

1994 REGS

ARTICLE XVIII: SPECIAL USE AND DIMENSIONAL PROVISIONS

18.1 Unspecified Uses: In the event that a particular use is not set forth in the Article describing a specific district which is, in the opinion of the Board of Adjustment, consistent with the philosophy as set forth in these Regulations for that particular district, said Board of Adjustment may allow such a use as a conditional use after proper hearing, duly advertised. In such an event notice shall be sent to the Planning Commission of such hearing, and the Planning Commission may submit its written or oral recommendations to the Board of Adjustment relative to such proposed use. A use which is philosophically not consistent with the purposes of each district, as set forth by this Regulation, shall not be permitted under this section.

18.2 Special Lot Requirements:

18.2.1 Lots which abut on more than one street shall provide the required front yard depth along each street, and the required frontage along each street.

18.2.2 Corner lots shall be deemed to have two front yards (one on each street), two side yards, and no rear yards.

18.2.3 Lots fronting on the outside of culs-de-sac:

(A) Lots fronting on the outside of curved portions of a cul-de-sac or outside corner of a street should have a minimum frontage (as measured by their chord distance) equal to 75 percent of that normally required.

(B) Lots fronting on the outside of curved portions of a cul-de-sac or outside corner of a street may be acceptable with less than the 75% of normal requirement if, in the judgement of the Planning Commission such an arrangement would physically or aesthetically improve the quality of the lot layout.

18.3 Projection into Yards: All structures, whether attached to the principal structure or not, and whether open or enclosed, including porches, carports, balconies or platforms above normal grade level, shall not project into any minimum front, side, or rear yard.

18.4 Buffer Areas:

Only applies to non-residential abutting residential zoning district

18.4.1 Where new nonresidential structures and/or uses are adjacent to the boundary of a residential zoning district, the following buffer area and setback requirements are intended to minimize the impact of one land use upon a less intense land use. These requirements shall apply only to uses and buildings

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ARTICLE III: GENERAL STANDARDS

3.0 Applicability: The following general standards apply to all land development in the Town of Essex subject to review by the Zoning Administrator, Community Development Director, Planning Commission, or Board of Adjustment. These standards are to be applied by the designated official or municipal panel in association with the review of applications for permits and approvals, as specified under these Regulations.

3.1 Access and Frontage Requirements:

(A) **Required Frontage on, or Access to, Public Roads or Public Waters.** No land development may be permitted on lots which do not have either frontage on a public road or public waters or, with approval of the Planning Commission, access to such a road or waters by a permanent easement or right-of-way at least twenty-five feet (25') in width.

(B) **Frontage.** The creation of new lots without the required frontage on a public road is prohibited, except as provided below under Subsection (C).

(1) Lots which front on more than one street shall provide the required frontage along each street

(2) A property line shared with the public right-of-way of a limited access highway is not permitted to be used as frontage if access to the limited access highway is not permitted within the length of the shared property line.

(C) **Reduced Frontage Requirements:** The Planning Commission, under subdivision review, may approve new lots with less frontage than specified in Article II in the following circumstances:

(1) Lots fronting on the outside of the curved portions of a cul-de-sac or on the outside corner of a street may be approved with frontage (as measured by their chord distance) reduced to seventy-five percent (75%) of that normally required; and

(2) Lots fronting on the outside of the curved portions of a cul-de-sac or on the outside corner of a street may be approved with less than the seventy-five percent (75%) of normal frontage requirement if, in the judgment of the Planning Commission, such an arrangement would physically or aesthetically improve the quality of the lot layout, and adequate separation can be maintained between curb cuts and adjacent lots.

(3) Frontage requirements also may be waived or modified by the Planning Commission in association with approval of a planned unit development under Article VI.

(D) **Nonconforming Lots.** The Planning Commission may grant access to pre-existing nonconforming lots recorded in the Town Land Records which do not meet applicable

GRANT OF DEVELOPMENT RIGHTS AND CONSERVATION RESTRICTIONS

WHEREAS, JOHN R. KUNKEL and DONNA M. KUNKEL are the owners in fee of certain real property in the Town of Essex, Chittenden County, Vermont, which has aesthetic, recreational, and natural resource values in its present state; and

WHEREAS, this property contains 107.7 acres (more or less) of undeveloped land in agricultural and forestry use, which provides wildlife habitat as well as recreational opportunities; and

WHEREAS, the VERMONT LAND TRUST, INC. is a publicly supported non-profit corporation incorporated under the laws of the State of Vermont, and qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, whose purpose is to preserve undeveloped and open space land in order to protect the aesthetic, recreational, cultural, educational, scientific, and natural resources of the State through non-regulatory means, thereby reducing the burdens on state and local governments; and

WHEREAS, the economic health of Vermont is closely linked to its agricultural and forest lands, which not only produce food products, fuel, timber and other products, but also provide much of Vermont's scenic beauty, upon which the state's tourist and recreation industries depend; and

WHEREAS, the State of Vermont has repeatedly sought to foster the conservation of the State's agricultural, forest, and other natural resources through planning, regulation, land acquisition, and tax incentive programs, including, but not limited to, Title 10 V.S.A. Chapter 151 (Act 250); Title 24 V.S.A. Chapter 117 (Regional and Municipal Planning and Development Act); Title 10 V.S.A. Chapter 155 (Acquisition of Rights and Interests in Land); Title 32 V.S.A. Chapter 124 (Current Use Taxation); Title 32 V.S.A. Chapter 231 (Property Transfer Tax); Title 32 V.S.A. Chapter 235 (Land Gains Tax); Joint Resolution #43 adopted by the Vermont House and Senate in February 1982 endorsing the voluntary transfer of interests in agricultural land through agreements between farmland landowners and private land trusts; and Title 10 V.S.A. Chapter 15 (Housing and Conservation Trust Fund); and

WHEREAS, the conservation of this property as open space land is consistent with and in furtherance of the town plan adopted by the Town of Essex, the regional plan adopted by the Chittenden County Regional Planning Commission, and the purposes set forth in 10 V.S.A. §§ 821 and 6301;

NOW, THEREFORE,

KNOW ALL PERSONS BY THESE PRESENTS that JOHN R. KUNKEL and DONNA M. KUNKEL both of the Town of Essex, Chittenden County, Vermont, on behalf of themselves and their heirs, executors, administrators, successors, and assigns (hereinafter "Grantors"), in consideration of Ten Dollars and other valuable consideration paid to their full satisfaction by the Vermont Land Trust, Inc., do freely give, grant, sell, convey, and confirm unto the VERMONT LAND TRUST, INC., a non-profit corporation with its principal offices in Montpelier, Vermont, and its successors and assigns (hereinafter "Grantee") forever, the development rights and a perpetual conservation easement and restrictions (as more particularly set forth below) in a certain tract of land situated in the Town of Essex, Chittenden County, Vermont (hereinafter "Protected Property"), together with a non-exclusive right of way for access from Town Highway #56 (also known as Sawmill Road) to the Protected Property, said Protected Property and right of way being more particularly described in Schedule A attached hereto and incorporated herein.

The development rights hereby conveyed to Grantee shall include all development rights except those specifically reserved by Grantors herein and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The development rights hereby conveyed are rights and interests in real property pursuant to 10 V.S.A. §§ 823 and 6303. The conservation easement and restrictions hereby conveyed to Grantee consist of covenants on the part of Grantors to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that these covenants shall constitute a servitude upon the land and run with the land. Grantee accepts such covenants in order to achieve the Purposes set forth in Section I, below.

I. Purposes of this Grant.

Grantors and Grantee acknowledge that the Purposes of this Grant are as follows:

1. To contribute to the implementation of the policies of the State of Vermont designed to foster the conservation of the State's agricultural, forest, and other natural resources through planning, regulation, land acquisition, and tax incentive programs.
2. The principal objectives of this Grant are to conserve productive agricultural and wood lands, wildlife habitats, non-commercial recreational opportunities and activities, and other natural resource and scenic values of the Protected Property.

3. Recognizing that conservation of productive forestry resources is a primary objective of this Grant, and that both the resource values of the Protected Property and responsible forest management standards will evolve over time, the forest management objectives of this Grant are to:

- a) Manage forest stands for long rotations which maximize the opportunity for the production of maple sap and/or for harvesting, sustained over time, of high quality sawlogs while maintaining a healthy and biologically diverse forest. Grantors and Grantee acknowledge that site limitations and biological factors may preclude the production of high quality sawlogs, and further that the production of a variety of forest products can be consistent with the goal of producing high quality sawlogs.
- b) Conduct forest management and harvesting activities (including the establishment, maintenance and reclamation of log landings and skid roads) using the best available management practices in order to prevent soil erosion and to protect water quality.

4. To advance these objectives by conserving the Protected Property because it possesses the following attributes:

- a) 107.7 acres of managed woodlands;
- b) 20 acres of Site Class I forest soils and 5 acres of Site Class II soils;
- c) at least one identified vernal pool providing high quality amphibian habitat, including critical breeding habitat; and
- d) mapped by the State of Vermont as black bear habitat.

Grantors and Grantee recognize these agricultural, silvicultural, scenic, and natural values of the Protected Property and share the common purpose of conserving these values by the conveyance of the conservation easement and restrictions and development rights, to prevent the use, fragmentation, or development of the property for any purpose or in any manner which would conflict with the maintenance of these agricultural, silvicultural, scenic, and natural resource values. Grantee accepts such conservation easement and restrictions and development rights in order to conserve these values for present and future generations.

In conveying the development rights, conservation easement, and restrictions described herein to Grantee, it is the intent of Grantors and Grantee that the interests conveyed herein may serve as the local or State contribution or match to conserve other forestlands and wildlife habitat in Vermont under the Federal "Forest Legacy Program" described in Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990.

The purposes set forth above in this Section I are hereinafter collectively referred to as the "Purposes of this Grant."

II. Restricted Uses of Protected Property.

The restrictions hereby imposed upon the Protected Property, and the acts which Grantors shall do or refrain from doing, are as follows:

1. The Protected Property shall be used for agricultural, forestry, educational, non-commercial recreation, and open space purposes only. No residential, commercial, industrial, or mining activities shall be permitted, and no building, structure or appurtenant facility or improvement shall be constructed, created, installed, erected, or moved onto the Protected Property, except as specifically permitted under this Grant.

2. No rights-of-way, easements of ingress or egress, driveways, roads, utility lines, other easements, or other use restrictions shall be constructed, developed, granted, or maintained into, on, over, under, or across the Protected Property, without the prior written permission of Grantee, except as otherwise specifically permitted under this Grant, and as appear of record prior to the date of this Grant. Grantee may grant permission for any rights-of-way, easements of ingress or egress, driveways, roads, utility lines, other easements, or other use restrictions, if it determines, in its sole discretion, that any such rights-of-way, easements of ingress or egress, driveways, roads, utility lines, other easements or other use restrictions are consistent with the Purposes of this Grant.

3. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that Grantors may erect and maintain reasonable signs indicating the name of the Protected Property, boundary markers, directional signs, signs regarding hunting or trespassing on the Protected Property, memorial plaques, temporary signs indicating that the Protected Property is for sale or lease, signs informing the public that any agricultural or timber products are for sale or are being grown on the premises, political or religious signs, and signs

informing the public of any rural enterprise approved pursuant to Section III below. Grantee, with the permission of Grantors, may erect and maintain signs designating the Protected Property as land under the protection of Grantee.

4. The placement, collection, or storage of trash, human waste, or any other unsightly or offensive material on the Protected Property shall not be permitted except at such locations, if any, and in such a manner as shall be approved in advance in writing by Grantee. The on-site storage and spreading of agricultural inputs including, but not limited to, lime, fertilizer, pesticides, compost or manure for agricultural practices and purposes, the storage of feed, and the temporary storage of trash generated on the Protected Property in receptacles for periodic off-site disposal shall be permitted without such prior written approval.

5. There shall be no disturbance of the surface including, but not limited to, filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner, except as may be reasonably necessary to carry out the uses permitted on the Protected Property under the terms of this Grant. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.

6. The Protected Property shall not be subdivided or conveyed in separate parcels without the prior written approval of Grantee, which approval may be granted, conditioned, or denied in Grantee's sole discretion, except as otherwise specifically permitted in this Grant.

7. No use shall be made of the Protected Property, and no activity thereon shall be permitted which is or is likely to become inconsistent with the Purposes of this Grant. Grantors and Grantee acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Grant. Grantee, therefore, in its sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant, or (b) alterations in existing uses or structures are consistent with the Purposes of this Grant.

III. Permitted Uses of the Protected Property.

Notwithstanding the foregoing, Grantors shall have the right to make the following uses of the Protected Property:

1. The right to establish, re-establish, maintain, and use cultivated fields, orchards, and pastures in accordance with generally accepted agricultural practices and sound husbandry principles, together with the right to construct, maintain, and repair gravel or other permeable surfaced access roads for these purposes; provided, however, that Grantors shall secure the written approval of Grantee prior to any clearing of forest land to establish fields, orchards, or pastures. Grantee's approval shall not be unreasonably withheld or conditioned, provided that such clearing is consistent with (a) the Purposes of this Grant, (b) the Forest Management Plan as described in Section IV, below, and provided further that any such operation is conducted in accordance with the publication, "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont" ("AMPs"), a Vermont Department of Forests, Parks and Recreation publication dated August 15, 1987 (or such successor standard approved by Grantee).

2. The right to conduct maple sugaring operations on the Protected Property and the right to harvest firewood for use on the Protected Property or on the other land excluded from the Protected Property as described in Schedule A attached hereto and incorporated herein; provided the excluded land is owned by the owner of the Protected Property.

3. The right to perform other forest management activities and to harvest timber and other wood products in accordance with a Forestry Plan as defined in Section IV below. Prior to commencing timber harvesting activity in accordance with the Forestry Plan, Grantors shall provide Grantee with not fewer than fifteen (15) days' prior written notice, except that no such notice shall be required for: (a) thinning of forest stands performed without the commercial sale of the harvested products; and (b) any timber harvesting involving fewer than ten (10) acres, or yielding fewer than 8,000 board feet of sawlogs or 25 cords of pulp or firewood. Nothing in this clause shall be interpreted to require Grantors to harvest a treatment unit (as defined in Section IV, below), but only to require that any such harvest be conducted in accordance with the Forestry Plan or the Amended Forestry Plan should Grantors elect to harvest. Any harvesting of wood products shall be conducted in accordance with the AMPs (or such successor standard approved by Grantee).

4. The right to construct and maintain barns, sugar houses, or similar structures or facilities, together with necessary access drives and utilities, on the Protected Property, provided that they are used exclusively for agricultural or forestry purposes, and provided further that such construction has been approved in writing in advance by Grantee. Grantee's approval may include designation of a complex surrounding the structures and shall not otherwise be unreasonably withheld or conditioned, provided that the structure or facility is located in a manner which is consistent with the Purposes of this Grant. Grantors shall not deem unreasonable a condition by Grantee that certain structures must be located within a complex which may be designated in the future as provided in this Section III.

5. The right to use, maintain, establish, construct, and improve water sources, courses, and bodies within the Protected Property for uses permitted in this Grant; provided, however, that Grantors do not unnecessarily disturb the natural course of the surface water drainage and runoff flowing over the Protected Property. Grantors may disturb the natural water flow over the Protected Property in order to improve drainage of agricultural soils, reduce soil erosion or improve the agricultural potential of areas used for agricultural purposes, but shall do so in a manner that has minimum impact on the natural water flow and is otherwise consistent with the Purposes of this Grant and complies with all applicable laws and regulations. Prior to undertaking a streambank stabilization project or placing any structure within rivers or streams or on the banks thereof, Grantors shall provide written notice to Grantee of their intent to do so. The construction of ponds or reservoirs shall be permitted only upon the prior written approval of Grantee, which approval shall not be unreasonably withheld or conditioned; provided, however, that such pond or reservoir is located in a manner which is consistent with the Purposes of this Grant.

6. The right to clear, construct, and maintain trails for non-commercial walking, horseback riding, skiing, and other non-motorized, non-commercial recreational activities within and across the Protected Property. Non-commercial snowmobiling may be permitted at the discretion of Grantors. All-terrain vehicles may be permitted by Grantors only in those circumstances as expressly provided in Section III(8) below.

7. The right to conduct rural enterprises consistent with the Purposes of this Grant, especially the economically viable use of the Protected Property for agriculture, forestry and open space and the conservation of agriculturally and silviculturally productive land. In connection with such rural enterprises, the right to construct, maintain, repair, enlarge, replace and use permitted structures with associated utility services, drives and appurtenant improvements within a designated complex permitted by this Section III. These structures shall be non-residential and not inconsistent in number, nature, size and intensity of use of each such structure or improvement with the Purposes of this Grant. No use or structure contemplated under this Section III(7) shall be commenced, constructed or located without first securing the prior written approval of Grantee, which approval Grantee may deny or condition in its sole discretion. All structures and uses shall conform with all applicable local, state and federal ordinances, statutes and regulations. Grantee's approval may be conditioned upon, without limitation, receipt of copies of any necessary governmental permits and approvals that Grantors obtain for such use or construction. In no event shall the Protected Property be used for more than de minimis commercial recreation activities pursuant to I.R.C. Section 2031(c)(8)(B) or any successor statute or regulation.

8. The right to use all-terrain vehicles on the Protected Property for the limited purposes of agriculture and forestry. Grantors also may permit the use of all-terrain vehicles on the Protected Property only for non-commercial recreational purposes and only by Grantors, Grantors' family (as hereinafter defined) and Grantors' employees.

9. The right to construct, maintain, repair, replace, relocate, improve and use systems for disposal of human waste and for supply of water for human consumption (collectively "systems") on the Protected Property for not more than one single-family residence which may be located on land owned by the original Grantors herein at the date of this Grant but excluded from the Protected Property under Schedule A hereto ("Exclusion"). Any such systems may be constructed, maintained, operated, repaired, replaced, relocated or improved on the Protected Property only if there does not exist within the designated Exclusion any suitable location for such systems, under the Vermont Department of Environmental Conservation Wastewater System and Potable Water Supply Rules or the then applicable law or regulations governing Systems (collectively "the Rules"), as determined by a person authorized to make such determination under the Rules retained at Grantors' sole cost and expense. Grantors shall first obtain the written approval of Grantee for the location, relocation, replacement or improvement of such systems on the Protected Property, which approval shall not be unreasonably withheld nor conditioned, provided that:

- a) All reasonable attempts to locate, relocate, replace or improve the systems within the Exclusion in a manner that complies with the then current Rules are exhausted; and

- b) Such systems are located in a manner consistent with the Purposes of this Grant and especially minimize the loss of agricultural soils; and,
- c) Such Systems are designed by a person authorized to do so under the Rules retained at Grantors' sole cost and expense, certified by such person as complying with the Rules, installed in compliance with the Rules, certified by person authorized to do so under the Rules as being installed in accordance with the certified design and approved in accordance with all the then applicable Rules.

After Grantors have obtained Grantee's approval for systems serving any Exclusion, Grantors shall have the right to convey legal access to the successor owners of the Exclusion for construction, operation and maintenance of the systems as an appurtenance only to the Exclusion.

10. The right to construct, use, maintain, repair and replace one (1) fully enclosed camp being no more than fifteen (15) feet high as measured from the average undisturbed ground level to the roof peak and having a footprint of no more than 800 square feet including decks and porches, provided, however, that any such camp shall be used exclusively for non-commercial, periodic camping, hunting and recreational purposes, and not for permanent occupancy, and shall not have commercial utility services or an access road improved beyond what is minimally required to afford reasonable vehicular access. Alternatively, Grantee may approve a camp having different dimensions; provided, however that such camp shall have an aggregate total exterior wall surface area from undisturbed ground level to stud wall height, excluding gables and roof, of no more than 800 square feet. Grantors shall notify Grantee in writing prior to commencing construction on the camp, relocating it or enlarging it so that Grantee may review and approve the proposed location, dimensions and access of the camp which approval shall not be unreasonably withheld or conditioned, provided that the dimensions and access of the camp are in compliance with this section and are located in a manner consistent with the Purposes of this Grant.

11. The right to construct, repair, maintain, and use a minimal number of minor structures (for example: deer stands, gazebos, hunting blinds, lean-tos, Adirondack shelters, tent platforms, tree houses, children's play houses, privies, kiosks, outdoor fireplaces) on the Protected Property provided that such structures shall not have any access roads or drives, utility services or facilities, waste disposal systems, or plumbing, and shall not be used for year-round, continuous residential occupancy or for any commercial activity of any nature (except as Grantee may permit in its sole discretion pursuant to the rural enterprises clause in Section III) and shall not exceed 300 square feet of floor space and fifteen feet in height. Grantors shall secure the written approval of Grantee prior to the construction of any such minor structure, which approval shall not be unreasonably withheld or conditioned, provided that the structure complies with the requirements of this Section III(11) and the number and location of such structures are consistent with the Purposes of this Grant.

12. In the event that ownership of the Protected Property is conveyed to a qualified holder as defined under 10 V.S.A. 821(c), Grantors and Grantee may amend this Grant in furtherance of the principal objectives of this Grant to include an easement for non-commercial recreational public access, which may include a requirement for adoption of management plan provisions for said public uses of the Protected Property. Notwithstanding the foregoing, this right is not intended to limit the amendment of this Grant in conformity with state and federal law, including Section 170 of the Internal Revenue Code and the Treasury Regulations promulgated thereunder.

IV. Forest Management Plans.

As provided in Section III(3), above, Grantors shall not harvest timber or other wood products (except for maple sugar production and the cutting of firewood for use on the Protected Property or on the other land excluded from the Protected Property as described in Schedule A attached hereto and incorporated herein) without first developing and submitting to Grantee for its approval, a Forest Management Plan for the Protected Property (hereinafter the "Forestry Plan"). All updates, amendments, or other changes to the Forestry Plan shall be submitted to Grantee for its approval prior to any harvesting. The Forestry Plan as updated, amended, or changed from time-to-time is hereinafter referred to as the "Amended Forestry Plan." Grantee's approval of the Forestry Plan and any Amended Forestry Plan shall not be unreasonably withheld or conditioned, if the Forestry Plan or Amended Forestry Plan has been approved by a professional forester and if the Forestry Plan and the Amended Forestry Plan are consistent with the Purposes of this Grant, and in particular, the primary objective set forth in Section I(2). Grantee may rely upon the advice and recommendations of such foresters, wildlife experts, conservation biologists, or other experts as Grantee may select to determine whether the Forestry Plan or Amended Forestry Plan would be detrimental to the values identified in Section I. The Forestry Plan and any Amended Forestry Plan shall be consistent with the Purposes of this Grant and shall include at least

the following elements (except that those elements of the Forestry Plan or Amended Forestry Plan which do not change need not be re-submitted in updates, amendments or changes to the Forestry Plan):

- a) Grantors' forest management objectives;
- b) An appropriately scaled, accurate map indicating such items as forest stands, streams, and wetlands, and major access routes (truck roads, landings and major skid trails);
- c) Forest stand ("treatment unit") descriptions (forest types, stocking levels before and after harvesting, soils, topography, stand quality, site class, insect and disease occurrence, previous management history, and prescribed silvicultural treatment);
- d) Plant and wildlife considerations (identification of known significant habitats and management recommendations);
- e) Aesthetic and recreational considerations (impact on viewsheds from public roads, trails, and places); and
- f) Historic and cultural resource considerations (identification of known resources and associated management recommendations).

The Forestry Plan shall be updated at least once every ten (10) years if Grantors intend to harvest timber or other wood products. Amendments to the Forestry Plan shall be required in the event that Grantors propose a treatment not included in the Forestry Plan, but no such amendment shall be required for any change in timing or sequence of treatments if such change does not vary more than five (5) years from the prescription schedule set forth in the Forestry Plan as approved by Grantee. In the event that any treatment unit is substantially damaged by natural causes such as insect infestation, disease, fire, or wind, Grantors may elect to conduct an alternative treatment in which event Grantors shall submit an amendment to the Forestry Plan for Grantee's approval prior to conducting any alternative treatment.

Disapproval by Grantee of a Forestry Plan or an Amended Forestry Plan proposing a heavy cut (as defined below) shall not be deemed unreasonable. Grantee, however, may approve a Forestry Plan or an Amended Forestry Plan in its discretion if consistent with the Purposes of this Grant, such as to permit the planting of different species of trees, promote natural regeneration, or establish or re-establish a field, orchard, or pasture. Grantee may rely upon the advice and recommendations of such foresters, wildlife experts, conservation biologists, or other experts as Grantee may select to determine whether the Forestry Plan or Amended Forestry Plan would be detrimental to the values identified in Section I. "Heavy cut" shall mean the harvesting of wood products below the "C-Line" or minimum stocking level on the Protected Property as determined by applying the protocol set forth in the current U.S. Department of Agriculture, Forest Service Silvicultural Guidelines for the Northeast or by applying a similar, successor standard approved by Grantee.

V. Enforcement of the Restrictions.

Grantee shall make reasonable efforts from time to time to assure compliance by Grantors with all of the covenants and restrictions herein. In connection with such efforts, Grantee may make periodic inspection of all or any portion of the Protected Property, and for such inspection and enforcement purposes, Grantee shall have the right of reasonable access to the Protected Property. In the event that Grantee becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, Grantee shall give notice to Grantors of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition. In the event there has been an event or circumstance of non-compliance which is corrected through negotiation and voluntary compliance, but which has caused Grantee to incur extraordinary costs, including staff time, in investigating the non-compliance and securing its correction, Grantors shall reimburse Grantee all such costs, including staff time, incurred in investigating the non-compliance and in securing its correction.

Failure by Grantors to cause discontinuance, abatement, or such other corrective action as may be demanded by Grantee within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle Grantee to bring an action in a court of competent jurisdiction to enforce the terms of this Grant and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by Grantee to corrective action on the Protected Property, if necessary. If such Court determines that Grantors have failed to comply with this Grant, Grantors shall reimburse Grantee for any reasonable costs of enforcement, including Grantee's staff time, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such Court. In the event that Grantee initiates litigation and the court determines that Grantors have not failed to comply with this Grant and that Grantee has initiated litigation without reasonable cause or in bad faith, then Grantee shall reimburse Grantors for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees. The parties to this Grant specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss, and damage to the

Protected Property and accordingly entitle Grantee to such equitable relief, including but not limited to injunctive relief, as the Court deems just. The remedies described herein are in addition to, and not in limitation of, any other remedies available to Grantee at law, in equity, or through administrative proceedings.

No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair Grantee's rights or remedies or be construed as a waiver. Nothing in this enforcement section shall be construed as imposing a liability upon a prior owner of the Protected Property, where the event or circumstance of non-compliance shall have occurred after said prior owner's ownership or control of the Protected Property has terminated.

VI. Miscellaneous Provisions.

1. Where Grantors are required, as a result of this Grant, to obtain the prior written approval of Grantee before commencing an activity or act, and where Grantee has designated in writing another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of Grantee. Grantors shall reimburse Grantee or Grantee's designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantee's approval; but not to include those costs which are expected and routine in scope. When Grantee has authorized a proposed action requiring approval under this Grant, Grantee shall, on request, provide Grantors with a written certification in recordable form memorializing said approval.

2. It is hereby agreed that the construction of any buildings, structures or improvements, or any use of the land otherwise permitted under this Grant, or the subdivision and separate conveyance of any land excluded from this Grant in Schedule A attached hereto, shall be in accordance with all applicable ordinances, statutes, and regulations of the Town of Essex and the State of Vermont and at Grantors' sole expense.

3. Grantee shall transfer the development rights and conservation easement and restrictions conveyed by Grantors herein only to a qualified conservation organization that agrees to enforce the conservation Purposes of this Grant, in accordance with the regulations established by the Internal Revenue Service governing such transfers.

4. In the event the development rights or conservation restrictions conveyed to Grantee herein are extinguished by eminent domain or judicial proceedings, Grantee shall be entitled to a share of the proceeds of any sale or exchange of the Protected Property formerly subject to this Grant according to the proportional value of Grantee's rights and interests in the Protected Property. Any proceeds from extinguishment shall be allocated between Grantors and Grantee using a ratio based upon the relative value of the development rights and conservation restrictions, and the value of the fee interest in the Protected Property as a whole, as determined by a qualified appraisal performed at the direction of Grantors effective as of the date of this conveyance in accordance with the requirements for a federal income tax deduction allowable by reason of this Grant pursuant to Section 170(h) of the Internal Revenue Code. For the purposes of this paragraph, the proportionate value of Grantee's rights shall remain constant. Grantee shall use any such proceeds in a manner consistent with the conservation purposes of this Grant.

5. In any deed conveying an interest in all or part of the Protected Property, Grantors shall make reference to the conservation easement and restrictions described herein and shall indicate that said easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity. Grantors shall also notify Grantee of the name(s) and address(es) of Grantors' successor(s) in interest.

6. Grantee shall be entitled to re-record this Grant, or to record a notice making reference to the existence of this Grant, in the Town of Essex Land Records as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§603 and 605.

7. Grantors shall pay all real estate taxes and assessments on the Protected Property and shall pay all other taxes, if any, assessed in lieu of or in substitution for real estate taxes on the Protected Property.

8. The term "Grantors" shall include the heirs, executors, administrators, successors, and assigns of the original Grantors, John R. Kunkel and Donna M. Kunkel. The term "Grantee" shall include the successors and assigns of the original Grantee, Vermont Land Trust, Inc. The term "family" includes: (a) any spouse of Grantors and any persons related to Grantors by blood to the 4th degree of kinship or by adoption, together with spouses of family members, (b) a corporation, partnership or other entity

which is wholly owned and controlled by Grantors or Grantors' family (as defined herein), (c) any estate of Grantors or Grantors' family, and (d) all owners of a Grantor corporation, partnership, trust or other entity who are related to each other by blood to the 4th degree of kinship or by adoption, together with spouses of family members.

9. Grantors shall hold harmless, indemnify and defend Grantee from and against any liabilities, claims and expenses, including reasonable attorney's fees to which Grantee may be subjected, including, but not limited to, those arising from any solid or hazardous waste/hazardous substance release or disposal or hazardous waste/ hazardous substance cleanup laws or the actions or inactions of Grantors as owners or operators of the premises, or those of Grantors' agents.

10. This Grant shall be governed by and construed in accordance with the laws of the State of Vermont. In the event that any provision or clause in this Grant conflicts with applicable law, such conflict shall not affect other provisions hereof which can be given effect without the conflicting provision. To this end the provisions of this Grant are declared to be severable. Invalidation of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights, conservation easement and restrictions, and right of way with all the privileges and appurtenances thereof, to the said Grantee, VERMONT LAND TRUST, INC., its successors and assigns, to their own use and behoof forever, and the said Grantors, JOHN R. KUNKEL and DONNA M. KUNKEL, for themselves, and their heirs, successors and assigns, do covenant with the said Grantee, its successors and assigns, that until the ensembling of these presents, they are the sole owners of the premises and have good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except those of record, and they hereby engage to warrant and defend the same against all lawful claims whatever.

We herein set our hands at Essex, Vermont this 1st day of December, 2011.

GRANTORS



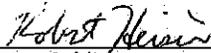
John R. Kunkel



Donna M. Kunkel

STATE OF VERMONT
CHITTENDEN COUNTY, ss.

At Essex, this 1st day of December 2011, John R. Kunkel and Donna M. Kunkel personally appeared and they acknowledged this instrument, by them sealed and subscribed, to be their free act and deed, before me.



Notary Public
My commission expires: 02/10/2015

SCHEDULE A
PROTECTED PROPERTY

Being all of the same lands and premises conveyed to Grantors by:

1. Warranty deed of Robert E. Miller and Margaret S. Miller, dated March 21, 1977, and recorded in Book 129, Page 562 of the Town of Essex Land Records; and
2. Warranty deed of Harold N. Marquette and Kathleen A. Marquette, dated November 2, 1977 and recorded in Book 134, Page 604 of the Town of Essex Land Records.

Excepted and excluded from this description of the Protected Property are the following five (5) parcels of land:

1. Lands and premises conveyed by Grantors to the Town of Essex by warranty deed dated November 2, 1977 and recorded in Book 134, Page 602 of the Town of Essex Land Records;
2. Lands and premises conveyed by Grantors to Harold N. Marquette and Kathleen A. Marquette by warranty deed dated November 2, 1977 and recorded in Book 134, Page 606 of the Town of Essex Land Records;
3. Lands and premises conveyed by Grantors to John R. Abernathy and Nancy Hausner Abernathy by warranty deed dated October 11, 1994 and recorded in Book 330, Page 135 of the Town of Essex Land Records;
4. Lands and premises conveyed by Grantors to the Town of Essex by warranty deed dated October 12, 1994 and recorded in Book 330, Page 185 of the Town of Essex Land Records; and
5. A twenty-eight (28) acre parcel, located northeasterly of Sawmill Road (Town Highway #56) and being more particularly described as follows:

Beginning at a northwesterly corner of lands n/f Marquette, said corner being located on the easterly sideline of the Sawmill Road right of way (assumed 3 rod width); thence proceeding
North 25° 56' East 100 feet more or less, along an easterly boundary of lands n/f Marquette; thence turning and proceeding
North 49° 11' West 50 feet more or less, along a northerly boundary of lands n/f Marquette to an iron pipe; thence turning and proceeding
North 74° 24' East 268 feet more or less, along a southerly boundary of lands n/f Abernathy to an iron pipe; thence turning and proceeding
North 19° 38' West 385 feet more or less, along an easterly boundary of lands n/f Abernathy to an iron pipe; thence turning and proceeding
North 8° 5' East 108 feet more or less, along an easterly boundary of lands n/f Abernathy to an iron pipe; thence turning and proceeding
North 83° 0' East 169 feet more or less, along a southeasterly boundary of lands n/f Abernathy to an iron pipe; thence turning and proceeding
North 73° 24' East 468 feet more or less, along a southeasterly boundary of lands n/f Abernathy to an iron pipe; thence turning and proceeding
North 37° 31' East 630 feet more or less, along an easterly boundary of lands n/f Abernathy; thence turning and proceeding
South 49° 30' East 285 feet more or less, along the Protected Property; thence turning and proceeding
South 11° 15' West 225 feet more or less, along the Protected Property; thence turning and proceeding
South 16° 15' West 290 feet more or less, along the Protected Property; thence turning and proceeding
South 8° 15' West 450 feet more or less, along the Protected Property; thence turning and proceeding
South 36° West 795 feet more or less, along the Protected Property to a northeasterly corner of lands n/f Marquette; thence turning and proceeding
North 55° 13' West 583 feet more or less, along a northerly boundary of lands n/f Marquette to an iron pipe; thence turning and proceeding

South 86° 4' West 126 feet more or less, along a northwesterly boundary of lands n/f Marquette to an iron pipe; thence turning and proceeding
North 38° 39' West 168 feet more or less, along a northerly boundary of lands n/f Marquette to the point of beginning.

All bearing are referenced to "Magnetic North" as depicted on a survey entitled "Boundary Adjustment & Two Lot Subdivision for John R. & Donna M. Kunkel, No. 91 Sawmill Road, Essex, Vermont" drafted by Mark V. Ward, dated 9/11/1992, revised 6/28/1994 and recorded 12/6/1994, Slide 296 in the Town of Essex Land Records.

Grantors do freely give, grant, sell, convey and confirm unto Grantee, forever, a perpetual and separately assignable easement for access from Town Highway #56 (also known as Sawmill Road) to the Protected Property, said easement being on, over and across the twenty-eight (28) acre excluded parcel of land immediately above-described located in the Town of Essex, Vermont.

Such access shall be for limited pedestrian and vehicular use for the purposes of monitoring and enforcement by Grantee in connection with this Grant. No public use or access is permitted by this conveyance. The rights conveyed herein are in addition to, not in lieu of, the covenants and restrictions otherwise conveyed by this Grant. Said access is depicted as "Monitoring R.O.W." on the Kunkel Conservation Plan described in this Schedule A (hereinafter "Kunkel Conservation Plan")

Meaning and intending to include in this description of the Protected Property all of the land with the buildings and improvements thereon lying northeasterly of the terminus of Town Highway #56 (also known as Sawmill Road), in the Town of Essex, Vermont, except as excluded above, and generally described as containing 107.7 acres, more or less.

NOTICE: Unless otherwise expressly indicated, the descriptions in this Schedule A and in any subsequent Schedules are not based on a survey or subdivision plat. The Grantors and Grantee have used their best efforts to depict the approximate boundaries of the Protected Property and any excluded parcels, complexes or special treatment areas on a plan entitled "Vermont Land Trust - Kunkel Property, Town of Essex, Chittenden Co., VT, December 2011" signed by the Grantors and Grantee (referred to throughout this Grant and its Schedules as "Kunkel Conservation Plan"). The Kunkel Conservation Plan is based upon Vermont Base Map digital orthophotos and other information available to Grantee at the time of the Plan's preparation. Any metes and bounds descriptions included in the Schedules herein are approximate only. They are computer generated and are not the result of field measurements or extensive title research. The Kunkel Conservation Plan and any metes and bounds descriptions herein are intended solely for the use of the Grantors and Grantee in establishing the approximate location of the areas described and for administering and interpreting the terms and conditions of this Grant. No monuments have been placed on the ground. The Kunkel Conservation Plan is kept by Grantee in its Stewardship Office. The Kunkel Conservation Plan is not a survey and must not be used as a survey or for any conveyance or subdivision of the land depicted thereon.

Grantors and Grantee do not intend to imply any limitation on the area of land included in this description, should a survey determine that additional land is also encumbered by the Grant. If, in the future, the Grantors or Grantee shall prepare a survey of the Protected Property, of any portion thereof, or of any excluded lands, and that survey is accepted by the other party or confirmed by a court, the descriptions in the survey shall control.

Reference may be made to the above described deed and record, and to the deeds and records referred to therein, in further aid of this description.

ACKNOWLEDGEMENT
Return Received (including Certificates and, if Required, Act 250 Disclosure Statement) and Tax Paid. 11-3-18
Signed Cheryl M. Money Clerk
Date December 6 2011

Essex, Vermont Town Clerk's Office
December 6 2011 at
o'clock 20 minutes AM
Received for record and recorded in
book 332 on page 35, 36
of Essex Land records
Attest: Cheryl M. Money
Town Clerk

Sent / limited
Dogs 7/20/16

Memorandum

TO: Dana Hanley, Community Development Director
Sharon Kelley, Zoning Administrator
Greg Duggan, Town Planner

FROM: Dennis Lutz, PE, Public Works Director
Aaron Martin, PE, Town Engineer

DATE: 19 July 2016

SUBJECT: Review of Kunkel Property 2 Lot Subdivision

This project has no implications for Public Works. There is no new curb cut off Sawmill Road and no changes that would involve a storm water review.

The submitted plan appears to show a portion of the existing driveway extending to Lot #1 as not being within the "30 foot wide access ROW". This could be a plan discrepancy or it could require a re-writing of the access so that the driveway falls entirely within a legally granted ROW.

The issue of approving or not approving a Conservation lot with no road frontage is entirely a Planning and Zoning issue. The lot does have existing access off a Town road.

Sent Doug
Kunkel
7/11/16

Jennifer Booker

From: Brad Larose
Sent: Monday, July 11, 2016 2:19 PM
To: Jennifer Booker
Subject: RE: 87 Sawmill Road

Jenn –

The police department has no concerns regarding this subdivision.

Thanks

Chief Bradley J. LaRose
Essex Police Department
145 Maple Street
Essex Junction, Vermont 05452
blarose@essex.org
(802) 857-0093 direct

From: Jennifer Booker
Sent: Monday, July 11, 2016 10:20 AM
To: Aaron Martin; Brad Larose; Allyson Vile; Charlie Cole
Cc: Sharon Kelley; Dana Hanley; Gregory Duggan
Subject: 87 Sawmill Road

Hello,
New Subdivision Sketch for 87 Saw Mill Road Comments back by July 21st.
Thanks,

Jenn Booker
Community Development Secretary
81 Main Street. Essex Junction VT 05452
802-878-1343
Jbooker@essex.org

Sent Doug
Kunkel
7/21/16

Jennifer Booker

From: Essex Fire Chief <ccole183@comcast.net>
Sent: Monday, July 11, 2016 1:28 PM
To: Jennifer Booker
Cc: Aaron Martin; Brad Larose; Allyson Vile; Sharon Kelley; Dana Hanley; Gregory Duggan
Subject: Re: 87 Sawmill Road

I have no objections to this as presented.

Charlie

From: "Jennifer Booker" <JBooker@ESSEX.ORG>
To: "Aaron Martin" <amartin@ESSEX.ORG>, "Brad Larose" <blarose@ESSEX.ORG>, "Allyson Vile" <avile@ESSEX.ORG>, "Charlie Cole" <ccole183@comcast.net>
Cc: "Sharon Kelley" <skelley@ESSEX.ORG>, "Dana Hanley" <dhanley@ESSEX.ORG>, "Gregory Duggan" <gduggan@ESSEX.ORG>
Sent: Monday, July 11, 2016 10:20:24 AM
Subject: 87 Sawmill Road

Hello,
New Subdivision Sketch for 87 Saw Mill Road Comments back by July 21st.
Thanks,

Jenn Booker
Community Development Secretary
81 Main Street. Essex Junction VT 05452
802-878-1343
Jbooker@essex.org

Sharon Kelley

From: Dennis Lutz
Sent: Tuesday, March 29, 2016 2:54 PM
To: Sharon Kelley
Cc: Aaron Martin; Gregory Duggan
Subject: RE: Kunkle Sawmill Road

Sharon,

At this point in time, there is not anything substantive to review on this proposal from a Public Works perspective. Our issues are drainage and access in the public right of way and no plans have been submitted to demonstrate how these issues will be addressed.

It should be noted that no more than two lots can share a driveway. In addition, Public Works is not in need of additional land and would not support a larger cul-de-sac.

It is my opinion that all lots should have public access and creating situations where lots do not have public access (i.e., legal frontage on a Town road) is not in the best interests of the Town or future users of the land.

Dennis

John and Donna Kunkel

87 Saw Mill Road

Waiver Proposal

The Kunkels own a parcel with a dwelling house and other improvements thereon consisting of approximately 135 acres. In 2012, the Kunkels executed a Grant of Development Rights and Conservation Restrictions in favor of the Vermont Land Trust in which the Kunkels permanently preserved and conserved approximately 108 acres of their property. They are now seeking to subdivide the parcel into two lots. Lot 1 would consist of the house and improvements and approximately 27 acres of land. Lot 2 would consist of the 108 acre conserved land. The 108 acres is proposed to be accessed by a 25' right of way in compliance with the intent of Article 3.1 (A) Town Zoning Regulations, but without road frontage.

Article 2.1(A) of the Town Subdivision Regulations allows the Planning Commission to apply waivers if the Commission finds that extraordinary and unnecessary hardships may result from strict compliance with the Regulations, *or* where there are *special circumstances* of a particular subdivision. With respect to the Kunkel's property, there are clearly special circumstances that warrant the Planning Commission granting a waiver of road frontage. The proposed 108 acre lot has been permanently conserved, in furtherance of the Town Plan and Zoning Regulations. The access to the lot will be limited and no further residential or commercial development will occur. The Kunkels have on two occasions conveyed land to the Town for the purpose of enlarging the cul-de-sac on which the property is located. The proposal will allow the conveyance of the 108 parcel to a new steward of the conserved land and allow for the sale of the Kunkel's home and 27 acres.

Attached is a written summary from Donna and John Kunkel.