaches</i> .....                                       | 25 |
| APPENDIX A.....  | 28 |
| REVIEW OF VERMONT CONSERVATION EASEMENT TRANSACTIONS.....                    | 28 |
| COMPLETED TRANSACTIONS.....  | 31 |
| INCOMPLETE TRANSACTIONS.....   | 33 |
| APPENDIX B.....  | 37 |
| SUMMARY OF APPROACHES USED IN OTHER JURISDICTIONS.....                       | 37 |

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## **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

The Town of Richmond, Vermont is attempting to conserve from development over 600 acres at the base of its interstate exit 11. After 7 years of challenges, frustrations and unsuccessful attempts, the Town wanted to know why it was so difficult to conserve these lands. More specifically, the Town asked :

- ◆ is the location, one with high development pressure, the root cause?
- ◆ does the highway present unique challenges not found in other growth areas?
- ◆ is the appraisal system not applicable to these situations?
- ◆ does the compensation system to landowners have problems?

To help answer these questions the Town acquired funding from the Vermont Department of Housing and Community Affairs through the US Environmental Protection Agency and hired Economic and Policy Resources to study these questions.

The report that follows this Executive Summary moves the reader from an introduction to the issues, to the methodology used, into a primer on valuing conservation easements. The report then provides a brief review of the appraisals on the Exit 11 farms in question, presents the study of other transactions around Vermont and examines the experiences of other jurisdictions around the country in dealing with the challenges of purchasing conservation easements in transportation corridors.

### **Findings and Recommendations**

**Finding One:** The factors that complicate conservation easement purchase transactions in transportation corridors are not fundamentally different than the issues present in other real estate negotiations.

It appears that most conservation easement purchase negotiations – indeed virtually all real estate negotiations of any kind – are bedeviled by the inherent tendency of property owners to believe (or at least to assert) that their property is worth more than it probably is. The presence of transportation corridors may exacerbate this belief. Nonetheless these challenges are present in other situations outside of transportation corridors. This observation holds equally true for Vermont as it does for other jurisdictions studied.

**Recommendation One:** Representatives of towns and land trusts involved in conservation easement purchases in high-visibility or targeted areas should anticipate owner assertions of greater value than could likely be demonstrated in the marketplace. For high priority easement purchases in such areas, it may make sense to budget higher appraisal fees than normal (see #3 below), to lobby

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funding partners to support purchase prices in excess (say 10%) of appraised values (see #5 below). Finally, one may need to be prepared to pursue alternative strategies if conservation easement purchase negotiations bog down (see #7 below).

**Finding Two:** For the most part, there aren't any realistic alternatives to the property appraisal process, so attention should be paid to making the appraisal and compensation process work better.

The property appraisal process is so embedded in the procedures used by funding sources and in the expectations of Vermont property owners that a departure from this process (point systems, for example) is not likely to be successful. Alternatives have been successfully employed only in jurisdictions where conservation easement purchase programs are just starting, where there is little precedent for easement values estimated through appraisals, and where the dollars spent are generated locally and not subject to the restrictions of state and federal agencies. In any event, most point systems are generally designed to replicate appraisal values in an effort to reduce appraisal fees and are not truly an alternative to the appraisal system.

**Recommendation Two:** Employing the use of appraisal alternatives should only be done in situations where local funds will be used to purchase the development rights. Locally generated funds can be distributed with much more discretion. State or federal funding sources would only fund conservation easement purchase projects based on fair market value appraisals.

**Finding Three:** The extent and nature of the interaction between the landowner and the appraiser is a critical factor.

Our qualitative research found that the likelihood of closing on a conservation easement purchase appears to increase as a function of the amount of time the appraiser spends with the property owner during the appraisal process and upon submission of the completed report. When appraisers and landowners discussed details such as comparable sales, assumptions about development constraints, and the logic and methodology leading to the value estimates a successful transaction occurred more often.

**Recommendation Three:** In the case of high priority conservation easement purchases, extra investments should be made for additional appraiser meetings with landowners, and in some cases to invest in the time of two experienced appraisers working as a team. Additional dollars spent at the front end might make more sense than additional dollars spent on review appraisals and, perhaps, on paying more for the easement in five years than would be paid now.

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**Finding Four:** The use of clear and specific guidelines for appraisers is another important factor.

Often the guidelines provided to appraisers of conservation easements are general appraisal guidelines prepared in the context of a transportation agency's condemnation proceedings. These guidelines generally do not adequately cover some of the unique issues faced by appraisers employing the "before and after" approach to conservation easement appraisals. The guidelines for conservation easement appraisals provided on the VHCBC website are very good, though somewhat out of date. Vermont appraisers should be provided with even more specific guidelines including such topics as: appropriate use of the subdivision method for estimating value; broadening the search for comparable market prices; and clear parameters for determining highest and best use. We believe this would help capture the trends in a rapidly developing market situation, and assure consistency in approach from one appraisal to another

**Recommendations Four:** VHCBC and other funding agencies should be encouraged to further improve their guidelines for appraisal of conservation easements. Clear guidelines regarding use of the subdivision method for estimating value should be included, perhaps using submission to the town of a development plan as one criterion for application of the subdivision method. Explicit encouragement for appraisers to search broadly for comparable markets in changing market situations should also be included.

At the local level, officials should consider recording landowner development plans if that will allow appraisers to better consider the development potential of land as they conduct their appraisals.

Where guidelines from funding agencies aren't sufficiently detailed, the letters used by town officials and land trusts to commission appraisals should include specific instructions to the appraiser covering some of these matters.

**Finding Five:** Agencies funding conservation easement projects tend to have strict requirements of limiting contributions to the appraised values. This research found that a little latitude in negotiating an agreed price for the easement would have helped bring some parties together to complete a transaction.

Virtually every appraiser would admit that the appraisal process is as much art as science. Despite increased appraisal regulations, improved professional standards, and enhanced training and accreditation requirements many appraisals can still vary widely depending on the appraiser. This suggests that professional judgement still plays an important role in the outcome. This variability is natural and therefore should be recognized in funding criteria.

**Recommendation Five:** Given the inexact nature of the appraisal process it would make sense for funding agencies to provide applicants with the latitude to negotiate within, say, 10% of appraised value. The Vermont legislature should

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allow VHCB limited negotiations above the appraised value. The federal government should also allow its funding agencies, such as the Department of Transportation, the same latitude.

**Finding Six:** There will always be situations where absolutely nothing can be done, except wait.

There are countless situations where all the refinements in the world to the appraisal and negotiation process wouldn't bring the parties to agreement. Selling one's development rights is both emotional and complicated. There are legal and financial considerations as well as family obligations, therefore, the timing of the transaction is critical. Sometimes one must wait for a changing family dynamic to emerge or for business or real estate market circumstances to change.

**Recommendation Six:** Land Trust and town representatives should always strive to emerge from even unsuccessful negotiations with good landowner relations in place. They should recognize that there may be abundant good reasons why this is not the time to complete a transaction. Those good relations will serve everyone well later on when the timing is ripe for successful negotiations.

**Finding Seven.** There may be certain situations where creative approaches above and beyond the purchase of conservation easements could be used to bring the parties together.

**Recommendation Seven:** When negotiations bog down, and patiently waiting for several years doesn't seem wise, town officials and land trust representatives should get creative in exploring alternative approaches. Some of these may achieve temporary protection of the resource while the parties wait for another opportunity to discuss a permanent solution.

Depending on the circumstances, the following approaches could be helpful:

1. a sale/leaseback of the property or the donation of the property subject to a retained life estate;
2. a purchase of a second "overlay easement", providing for additional usage restrictions, for an additional sum of money;
3. increasing the appraised price of a conservation easement by imposing an option to purchase the restricted property at agricultural value;
4. purchase of a conservation easement for a limited term of years.

It would appear that all of these approaches could be pursued in Vermont, depending on the circumstances.

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## ***Introduction***

The Town of Richmond Vermont is a rural community with a charming and compact village center of mixed-use, 3-story residential/commercial buildings, small businesses, single-family homes, civic buildings and public parks. The village is approximately one mile from Exit 11 of Vermont Interstate I-89 and is home to approximately 1,000 people. Farm fields, floodplains and forests surround the village and accommodate an additional 3,000 people who live in low-density developments.

The Town has expressed in many ways a goal of preserving its small-town character. The preservation of the agricultural land between the village center and the highway is critical in achieving this goal. The Town believes that large quantities of commercial development at the exit would detract from the viability of the village center. This is evident through numerous documents including the Town Plan. On June 21, 1982, Richmond adopted a floodplain ordinance, which prohibits development in the 100-year floodplain. This ordinance significantly curtails the probability of development on some of the land near the exit. Nonetheless, the exit's proximity to other high growth areas in Chittenden County presents threats to the town's conservation goals.

Richmond is one of 18 towns in Chittenden County. Chittenden County is Vermont's most populous region. It supplies far more tax revenue to the state than any other county and surpasses all other counties by an order of magnitude for commercial square feet. Taft Corners, located one exit north, 5 miles away, has over one million square feet of "big-box" and commercial development. The pressure to develop at Exit 11 is unusually strong given the nature of its location.

Despite the floodplain ordinance, Richmond is seeking to buy the development rights for the farmland that lies between Exit 11 and the village center. Town officials believe that the removal of the development rights is the only way to ensure that the land can never be developed in the face of the existing and unprecedented development pressure. The Town attempted to buy the development rights from the landowners at the appraised values in 1998. However, the landowners rejected the offer citing the offer was too low among a variety of other reasons. These farms comprise over 600 acres of land, some with road frontage on a state highway at the base of an interstate exit in Vermont's most developed county. The land also holds numerous public (or non-market) values as well, including a spectacular view of Camels Hump (Vermont's tallest undeveloped mountain), a stream buffer to help prevent soil erosion, and the preservation of a wildlife habitat and corridor. Although the Town would like to purchase the development rights on these properties, the combination of high development pressure, valuable public resources, and an inflexible appraisal/purchase process have so far been insurmountable challenges for the Town.

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The Vermont Department of Housing and Community Affairs applied to and received funding from the United States Environmental Protection Agency to address a number of land planning related issues pertaining to interstate interchanges. The Department and the Town are working together to research the unique dynamics of conserving land around interstates and other areas of high development pressure. These development “hotspots” typically generate a higher set of value expectations for the land and its associated resources. Property owners perceive their land values to be rapidly increasing, developers see development opportunities, conservation organizations feel urgency to conserve the land, and local residents are conflicted between a desire to conserve land and a desire to have closer conveniences. All the while, real estate appraisers estimate the value of the land and conservation easements based on a limited scope of guidelines and methodologies, none of which can capture forthcoming changes in the marketplace. These competing expectations present a unique set challenges for land conservation in areas with high development pressure

Do accepted appraisal methodologies limit the ability of appraisers to accurately estimate the value land in these unique locations? Is there a problem with the current compensation system for buying development rights? If so, what are the extent and the components of the problem? This report opens the dialogue on these important questions by researching a select sample of conservation easement transactions in development hotspots in Vermont and by looking at the experience of other jurisdictions around the country dealing with similar challenges. It helps clarify the problem by documenting the details of selected transactions and by offering a series of observations. It concludes with findings and recommendations to be considered by town officials, land trust representatives, and officials of VHCB and other state and federal funding partners.

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## **Methodology**

The purpose of this report is to understand the challenges presented when using conservation easements for conserving land in development “hotspots”. To this end the following methodology was used:

### **Defining “development hotspots”:**

Development hotspots were defined as areas that receive high pressure to develop commercial, residential or industrial properties. Pressure to develop is manifest by the number of property transfers in the area, number of applications for development on adjacent lands, existing zoning, interest to develop as stated by the landowner, and observed development on neighboring parcels. These factors were not quantitatively measured due to project scope, rather, they were assessed through conversations with local landowners, conservation organizations, by the information in the appraisals and through local knowledge. Since this project is part of a larger statewide effort that focuses on the land use challenges around Interstate Interchanges our search paid particular attention to the major transportation corridors in Vermont, I-89 and I-91. In the end, properties were considered to have high growth pressure on a case-by-case basis.

### **Review of conserved lands:**

Completing this research required a sample of conservation easement transactions in Vermont. A database of conservation easement in Vermont is maintained by the University of Vermont Spatial Analysis Laboratory. The database was queried to find conserved parcels in suspected development hotspots. To do this the following process was used:

1. All parcels within 2 miles of the interstate and all parcels in Chittenden County were located. This resulted in **211 parcels**.
2. Each of the 211 conserved parcels was reviewed to determine if each can pass **two tests**: first, was the conservation easement subjected to **high development pressure?**; and second, was the conservation easement **acquired in a financial transaction within the past 20 years?** Those that merited a “no” to either question did not pass this two-tiered test and were not examined.
3. The two-tiered test eliminated all but **15 parcels**.
4. The **files on these 15 transactions were reviewed**. A range of data was collected, including, property owner information, easement holder information, funding sources, zoning, purchase price, and appraisal value.

### **Collect a sample of unsuccessful transactions:**

Information on transactions that were neither completed nor resulted in a conservation easement was also collected. This allowed comparisons to be

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made and help shed some light on why transactions don't close. Locating unsuccessful transactions required talking to professionals in the field. Conversations were held with several representatives of the Vermont Land Trust, Vermont Housing and Conservation Board, Upper Valley Land Trust, State officials, and Town representatives. Appraisals were completed on some of the unsuccessful transactions. This information was very helpful and allowed comparisons to completed transactions. The following people were interviewed regarding these unsuccessful transactions:

1. Paul Harlow and representatives of VLT regarding a possible purchase of a conservation easement on land located at the Exit 5 interchange (Westminster) of Interstate 91.
2. Edward and Carol Mahoney and representatives of VLT regarding a possible purchase of a conservation easement on land located within 5 miles of the Exit 21 interchange (Swanton) of Interstate 89.
3. Chuck and Peggy Farr and representatives of the VLT and the Town of Richmond regarding a possible purchase of a conservation easement on land located at the Exit 11 interchange (Richmond) of Interstate 89.
4. Ron and Lynn Paradis and representatives of VLT regarding a possible purchase of a conservation easement on rather remotely located land in Franklin.

The interviews covered such topics as:

- Who initiated the discussions
- Expectations of value prior to discussions, and impact of interstate proximity and knowledge of other easement transactions on such expectations
- Nature of the interaction between landowner and appraiser
- Why the landowner decided not to sell

### **In-Depth Interviews:**

Six case studies were chosen to highlight the unique challenges associated with closing on conservation easements in development hotspots. Interviews were conducted with the landowners to understand the motivating factors to either refuse or accept the offer. These six examples were chosen based on how relevant they were to the study and how insightful they may be to understanding the problem. In addition to in-depth interviews a specific focus is given to the Richmond Exit 11. Those interviewed for this section of the research included the four listed above in the unsuccessful transactions and the following successful transactions:

1. Sale in July, 2001 by Willard Properties, LLC to Vermont Department of Buildings and General Services of a conservation easement on land located at the Exit 17 interchange (Colchester) of Interstate 89.
2. Sale in 1991 by Waldo and Arline Siple to VHCB/VLT of a conservation easement on a farm in Williston.

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## **Interviews with PDR administrators around the Country:**

In order to place Vermont's land conservation challenges in perspective, interviews were held with administrators of Purchase of Development Rights programs or those who are otherwise intimately involved with the purchase of development rights in other jurisdictions around the country. This review consisted of telephone interviews with the following individuals:

1. Richard Hubbard, Massachusetts. Assistant Commissioner, Massachusetts Department of Food and Agriculture.
2. James Conrad, Maryland. Executive Director, Maryland Agricultural Land Preservation Foundation.
3. John Zanitowski, Maryland. Director of Planning, Montgomery County Agricultural Services.
4. Greg Romano, New Jersey. Executive Director, New Jersey Agriculture Development Committee.
5. Paul Burns, New Jersey. Chief Review Appraiser, New Jersey Agriculture Development Committee.
6. Mary Bender, Pennsylvania. Director, Bureau of Farmland Preservation.
7. Erik Vink, California. Assistant Director, California Department of Conservation.
8. Jeanie McIntyre, New Hampshire. Executive Director, Upper Valley Land Trust.
9. Jessie Robertson-Dubois, American Farmland Trust. Farmland Information Specialist.

Interviews covered such topics as:

- The extent to which purchase of conservation easements in areas influenced by interstates and other "hot markets" was a problem, and the factors contributing to this problem;
- The approaches used in addressing this challenge;
- The policies and practices in place governing determination of landowner compensation (before and after appraisal, appraisal combined with bid process, point system, etc.);
- Particular features of the jurisdiction's appraisal process, both regarding "before" value and "after" value;
- The nature of the information sharing and negotiation process with the landowner, and the involvement of appraiser and purchasing agent in the process;
- Alternatives to appraisals as a means of arriving at compensation value.

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## ***Valuing Conservation Easements: A Primer***

### **Conservation easements and development rights defined**

A conservation easement is a voluntary legal land use agreement. It comes in the form of a deed restriction, recorded in the public records and tied to the land, in which a property owner conveys to a conservation organization or unit of government (the easement “holder”) the rights to enforce restrictions on use of the property. The easement restrictions are usually perpetual although some have a limited life. The particular restrictions of any given conservation easement are generally negotiated between the property owner and representatives of the easement holding organization. The restrictions tend to support the policies of that organization, and must be in accordance with IRS codes if a charitable tax deduction is involved, and meet the requirements of funding organization(s) if a purchase is involved.

Conservation easements have become the backbone for protection efforts of significant natural resources. Conservation easements are an essential land protection tool. They eliminate the need for outright government purchase and they help keep property in private hands and on local tax rolls whenever possible.

Conservation easements often include, among other restrictions, prohibitions or limitations on construction or addition to structures, on subdivision, and on mining or other disturbances of the soil. These restrictions can vary widely depending on whether the primary objective of the easement is protection of scenic views, protection of the land’s agricultural or timber productivity, protection of natural habitat, or preservation of historic structures. (Each of these purposes is considered a valid “conservation purpose” by the Internal Revenue Code.)

“Conservation easement” and “development rights” are often used interchangeably. This is because in most cases the bulk of the economic value foregone in a conservation easement is the right to undertake certain types of property development. Care must be used, however, in mixing up these terms. It can lead to the impression that sometimes a property owner transfers the right to develop that was previously his or hers, when in fact what is being given to the easement holder is not a right to develop, but a right to enforce a prohibition on development.

### **The legal framework and the origins of conservation easements**

The legal framework for conservation easements first developed in 1964 out of charitable contributions and tax law. Conservation easements were originally most valuable as a tax deduction. Since then the public’s conservation

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interests have grown to the point where taxpayers are willing to compensate landowners directly with cash for conservation easements. On agricultural land this is particularly true since farmers are unlikely to benefit from income tax deductions due to their high debt load.

Although guidelines for tax deductibility of conservation easements date to IRS revenue rulings as early as 1964, substantial guidelines weren't codified until 1976, when tax code changes and accompanying regulations provided clear guidance on the subject. The Tax Reform Act of 1984 added further requirements for deductible conservation easements, and provided clear guidelines for the appraisal of conservation easements.

### **Appraisal methodology**

Considering the legal origins of conservation easements, the methodology for appraisal of easements has its roots in the regulations governing tax deductibility. In addition, approaches to the appraisal of conservation easements have developed in the context of an appraisal industry facing increased scrutiny and regulation (notably, Financial Institutions Reform, Recovery, and Enforcement Act [FIRREA] of 1989), and changing professional standards (notably, *Uniform Standards of Professional Appraisal Practice [USPAP], 1989*). Tax code changes in 1984 and more severe penalties for all involved parties, including appraisers, has created a cautious climate in the appraisal industry and a guarded approach to the valuing of conservation easements.

A conservative appraisal approach is also complimentary to the reality of buying easements. Easement purchasing units of government are typically not endowed with resources. So, in an attempt to stretch scarce acquisitions dollars they increasingly negotiate with landowners to accept less than full appraised value. They then advise landowners that they would be eligible to take a tax deduction for the difference between appraised price and the "bargain" price at which they agreed to sell. In these instances, to claim the deduction available to them the conservation easement, and the appraisal process need to conform to IRS requirements.

### **The before and after approach to valuing conservation easements**

Whether for donation or purchase, the objective of the easement appraisal process is to estimate the value of the easement. Unlike the appraiser of houses and buildings lots who can turn to the marketplace for recent sales of comparable properties to estimate fair market value, the appraiser of a conservation easement will not typically find comparable sales. Though there are areas of the country where widespread use of conservation easements for many years has begun to provide a data base of useful easement sales, the methodology that will continue to be widely accepted for valuing conservation easements is the "before and after" approach.

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Treasury regulations and revenue rulings have confirmed the correctness of a “before and after” approach. The appraiser must first estimate the fair market value of the subject property in its “as

is” condition, free of the encumbrances of the proposed easement, and then to estimate the value of the property “as if” encumbered by the contemplated easement. The difference in value between these “before” and “after” values, if any, is considered to be the value of the conservation easement.

| EXAMPLE:                                     |                    |
|--|--------------------|
| Easement Valuation of a 150 acre Dairy Farm: |                    |
| Value of land in Fee Simple =                | \$331,000          |
| Value of land after Restrictions =           | \$145,000          |
|  | \$331,000          |
|  | - <u>\$145,000</u> |
| Value of Easement                            | \$186,000          |

### **The three standard appraisal approaches**

Standard appraisal procedures require an appraiser to apply three standard approaches, as appropriate, in estimating both the “before” value and the “after” value of a property to be encumbered with a conservation easement. The sales comparison approach, which uses of direct comparisons to similar properties that have recently sold in the same or similar market. The income approach estimates value by selecting an appropriate capitalization rate for use in capitalizing a projected net operating income for the property. Finally, the cost approach which is applicable to improved properties and is generally used as a check on the results of the other two approaches.

### **The critical highest and best use determination**

A critical juncture in both the “before” and “after” components of the easement appraisal process is the appraiser’s determination of the “highest and best use” of the property. Highest and best use is generally the most profitable, likely and legal use for a property that will support the highest present value for the property. For conservation easement appraisals, there is probably no more important judgment call on the part of the appraiser than the determination of highest and best use in the “before” scenario. An appraiser need not be bound by current zoning law and other regulations in making this determination if he or she believes there is a reasonable probability that in the near future some use of greater economic value might be permitted and supported in the marketplace. However, to support such a determination, the appraiser should be able to show that this conjecture about the change in zoning or permitting is otherwise reflected in the marketplace.

### **Role of public values**

Accepted appraisal methodology, and the guidelines generally promulgated by easement-acquiring governmental agencies, make no particular provision for the appraiser to give special consideration to such “public values” as water quality, agricultural productivity, scenic views, historic significance,

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recreational access and the like. Most appraisers would contend that these attributes are indirectly valued in an appraisal to the extent that these values have an impact on economic value. For example, if a sale price for a farm with mountain views is 20% greater than a sale price for a farm with no views, there is evidence that the marketplace has attached a value to the view of about 20% of the sale price.

There have been some jurisdictions around the country that have attempted to compensate landowners conveying conservation easements in ways that take into account a range of “public values,” as an alternative to a “before and after” approach based on traditional appraisal methodology. Further investigations will be conducted regarding these approaches, their success, and their applicability to Vermont situations.

## ***Appraisals of the Farm Land at Exit 11***

### **Overview**

In May of 1998, Allen Karnatz of Vermont Land Trust (VLT), wrote a letter to Steven Allen of Allen Cable Real Estate Appraisers authorizing an appraisal of a conservation easement on 280 acres at Exit 11. The request was on behalf of the Town of Richmond, the Vermont Housing and Conservation Board (VHCB), and VLT. The landowner, Jacob Verberg of Richmond, agreed. Three different before and after scenarios were presented for valuation:

- 1) the entire farm, including farm buildings and one house, but excluding two houses and sixteen acres on the south side of the farmstead;
- 2) the entire farm but excluding all the farm buildings and houses and 55 acres; and
- 3) only the approximately 100 acres lying between Route 2 and the railroad tracks.

The appraiser was not provided with a proposed conservation easement for the Verberg farm, but was provided with a sample VLT/VHCB conservation easement that would largely apply to the Verberg property. The appraiser was instructed to “follow all the VHCB and AOT/TEA-21 Enhancement Program specifications.” This appraisal was completed and submitted on August 24, 1998.

In January of 2000, Allen Karnatz, acting on behalf of the same group of organizations, wrote a letter to Michael O’Brien of Keller, Navin & O’Brien officially authorizing an appraisal of a proposed conservation easement on three parcels of land, totaling approximately 345 acres. This land is also directly off of Exit 11 and is known locally as the Farr Farm. A proposed conservation easement was to be appraised on each of three parcels:

- 1) the 271-acre Home Farm, including a right to build two non-subdividable farm labor houses, and excluding some acreage including one house and adjoining farm buildings;

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- 2) the 52-acre French Hill parcel in Williston; and
  - 3) the 220 acre Village Parcel.

The appraiser was not provided with a proposed conservation easement for the Farr farm, but was provided with a sample VLT/VHCB conservation easement that would largely apply to the Farr property. The appraiser was instructed to “follow all the VHCB and AOT/TEA-21 Enhancement Program specifications.” This appraisal was completed and submitted on February 11, 2000.

In the winter of 2001, Allen Karnatz commissioned an update appraisal on the Farr Farm from Michael O’Brien. This update appraisal, based on roughly the same assumptions as the original appraisal, was completed and submitted on April 23, 2001.

### **Methodology used**

Both appraisers followed the same basic methodology:

1. employ the before and after approach for conservation easement values,
2. reliance on the sales comparison approach (after determining that the cost approach and the income approach weren’t applicable to these situations),
3. determination of highest and best use for both the before and the after scenarios,
4. application of the sales approach to both the before and after scenarios, and
5. determination of conservation easement values based on the difference between the before and after value estimates.

### **Highest and Best Use Determinations**

Both appraisers relied on the definition of highest and best use as “The reasonably probable and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility and maximum profitability.”

**Legal permissibility.** The appraisers examined local zoning regulations as well as State land use regulations, including Act 250. In the Verberg appraisal, it was noted that a zoning change in November of 1996, which rezoned the property to Agricultural/ Residential, removed the possibility of commercial uses other than professional offices up to a floor area of 2500 square feet (with a special permit). Prior local approvals for a service station and a larger office building on the Verberg property expired when the owner declined to pursue the Act 250 process that would have been required. In addition to agricultural and forestry uses, this left one and two family residences on 1-acre minimum lots and bed and breakfasts as the primary permitted uses. A variety of other uses (including artist studio, day care center, group home or retirement community, religious or education facility) are allowed as conditional uses.

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The Farr appraisal included a similar analysis of permitted uses in the Town's Agricultural/Residential zones, and also noted that intensive development of the parcel would be unlikely due to the likely protection by Act 250 of the parcel's prime and statewide significant agricultural soils.

An appraiser is not necessarily limited by the constraints of current zoning if he or she believes there is a reasonable probability that in the reasonably near future a use of greater economic value might be permitted through a change in local land use regulations. In the case of the Verberg and Farr appraisals, neither appraiser found the facts to support such a conclusion.

**Physical possibility.** Flood plain issues, soil capacity for septic, access to sewer, physical access, and slopes are among the factors the appraiser looks at in assessing the physical possibility of various possible uses of the property. For both the Verberg and Farr properties, the appraisers concluded that physical factors – particularly location of 100 year and 500 year flood plains – dramatically limit the possibilities for development of the properties. Major portions of both properties lie within the Winooski River floodplain and are therefore not suited for development.

**Financial feasibility.** The appraiser's determination of whether a potential use is financially feasible has to do with the relationship between market demand for that use and the costs of developing that use on the property. In the case of the Verberg appraisal, the appraiser's determination was that the high costs of developing infrastructure would limit financial feasibility to low density residential use and, of course, agriculture. The Farr appraisal concluded that market support would be greatest for detached single family dwellings. The appraiser found little evidence of market support for condominium or multi-family dwellings, and little support for commercial development.

**Maximum profitability.** The Verberg appraisal concluded that subdivision for low density residential development would make sense for some of the property, with the majority of the property being most profitably used for agriculture. The Farr appraiser concluded that the most profitable scenario for the Farr properties would be speculative development of up to 50 detached single family homes on a developable 75-acre parcel accessible by municipal sewer, with the remainder of the property devoted to agricultural uses.

**Highest and best use conclusion.** The highest and best use is that use that represents the highest value of the property consistent with the four tests described above. The Verberg appraisal concluded that highest and best use for the property, prior to imposition of a conservation easement, was speculative low density single family homes and continued operation of a dairy farm. The Farr appraisal arrived at similar conclusions, stating that "there are no alternate uses for the property that are more profitable given the property's location, physical characteristics, market demand and zoning."

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## **Determination of the “after” value**

Both appraisers assumed that the proposed conservation easements would prohibit further residential or commercial development. Therefore, the highest and best use for both properties, as if subjected to the proposed conservation easements restrictions, was determined to be agricultural use, in particular, as a dairy farm. Because of the existence of recent sales in the area of easement-restricted farms, the appraisers had good comparable market prices to use in applying the sales comparison approach.

## **Other possible approaches to valuation**

It is not surprising that neither appraiser tried to apply the cost approach, since such an approach generally only has meaningful application to improved properties. On the other hand, another approach may have been applicable. A variation on the Income Approach, the Subdivision Development Method, that projects gross residential lot sales by year, nets against that the costs of development and sales, makes an allowance for developer profit, then discounts the stream of net income to a present value. The Farr appraiser declines to use such an approach – even though it’s sanctioned by the Appraisal Institute – unless an actual subdivision plan has been approved and he has reliable engineering data for use in estimating costs. In any event, it is unlikely that use of such an approach would have generated a result appreciably different from the estimate produced using the sales comparison approach.

Beyond that, there really are no other accepted approaches to property valuation that could have been applied to the Farr and the Verberg appraisals. Some appraisers in other parts of the country have become creative and aggressive in ascribing values to certain unique, “resource-rich” properties by employing statistical techniques such as contingent valuation, conjoint analysis and multiple regression in arriving at the contributory value of various resources on the property. However, even if they were applicable to the resources of these properties in Richmond, they would likely have a greater impact increasing the “after” value in a conservation easement appraisal than the “before” value, thus reducing the amount of the difference between the two value estimates.

Neither the Verberg nor Farr appraisals explicitly considered such “public values” as scenic views, watershed protection, agricultural productivity or the like. Traditional appraisal methodology, including that recognized by VHCB and AOT/TEA, does not provide for such considerations, based on the belief that the value of such attributes is reflected in the market’s attraction to resource-enhanced properties.



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## ***Findings***

### **Perceived Value vs. Real Value**

A consistent observation has emerged from interviews in Vermont and around the country regarding the landowners' perception of their land values. That is, the likelihood that the seller will have an exaggerated sense of his or her property's value is high. On the other hand, many of those interviewed mentioned that the same property owners have argued that their property is worth less than public officials claim when contesting assessed valuations for property taxes. Another clear consensus is that they are a subset of a broader challenge of buying any property, including conservation easements, in areas with high development activity.

This aspect of human nature is a factor in any other real estate transaction. In the case of properties in emerging hot markets, this tendency may be exacerbated by two factors. First, the visibility given to recent sales at unusually high prices and second, the public probably help influence property owners to conclude that their property is worth more.

The challenge of buying real estate in emerging hot markets is often exacerbated by the reliance on a real estate appraisal process that is a snapshot of activity in the past. Adapting this methodology to situations where market and regulatory activity is changing rapidly is indeed a challenge, but must be recognized as secondary to the larger challenge of exaggerated sense of value that often dictates a landowner's attitudes in a negotiation process.

### **The appraisal process is here to stay**

When a prospective buyer of a conservation easement and the landowner aren't able to come to terms, frustration sometimes leads to the suggestion that the appraisal process is the problem, and an alternative to appraisals needs to be found. Other times, a search for alternatives comes from a belief that the appraisal process doesn't capture the value of natural resources or "public" values like soil quality, watershed protection, or scenic views.

An alternative approach that has been implemented in Montgomery County and several other counties in Maryland, in Lancaster County, Pennsylvania, and in Skagit and San Juan Counties in Washington, is a point system that is used as the basis for determining conservation easement compensation values. There are discussions underway about launching the state of Ohio's new purchase of development rights system using a point system. In such systems, a series of attributes of the property are used to "score" the property, and the score is then translated into a dollar value.

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This research found that where alternative programs are operating, they were implemented early in the life of the program and before there was widespread acceptance of the appraisal process. These programs to date have operated at the county level, using locally generated funds. This is a significant difference to Vermont's conservation practices. Municipalities with locally generated funds are free to create their own procedures as opposed to being reliant on state or federal funding sources which have a different rules. What should also be remembered is that these programs were generally designed to avoid appraisal expenses by replicating as closely as possible the results of an appraisal. These point systems generally don't try to assign dollar values to natural resources or public values not typically valued by the market.

Since it would appear that the property appraisal process is entrenched in the procedures and culture of Vermont, it makes sense to focus on refinements to the appraisal process and the way it is used in negotiations to purchase conservation easements.

### **Importance of the appraiser/landowner interaction.**

A consistent factor that emerged from many interviews of Vermont landowners and PDR administrators nationwide was the amount of time the appraiser, and/or the purchasing agent spent talking with the landowner/seller. It is clear that a process that consists of one initial appraiser visit to the property, followed several months later by a purchase offer based on a completed appraisal, is less likely to produce a completed transaction. On the other hand, a process that includes frequent conversations between appraiser and landowner, and between purchasing agent and landowner, is much more likely to lead to a completed transactions. The focus of those conversations should cover such topics as:

1. relevant comparable sales
2. appropriate adjustments;
3. zoning and permitting issues;
4. natural development constraints;
5. the time, costs and risks associated with the subdivision and development process; and
6. the methodology and logic that the appraiser employs.

It is likely that the landowner will be more accepting of the value conclusions formed by the appraiser when appraiser and landowner have a chance for extensive give and take. Administrators in New Jersey, Maryland, Pennsylvania, and Massachusetts placed particular importance on this part of the easement purchase process. In Massachusetts, the landowner is encouraged to literally mark up the appraisal from start to finish with questions and challenges, and the appraiser is then paid to spend additional time addressing every question raised by the landowner. In Massachusetts, in the case of high-visibility, high priority or controversial easement projects, the state hires two veteran appraisers

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to work as a team, based on their experience such an approach tends to generate more creative solutions and increases the likelihood that the landowner will accept the conclusions.

Property owner frustration with the nature of the interaction with the appraiser was mentioned in three of the four incomplete transaction situations studies in Vermont. On the other hand, extensive interaction between appraiser and landowner is not a guarantee of a completed transaction. In the case of the Farris of Richmond, the landowners were very satisfied with their interactions with both the appraiser the land trust representative. It was for other reasons that they declined to sell a conservation easement.

Easement purchasing agencies and land trusts in Vermont should explicitly encourage, and pay for, additional meetings between appraisers and property owners before the appraisal is completed, and following the submission of the appraisal report. It would also make sense to use the Massachusetts approach – engage a team of two appraisers from the start -- in the case of high priority and/or challenging easement purchase projects.

### **Clear guidelines for appraisers**

Most jurisdictions provide appraisers with guidelines for preparing appraisals. Many times, these guidelines have been prepared in the context of condemnations of properties (fee interests, generally) by a transportation agency, and are not particularly helpful for the specialized issues facing appraisal of conservation easements. In other cases, such as the Vermont Housing and Conservation Board and the New Jersey State Agriculture Development Committee, very specific guidelines have been developed and are periodically updated. California's Farmland Conservation Program is in the process of developing such a handbook, as a result of inconsistency in the approaches taken by different appraisers of conservation easements. Other times, specific instructions are given to appraisers in their letters of engagement.

VHCB and VTRANS should consider supplementing existing appraiser guidelines with expanded guidelines providing more detailed instructions regarding some of key issues particular to conservation easement appraisals. In addition, letters commissioning individual appraisals should offer specific instructions beyond the standard boilerplate typically found in many appraisals.

Whether in expanded guidelines or in letters of engagement, it would make sense to provide Vermont appraisers with clear guidance on topics such as:

1. Use of the subdivision method for estimating value. In Massachusetts, appraisers are asked to use the subdivision method as well as the sales comparison approach in estimating the "before" value. Rather than weight the estimates from the different approaches, appraisers are asked to use the highest

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estimate – which often results from application of the subdivision method – in arriving at their final conclusion. In New Jersey, on the other hand, appraisers are discouraged from using the subdivision method. Although the property may have preliminary approvals for a subdivision in place, use of this method is to be considered a check on the results from the sales comparison approach.

In Vermont's "hot property markets", it might make sense to instruct the appraiser to use the subdivision method, even if approvals for a subdivision have not been obtained, since many appraisers will otherwise be reluctant to use such an approach. Clarity in Vermont, one way or the other, would be preferable to a system that allows two different appraisers to use two different approaches in evaluating the same property.

2. Searching for comparable prices. Sometimes, particularly in Vermont hot property markets, it would be appropriate to specifically encourage the appraiser to look further a field for the "before easement restrictions" comparable prices than just the immediate town. It may be that recent sales activity in towns many miles away can serve as an indication of the market forces that are just beginning to appear in the town where the subject property is located. Naturally, the appraiser will need to use his/her judgment in making location adjustments to such comparables, but encouraging a more expansive look is often a good idea.

3. Highest and best use determination. The appraiser's conclusion regarding the highest and best use of the property in the "before" condition is often the most critical judgment in the train of logic leading to a value conclusion. Appraisers will generally be highly reluctant to assume a property use not allowed under current zoning. Some exceptions are made only when a specific zoning change has been proposed and has received generally favorable commentary from local officials.

In Vermont, it may be appropriate for the appraiser to be instructed at the outset to make the assumption that a specific zoning change will occur, say, within a two-year period. A problem with this approach, however, is that the appraiser may feel compelled to label the resulting value estimate as a "hypothetical" value, rather than a "fair market" value. The issue will then be whether VHCB or other funding sources are comfortable providing funding based on an estimate other than "fair market value." In New Jersey, for example, such an approach would be considered "hypothetical," and would likely not be accepted by the state's review appraisers.

### **Maneuvering room on purchase price**

Some land trusts, when working with private dollars, are prepared to pay up to 10% in excess of appraised price if necessary to complete an important purchase. The feeling is that a 10% premium, given the variability from one appraisal to another, probably falls in an acceptable range for the IRS regarding

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private benefit issues. It is difficult to create this sort of maneuvering room when dealing with public funding agencies. It would make sense to pursue this concept with Vermont funding agencies in recognition of the fact that the appraisal process is not an exact science, but rather is an estimate of value based on numerous assumptions. The purchasing entity should have some ability to offer in excess of appraised value for priority acquisitions in hot property markets.

In the discussions with the Mahoneys of Swanton, VT, for example, it turns out that the appraised price for a conservation easement fell just \$1000 short of the minimum amount they had decided would make it worth their time to pursue discussions. A little bit of latitude in the ability to extend an offer might have made all difference.

### **Sometimes, there's nothing that can be done**

Anyone who has been involved in the acquisition of real estate understands that there is a multitude of complex factors working at the same time. In some situations there is no amount of tweaking the appraisal process or amount of time spent reasoning with the landowner that will result in agreement on price and terms. Where the acquiring entity has no room to maneuver beyond the value estimate of an authorized appraisal, this leaves no alternative but to back off and wait. In such instances, the wait may take years or decades. In other cases, external events such as nearby land sales or changing financial circumstances may help to bring the landowner back to the negotiating table. These are situations where only patience will work.

This may be particularly true when it comes to purchasing conservation easements. Many landowners are confused and threatened by the detail of conservation easement language. In addition, landowners generally rely on advice from bankers, family attorneys and accountants who are often unfamiliar with, and/or skeptical of, such techniques. Many years of deliberation and education will ensue before a landowner is ready to move forward with the sale of a conservation easement.

In some cases, a landowner may decline to sell a conservation easement simply because he or she doesn't have any immediate use for the proceeds of sale, or hasn't committed to staying on the farm long-term. This was a factor in the decisions of both Harlow (Westminster, VT) and Farr (Richmond, VT) to decline to move forward with easement sale discussions.

### **Other possible approaches**

In situations where the appraisal process simply doesn't yield a value satisfactory to the owner, and where the Vermont purchasing entity is fully prepared to pay more but is limited by statute or policy to paying no more than appraised value, there are other possible avenues to be pursued.

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1. Sale/leaseback or retained life estate. There are occasional situations where the landowner is clear that he or she will want to part with the property in, say, 10 or 15 years. In such situations, it might make sense to buy the property outright from the landowner, and then lease it back for a period of years. This would provide the ability to control development and subdivision of the property. In some cases, the purchase price, net of rents received, might be comparable to the cost of buying an easement.

Landowners with the ability to use the tax benefits of a charitable donation may take advantage of a bargain sale of the land. The sale would be subject to a life estate agreement that would allow the landowner(s) to remain on the property for the rest of their lives, or until such time as they choose to relinquish their life estate.

2. Overlay easement or management agreement. Another approach would be to pursue the possibility of a supplemental agreement restricting land use or agricultural practices. Such an agreement, in the form of an overlay easement or a management agreement could, for example, provide for payments to the landowner in exchange for an agreement to regularly mow certain fields, or to maintain certain structures for scenic purposes. This could provide a legitimate way of providing cash to the landowner above and beyond the proceeds from sale of a conservation easement.

3. Option to purchase at agricultural value. Programs designed to protect working farms have been increasingly challenged by situations where easement-protected farms become attractive to gentleman farmers and horse owners. These owners bid up the price of easement-protected farms to the point where they aren't affordable for more traditional agriculture. The response of Massachusetts and, in a few cases Vermont, has been to add the easement an option for the state to purchase the property at agricultural value. This helps assure the farm, if resold, will stay priced in a range that would allow continued agricultural use. The effect of such an option agreement is to diminish the after value of the property, thus increasing the appraised value of the conservation easement. Expanded use of this approach in Vermont might make sense in some instances.

4. Term easement. If the landowner won't agree to sell a conservation easement in perpetuity there might be situations where it would make sense to buy the development rights for a limited period of time. These time-limited agreements are usually less expensive for the acquiring agency and more flexible to the landowner than traditional conservation easements. From the public agency or land trust's point of view, such an approach would not likely make sense unless accompanied by some form of right of first refusal or option to buy that would apply at the time of expiration of the term easement. Whether this type of conservation easement – or an equivalent conservation lease of

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some sort – would be permitted under Vermont law, or would be supported by VHCB or other organizations, is not clear.

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**APPENDIX A**

**Review of Vermont Conservation Easement Transactions**

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| DATA FORM  |
| <u>Conservation Easement Transaction Information</u>   |
| <u>Status of transaction</u><br>_____ Completed    _____ In Progress    _____ Never completed  |
| <u>Location</u><br>Town: _____<br>Location relative to interstate or state highway:<br>_____<br>_____  |
| Location relative to urban edge or other "hot spot": _____<br>_____  |
| <u>Parties</u><br>Landowner name: _____ Phone: _____<br>_____  |
| Purchaser(s): _____<br>Contact person: _____ Phone: _____<br>_____   |
| Easement holding organization:<br>_____<br>Contact person: _____ Phone: _____<br>_____   |
| Funding sources:<br>_____<br>Contact person: _____ Phone: _____<br>_____   |
| <u>Property information</u><br>Acreage: _____<br>Land uses: _____ dairy _____ other ag. _____ commercial<br>_____ residential _____ open space _____ other: _____<br>Abutting property land uses: _____ dairy _____ other ag.<br>_____ commercial _____ residential _____ open space _____ other:<br>_____ |
| Flood plain acreage? _____<br>Unbuildable acreage (wetlands, >30% slopes etc..) _____<br>_____   |
| <u>Zoning issues</u><br>Zoning at time of appraisal: _____   |

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Last zoning change, and previous zoning status: \_\_\_\_\_

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Evidence of possible coming zoning changes at time of appraisal: \_\_\_\_\_

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Price

Purchase price if completed transaction: \$ \_\_\_\_\_ (Last offered price, if never completed)

Purchase price per acre: \$ \_\_\_\_\_

Date of transaction: \_\_\_\_\_

Easement information

Easement used: \_\_\_ standard VLT \_\_\_ standard VHCB \_\_\_ other: \_\_\_\_\_

Easement purposes: \_\_\_ agricultural \_\_\_ open space/scenic \_\_\_ wildlife habitat  
 \_\_\_ other: \_\_\_\_\_

Appraisal information

Name of appraiser: \_\_\_\_\_ Phone: \_\_\_\_\_

Date of appraisal: \_\_\_\_\_

Appraised price: \$ \_\_\_\_\_

Appraised price per acre: \$ \_\_\_\_\_

Appraiser's highest and best use determination "before": \_\_\_\_\_

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Appraiser's highest and best use determination "after": \_\_\_\_\_

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Any special instructions given to appraiser: \_\_\_\_\_

Did appraiser have access to final conservation easement? \_\_\_\_\_

Appraisal methods used: \_\_\_\_\_ sales comparable approach  
 \_\_\_\_\_ subdivision development approach  
 \_\_\_\_\_ cost approach

Annual % used to adjust comparable sales: \_\_\_\_\_

Location of comparable sales: \_\_\_\_\_ all in immediate town  
 \_\_\_\_\_ in adjacent towns  
 \_\_\_\_\_ elsewhere: \_\_\_\_\_

Negotiation information

Who initiated transaction? \_\_\_ landowner \_\_\_ purchasing entity  
 \_\_\_ real estate agent \_\_\_ other: \_\_\_\_\_

Seller's involvement in appraisal process: \_\_\_\_\_

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Who handled negotiations for the purchaser? \_\_\_\_\_

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Brief description of negotiating process: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proximity to other conservation easement sales:  
Why was the offer refused? \_\_\_\_\_  
Too low\_\_\_ Unsure about the future benefits\_\_\_ Personal reasons not related  
to price \_\_\_\_\_  
Other \_\_\_\_\_  
Other information: \_\_\_\_\_

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## INTERVIEWS OF COMPLETED TRANSACTIONS

### Willard Properties, Colchester, VT

Background: In July, 2001, Willard Properties, LLC (Richard Feeley and Phil George, partners) sold a conservation easement on approximately 25 acres of land located at the Exit 17 interchange (Colchester) of Interstate 89 to the Vermont Department of Buildings and General Services. The land was zoned industrial, and abutted woodlands, including land owned by Vermont Forest & Parks. The much-publicized transaction was personally championed by Governor Dean.

Sources: Interview of Stacey Butler, Staff Attorney, Department of Buildings and General Services.

Who initiated?: It appears that representatives of B&GS initiated discussions with the property owners.

Expectations of value: The owners reportedly had high expectations of the value of their land based on its visibility at the Interstate interchange, and the priority given by the State to protecting the property.

Nature of the appraisal, and interaction with the appraiser: The appraisal commissioned by the state asked for a fair market value estimate of the unrestricted fee interest only. The appraiser was never asked to estimate the value of the property as if encumbered by an easement (the after value). The appraiser's fee simple estimate of \$315,000 was used as the basis for negotiating the purchase price of a conservation easement on the land. The agreed price of \$335,000 reportedly took into account the fact that an easement on a 15-foot strip on adjoining property was also included in the purchased conservation easement. Nothing was learned about the nature of the interaction between the property owners and the appraisers.

What did it take to decide to sell?: It appears that the purchase price was very attractive to the property owners, particularly considering that they retained ownership of the property and that the conservation easement allowed utilities, signage and fences on the property in order to facilitate development of the owners' adjacent property.

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## **Siple, Williston, VT**

**Background:** In 1991 Waldo and Arline Siple sold a conservation easement on 164 acres of their farm to VHCB/VLT. Zoned ag/rural residential with frontage on three roads, this property was a prime Williston development candidate.

**Sources:** Interview with Arline Siple.

**Who initiated?:** Town representatives initially approached the Siples about their possible interest in selling an easement. Because they had no interest in developing, they were interested.

**Expectations of value:** Because this was the first agricultural easement sale in the town, the Siples didn't have particular expectations about value going into the process. The amount they were eventually paid -- \$2652 an acre for 164 acres of their 244-acre farm -- was in line with their expectations.

**Nature of the appraisal, and interaction with the appraiser:** The Siples report a fair amount of discussion with the appraiser as the appraisal was underway. He explained his reasoning on the before and after values and reviewed with them the comparables he was using.

**What did it take to decide to sell?:** The Siples needed cash for improvements on the farm, and had no intention of developing or moving. So, when the appraisal came in at a satisfactory number, they decided to sell. "We're very happy with the way things worked out. We'd do it again," reported Arline Siple. She reports that their daughter is considering taking over the farm.

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## ***INCOMPLETE TRANSACTIONS***

### **Harlow, Westminster, VT**

Background: Discussions took place over several years between Paul Harlow and representatives of VLT regarding a possible purchase of a conservation easement on land located at the Exit 5 interchange (Westminster) of Interstate 91. The 127-acre farm property (organic vegetables) is very near the I-91 interchange, and abuts various commercial uses. The property is zoned residential with an agricultural overlay, and has extensive acreage within the 100-year floodplain. The appraisal, commissioned by VLT, showed very little difference (only \$53,000) between the before and after values. The owner had a much larger number in mind, and will just sit and reconsider his options.

Sources: Interviews with Joan Weir of VLT and with Paul Harlow, property owner.

Who initiated?: VLT representatives had been encouraging Paul Harlow for many years to consider selling a conservation easement on his 127 acres of farmland, but he wasn't interested, partly based on concern about reducing collateral value for bank loan purposes. Recently, beginning to think about retirement, he told VLT he would consider the possibility.

Expectations of value: Based in part on what he knew was being paid for other easements, and on his proximity to the Interstate, and on advice from his banker, Paul had a number in mind for what he should be paid for sale of an easement. That number was five times the amount offered to him based on appraisal.

Interaction with the appraiser: The owner reports that the appraiser visited him and the property early in the appraisal process, but there was no further contact with the appraiser after that time. The appraiser never discussed the reasoning of the appraisal, the highest and best use assumptions, or the selection of comparables. These issues were discussed by VLT representatives, however.

What would it take to decide to sell?: Given the development constraints created by floodplain and zoning issues, the owner doesn't really dispute the appraisal's conclusions. It would take a great deal more money for him to consider selling an easement. He's not desperate for money, so he'll just wait, with no intention to develop or sell, thinking that the situation might be dramatically different in 10 years.

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## **Mahoney, Swanton, VT**

Background: Discussions took place over several years between Edward and Carol Mahoney and representatives of VLT regarding a possible purchase of a conservation easement on land located within 5 miles of the Exit 21 interchange (Swanton) of Interstate 89. The 170-acre dairy farm is zoned ag/residential, and has considerable road frontage.

Sources: Interview with Carol Mahoney.

Who initiated?: The Mahoneys initiated discussions with VLT in 1995. VLT applications for funding were rejected several times, so the Mahoneys lost interest. Recently, VLT approached the Mahoneys, suggesting it might be time to try again.

Expectations of value: The Mahoneys believed that their proximity to the Interstate interchange made their location very attractive to commuters, thus contributing to their expectations of the property's value. They were aware of prices paid for other easements. They also had advice from a UVM economist about what they should expect as compensation.

Interaction with the appraiser: The VLT-commissioned appraiser met with the Mahoneys once at the outset of the appraisal process, but there was no further contact after that time. When the first appraisal came in way below everybody's expectations, VLT suggested the appraiser look at some different comparables and try it again. The revised appraisal came much closer to meeting the Mahoneys expectations. But there was never any discussion between the owners and the appraiser about comparables, development potentials or the like.

What would it take to decide to sell?: Eight years ago, when the Mahoneys were under greater financial pressure, they would gladly have sold had funding been available. Most recently, the appraised value was within \$1000 of the value they agreed they would consider, but since there was no room to budge on price, they declined to proceed. Now, with their son leaving the farm, they may be forced to consider selling their herd and subdividing their land.

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## **Farr, Richmond, VT**

**Background:** Discussions have taken place over several years between Chuck and Peggy Farr and representatives of the Vermont Land Trust regarding the possible sale of a conservation easement on portions of their 275-acre dairy farm in Richmond and Williston. The property, near Interchange 11 on Interstate 89, is largely (about 200 of 275 acres) in floodplain.

**Sources:** Interview with Chuck Farr and with Allen Karnatz of Vermont Land Trust.

**Who initiated?:** The owners initiated the discussions some years ago, largely out of curiosity, but with no clear plan in mind for whether and how they might stay on the farm over the long haul.

**Expectations of value:** The owners didn't have a particular number in mind when they initiated the process, but had a good sense of local value through their own sales of building lots. They were well aware of the impact on value of their extensive acreage in floodplain.

**Interaction with the appraiser:** The owners were very satisfied with their interaction with the appraiser and with VLT, though they thought the value estimate should have come out somewhat higher. They feel they had ample opportunity to discuss comparables, development constraints, assumptions and methodology.

**What would it take to decide to sell?:** The owners cite two reasons for not selling. First, they were never totally comfortable with the language regarding retained rights in the conservation easement document. Second, they weren't clear about their own family's plans for the farm. Specifically, they didn't have a particular farm-related project that they would use the funds for. Chuck said it wasn't really about money – even if they'd been offered twice the \$280,000 they were offered, he doubts they would have done it, for the same two reasons.

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## **Paradis, Franklin, VT**

**Background:** Discussions have taken place recently between Ron and Lynn Paradis and representatives of the Vermont Land Trust regarding a possible purchase of a conservation easement on the 305-acre farm located in Franklin, Vermont. This remote property has some attraction for residential development because of its proximity to Lake Carmi State Park. The property is zoned rural residential/ag, and has 1.5 miles of road frontage.

**Sources:** Interview with Ron Paradis.

**Who initiated?:** The owners initiated the discussions, based on their desire to do a tax-free exchange of the proceeds from their sale of an easement for the easement-restricted property of a neighboring farmer.

**Expectations of value:** The owners' expectation of value was formed by their knowledge of other easement sales, and their belief that an easement should sell for at least 40% of the property's underlying value.

**Interaction with the appraiser:** The owners would like to have more conversation with the appraiser, in order to review assumptions about development constraints, relevance of comparables, etc. There has been frequent conversation with VLT staffers about these matters, but not with the appraiser.

**What would it take to decide to sell?:** They would need the appraisal to reflect different assumptions, yielding a higher price. The owners see some possibility that VLT could convince the appraiser to look differently at their situation.

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## **APPENDIX B**

### ***Summary of approaches used in other jurisdictions***

#### **CALIFORNIA**

Source: Erik Vink, Assistant Director, California Department of Conservation

Extent of problem in interstate corridors and other hot spots: The California Farmland Conservancy Program has not experienced particular problems coming to terms with landowners in interstate corridors or other hot market zones. To the extent it's been an issue, it's been no different than other give-and-take with landowners over appraised value.

Compensation approach: The CFCP has exclusively used an appraisal approach, extending offers (or rather, offering the funding to land trusts who extend the offers) on the basis of appraised price. They have not used a bid system. However, in the future, as dollars become tighter, they may shift to a bid system to make existing dollars go further.

Appraisal process: Appraisals are commissioned by land trusts, who receive funding for easement purchases from the Dept. of Conservation. All appraisals are done with fair market value used for both before and after values. Slowly, California is getting to the point where comparables are available for after valuations.

The Department's review appraisers review all appraisals. They are generally not comfortable with the use of the subdivision approach, unless approvals for such a subdivision are in hand.

The Department will soon be issuing a handbook for use by appraisers, so that greater consistency can be achieved regarding such matters as: HBU determinations, when to use subdivision approach, the how to factor in the value impact of Williamson Act land use restrictions.

Negotiation process: Negotiation is handled by partner land trusts. It's the Department's observation that transactions are facilitated by extensive contact between landowner and appraiser and land trust throughout the process, comparing notes on comparables, zoning review, HBU assumptions and the like.

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## **MASSACHUSETTS**

Source: Richard Hubbard, Assistant Commissioner, Massachusetts Department of Food and Agriculture

Extent of problem in interstate corridors and other hot spots: Appraising and negotiating are particularly challenging in hot markets where comparables can be out of date in a matter of months.

Compensation approach: The Massachusetts Agricultural Preservation Restriction (APR) program uses appraisals for determining compensation offers. They have no intention of considering a bid system – to do so where the appraisal process is so firmly established would be impossible.

If a high-scoring property is in imminent threat of conversion, the program uses discretion in moving them higher on the priority list.

Appraisal process: Appraisers use fair market value for both before and after values. There have been adequate sales of restricted properties over time to provide generally good comparable for after valuations.

Appraiser are asked to use the subdivision method, even where it would be hypothetical, and are then asked to give greater weight to which ever method produces the higher value, especially in rapidly appreciating hot market zones.

For controversial or high-visibility or strategically important projects, two good appraisers will be commissioned from the start, and asked to work as a team. The result is generally creative solutions coming from the collaboration of two appraisers, along with greater likelihood of landowner acceptance of their conclusions.

Negotiation process: The APR program encourages – and will pay extra for – extensive time spent by appraisers on the land with the landowner. Appraisers are encouraged to solicit suggestions regarding comparables from the landowner. The landowner is presented with a draft appraiser, and asked to mark it up with questions and comments. The appraisal is then paid to spend additional time with the landowner addressing questions and concerns, and then revising the appraisal if appropriate.

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## **NEW JERSEY**

Sources: Greg Romano, Executive Director, New Jersey State Agriculture Development Committee; Paul Burns, Chief Review Appraiser, NFASDC

Extent of problem in interstate corridors and other hot spots: The program works in hot markets all over New Jersey, whether interstate-influenced or not. Offers based on appraisals are accepted 75% to 80% of the time.

Compensation approach: When handled at the County level, appraisals are commissioned for high ranking properties, then landowners are asked to bid. For every 1% of discount off of appraised price, they are given extra points in the ranking system which ultimately determines the order in which offers are made in any given funding cycle.

When handled at the State level, appraisals are commissioned for high ranking properties, then a negotiation ensues based on appraised price.

Appraisal process: The program provides appraisers with a guidebook covering a wide range of matters, including zoning, highest and best use, adjusting comparables, etc. But many informal policies of the program aren't in the guidebook, for example: subdivision approach can be used only when a plan has been created and filed, and even then would need to be accompanied by a detailed market feasibility study. (Otherwise, the value estimate would be considered a "hypothetical value", not a "fair market value". And it's questionable whether the state could pay for an easement based on anything other than fair market value.)

In hot markets, the state's review appraiser can authorize the use of a pending sales contract as a comparable, even when the sale has not closed and been recorded.

Negotiation process: The state encourages extensive contact between appraiser and landowner, believing this is particularly helpful in educating landowners about costs and risks involved if they were to pursue a subdivision or development of their own land.

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## **PENNSYLVANIA**

Source: Mary Bender, Director, Bureau of Farmland Preservation

Extent of problem in interstate corridors and other hot spots: They've had their share of interstate corridor projects, particularly in the Southeast part of the state. But they take them case by case, treating them as the same sort of appraisal and negotiation challenges that emerge elsewhere.

Compensation approach: The program is administered at the County level, with Counties commissioning appraisals as basis for offers. Some counties set per-acre caps (e.g. \$1500 or \$2000) on what they can pay, leading to many bargain sales. (I.e. the landowner takes as charitable deduction for the difference between appraised easement price and the price paid by the County based on their cap policy.) Other counties don't set caps – an easement was just purchased in Berks County for \$30,000/acre.

Appraisal process: County programs commission appraisals on farms that qualify (that are in Agricultural Security Areas). Landowners are encouraged to commission their own appraisal, at their cost, if they dispute the county appraisal. A state review appraiser may become involved to mediate.

Appraisers use fair market value for both before and after values. Extensive restricted sales data are available for use as after value comparables.

Negotiation process: Experience shows that most landowners seeking to sell have a fairly good sense of values to expect. Counties with the longest track record operating the program have the greatest chance of reaching agreement with landowners.

Adequate time spent by appraiser talking with landowner has shown to be very important in bringing the parties together.

Point system: Lancaster County, which started an agricultural easement program before the state's program was started, runs their own program – apart from state funding – using a points system. It's intent is to streamline the process and to minimize appraisal fees, rather than to provide an alternative means for compensating landowners for natural resource or "public" value.

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## **MARYLAND**

Sources: Jim Conrad, Executive Director, Maryland Agricultural Land Preservation Foundation; John Zanitowski, Director of Planning, Montgomery County Agricultural Services.

Extent of problem in interstate corridors and other hot spots: The program deals with complaints about appraisals all the time, whether in an interstate corridor or not.

Compensation approach: When handled at the county level, counties have discretion. Most commission appraisals on before value, then use an ag. formula to establish the after value, then make offers on the basis of the difference between the two. (Montgomery County and several other counties are exceptions, having shifted to exclusive reliance on a points system. See below.) When handled at the state level, landowners submit bids after appraisals are completed, and offers are extended in order based on the amount of discount offered. (Recently, offers at 65% of appraised value tended to go to the top of the list.)

Appraisal process: State project appraisals are commissioned by the General Services Department's Real Estate Office. Before values are set at fair market value. After values are determined by the state on the basis of a formula that establishes annual rent potential based on soil quality and other factors, then capitalizes that number to arrive at an after value. The difference is set as the easement value, which forms the basis of the bid process.

Legislation is pending which would alter the formula for determining after value.

When there are disputes, the state will commission a second appraisal, and the landowner is invited to commission a third (at landowner's expense). Then, the state's review appraiser becomes involved in a mediation/negotiation process.

Negotiation process: The State has found that projects are most successful when both appraiser and purchasing agent spend considerable time reviewing comparables and development timetables and risks with the landowner.

Points system: Montgomery County has shifted to use of a points system to streamline the easement acquisition process. The system is frequently recalibrated to assure that results closely track the results of an appraisal process. The system does not attempt to build in extra points for natural resource or "public" values that might not otherwise be captured in market activity.

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For a while, the County offered landowners a choice between appraisal process and points process, but when all landowners were showing a preference for the points system, the County abandoned the appraisal process.

The State's Rural Legacy program operates on the basis of a point system which *does* build in points for natural features, occasionally resulting in easement purchase offers in excess of what a fair market value approach would likely produce.

