



Statutory Authorization: 10 V.S.A. Chapter 155; 24 V.S.A. §§2804, 4432(3), 4403, 4431, Chapter 118

Type: NONREGULATORY

Related Topic Areas: Historic Preservation; Land Use & Development Regulations; Open Space & Resource Protection Regulations; Transfer of Development Rights

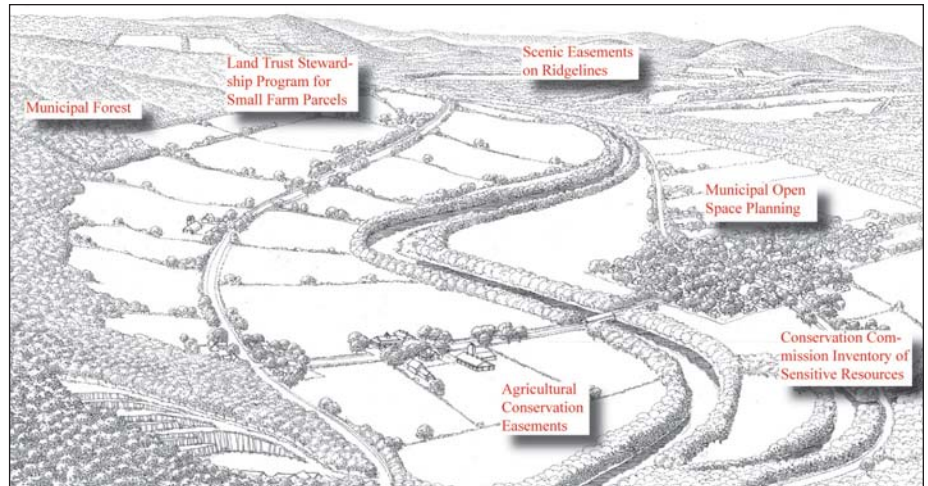
Open Space & Resource Protection Programs

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Overview

The term *open space* can mean many things—wooded hillsides, open farm fields, land set aside for natural, historic, and scenic resource protection or for public access and recreation, or all undeveloped land in a community. When creating a local conservation program, it's necessary to determine how open space is defined locally in relation to its context, meaning, and importance to the community.

The municipal plan should provide some guidance. Under the Vermont Planning and Development Act (24 V.S.A. Chapter 117), the plan must include policies regarding the “preservation of rare and irreplaceable natural areas, scenic and historic fea-



Communities can protect open space using many nonregulatory tools, from creative planning and management to purchase of land and conservation easements. Local stewardship is essential both to protect open space resources from immediate threats and to maintain them for future generations.

tures, and resources.” The land use section of the plan must also identify areas proposed for forests, recreation, and agriculture, and ... “open spaces reserved for floodplain, wetland protection, or other conservation purposes...” A local conservation or open space protection program—and many of the tools used to preserve open space, natural, historic, and scenic resources—must conform to the municipal plan’s resource protection and land use goals and to specific plan policies and recommendations. The first step then, in conserving local land and resources, is to review the municipal plan and related maps.

There are a variety of techniques available at the local level to protect resources and to preserve open space, including both nonregulatory options—the subject of this paper—and regulatory options that are covered under related topics. The most effective conservation programs generally rely on a combination of both regulatory and nonregulatory tools, crafted to fit local needs and

circumstances. The options most appropriate for local use depend in large part on community goals and objectives and the municipal, volunteer, and financial resources available to administer local programs. The municipal plan again should be consulted for guidance.

Conservation Commissions

Vermont passed legislation in 1977 allowing municipalities to establish conservation commissions (24 V.S.A. Chapter 118). A conservation commission can be created at any time by a vote of the municipality or by the legislative body. The commission is a volunteer board, consisting of three to nine appointed members, whose purpose is to promote the long-term stewardship of a community’s natural and cultural resources. The commission serves in an advisory capacity to local officials, including the legislative body, planning commission, and zoning or development review board.

Definition of Open Space

Example: 2006 Shelburne Open Space Conservation Plan

For the purposes of this Plan, open space is defined as an area of Shelburne’s landscape that is essentially undeveloped, such as ridges, streams, woodlands, wetlands, shorelines, and agricultural lands. Open space lands typically have no buildings or other complex human-made structures in current service, except for active farms with barns and other agricultural structures. These lands may be in their natural state, serving important environmental and/or aesthetic functions, or they may be used for agriculture, forestry, and/or low-impact recreation. Either way, they help maintain the condition and function of Shelburne’s natural resources, which are essential to the Town’s outstanding quality of life.

Powers and Duties of Conservation Commissions

24 V.S.A. §4505

- Inventory and conduct ongoing studies of natural, scenic and cultural resources in the community.
- Maintain inventories of lands within the municipality that have historic, educational, cultural, scientific, architectural or archaeological values in which the public has an interest.
- Recommend to the legislative body the purchase or receipt of gifts of land or interests in land.
- Administer lands, properties or rights that have been acquired by the municipality.
- Provide environmental evaluations where pertinent for the local or state review of development applications
- Cooperate with local officials, and other local and private organizations, on matters affecting the local environment and natural resources of the community.
- Encourage, through educational activities, the public understanding of local natural resources and conservation needs.

(See statute for a complete list of powers and duties.)

State-enabling legislation describes—but does not mandate—the commission's powers and duties. Each conservation commission can tailor its activities and projects to address local conservation needs and priorities. There are currently more than ninety established conservation commissions, or committees, in Vermont.

Often, it's the conservation commission that helps the planning commission identify and inventory a community's natural, cultural, and scenic resources, including those lands that have natural, cultural, educational, or recreational value, for reference or inclusion in the municipal plan. The commission may also be charged with the preparation of a conservation or open space plan that more specifically identifies local conservation goals and priorities and strategies for achieving them.

The conservation commission may recommend the acquisition or receipt of gifts of land or interests in land (such as easements) and, if authorized by the legislative body, may administer land or interests in land on behalf of the municipality.

The conservation commission is also authorized under Chapter 117 (§4464) to review and comment on development applications, work with applicants to address resources potentially affected by proposed development, and present its findings and recommendations on a particular project to the planning commission, zoning, or development review board during the public hearing process.

Perhaps most important, a conservation commission can take on an educational role and provide information and technical assistance to local property owners interested in conserving their land and resources.

More information about conservation commissions in Vermont is available from the Association of Vermont Conservation Commissions (AVCC). The *Vermont Conservation Commission Handbook*, available through the AVCC, provides a wealth of information about starting and funding a local conservation commission. The association also holds an annual conference and issues newsletters to members that highlight commission activities throughout the state.

Open Space Plans

Municipal plans and maps, as noted above, are required to identify areas proposed for farming, forestry, recreation, and open space, but in the context of a comprehensive plan, this information often is not presented in enough detail to support specific conservation strategies and programs. A conservation or open space plan, prepared by a local planning or conservation commission, identifies and addresses in more detail community conservation objectives. To have legal standing, the open space plan should be incorporated by reference in, or

adopted as an amendment to, the municipal plan.

An open space plan typically includes an inventory and map of resources and lands to be conserved as open space; related goals, objectives, and strategies as determined through a public process; and a set of short- and long-term conservation priorities, which may include specific projects to be undertaken and financed by the community—for example, through a local conservation fund.

Open space plans are especially useful sources of information in the development review process for both applicants and boards. The open space plan can be used to:

- flag important natural and cultural resources on properties to be developed—through site visits and more detailed fieldwork may also be necessary;
- inform applicants up front about local conservation priorities; and
- ensure that land conserved as part of an individual development project fits within the community's overall plan for open space protection.

The Vermont Department of Fish and Wildlife's *Conserving Vermont's Natural Heritage: A Guide to Community-Based Planning for the Conservation of Vermont's Fish, Wildlife, and Biological Diversity* is an especially helpful guide for use in the preparation of conservation and open space plans. The guide, published by the department in 2004, includes a discussion of the state's significant natural resources, sample language, strategies, and a comprehensive list of resources.

Open Space Plans in Statute

24 V.S.A. §4432(3)

One of three types of "supporting plans" specifically identified in Chapter 117 as a nonregulatory plan tool to implement the municipal plan is an open space plan "to guide public and private conservation strategies."

Land Evaluation and Site Assessments

Land evaluation and site assessments (LESAs) are used to systematically evaluate and rank resource lands for protection, often for inclusion in community open space or conservation plans. First developed in 1981 by the U.S. Natural Resource Conservation Service (then the Soil Conservation Service) to rank agricultural land under federal farmland protection programs, LESAs have since been modified for local use and to evaluate other resources such as forestland (FLESAs).

As implied in the name, there are two parts to a LESA: a land evaluation that evaluates the physical properties of a parcel, including soil characteristics identified by the NRCS, and a site assessment that evaluates the parcel in relation to other site criteria, such as parcel size, relationship to nearby land uses, applicable land use regulations, tax status, and proximity to developed areas. These criteria are developed locally, assigned points that may be weighted according to local priorities, and are then used to evaluate and rank individual parcels. The Vermont Housing and Conservation Board, the Vermont Land Trust, and District Environmental Commissions also refer to LESAs adopted by municipalities for their funding and regulatory programs. LESAs used in these contexts present a clear statement of local public policy with regard to farmland, forestland, and natural resource protection.

In the 1980s and 1990s, a number of Vermont municipalities developed LESAs to evaluate and rank farm or forest parcels for inclusion in municipal and open space plans and for priority consideration under local conservation programs. It was, however, very labor intensive. As a result, many LESAs, once developed, were never maintained or updated. The use of computerized mapping and geographic information systems

has made both LESA development and maintenance much easier. For more information on LESAs, contact your regional planning commission.

Conservation Funds

Municipalities are allowed to acquire real property or rights or interests in property for conservation purposes through purchase, donation, transfer, or other accepted methods (10 V.S.A. Chapter 155). A conservation fund is a dedicated fund set up by a municipality to finance conservation projects in the community. The first local conservation fund in the state, the Norwich Conservation Trust Fund, was established in 1974. Since then, nearly thirty Vermont municipalities have created such funds.

Most local conservation funds are types of reserve funds that, under related state law (24 V.S.A. §2804), are established by a vote of the municipality and placed under the control of the legislative body. Conservation funds, however, also have been established by conservation commissions in their capacity (under 24 V.S.A. §4505) to “receive money, grants or private gifts from any source” for conservation purposes.

Sources of money include annual appropriations in the form of a lump sum, under a separately warned article or line item in the budget, or as a dedicated portion of the property tax rate, such as a “penny for conservation” initiative. They may also include other sources of municipal revenue (for example, timber sales), grants, and tax-deductible gifts or donations. Local fund-raising efforts are often undertaken to supplement municipal appropriations.

Once established, the fund is managed by the legislative body, generally in cooperation with the conservation commission. Projects funded through a conservation fund may be included in a municipality’s capital budget and program or may be used as opportunities arise. Though typically used to purchase land or ease-

ments, conservation funds can also be used to purchase options on land, rights of first refusal, and long-term leases and to cover associated costs, including appraisals, surveys, and legal work. A few municipalities, such as Williston and Brattleboro, also use their conservation fund to support local grant and loan programs.

The administration of a local conservation fund involves maintaining adequate financial records (a job usually handled by the municipal clerk or treasurer), developing policies and evaluation criteria for the use of the fund, and related application procedures.

Local conservation funds are often used to leverage or match other sources of funding needed to finance larger conservation projects. In a very competitive funding environment, a local conservation fund can provide matching money and, more important, show that the community has a

Vermont Housing and Conservation Trust Fund

10 V.S.A. Chapter 15

Established by the legislature in 1987, the Vermont Housing & Conservation Trust Fund is, in effect, a statewide conservation fund that is intended to support the dual goals of creating affordable housing for Vermonters, and conserving and protecting valuable farmland, historic properties, and important natural and recreational areas.

The Housing and Conservation Trust Fund is funded in part through property transfer tax revenues ? though typically not at the full 50 percent of annual revenues as established under state law. The state fund is also used to leverage other sources of money, including federal housing and conservation program funds.

The Housing and Conservation Trust Fund is administered by the Vermont Housing and Conservation Board. Funds are made available for local projects generally on a competitive basis. For more information and application forms, contact the VHCB at www.vhcb.org.

long-term commitment to local land conservation and stewardship. More information about establishing a local conservation fund is available through the Vermont League of Cities and Towns and the Association of Vermont Conservation Commissions.

Land Trusts

A land trust is a nonprofit organization that, as all or part of its mission, conserves land by:

- acquiring land or interests in land—for example conservation easements;
- assisting property owners, communities, and other organizations to conserve land; and
- providing long-term stewardship of protected land.

There are currently over thirty local, regional, state, and national land trusts working in Vermont. The most active and well known is the Vermont Land Trust—now a statewide organization that began in 1977 as a local nonprofit to preserve open space in the Woodstock region (www.vlt.org). The Vermont Land Trust has since opened six field offices throughout the state to assist private landowners, local communities, and partner organizations, including local land trusts. As of 2005, the Vermont Land Trust had helped protect more than 440,000 acres of land throughout the state, including 400 parcels in active agricultural use.

A number of smaller local and regional land trusts have formed around the state over the last two decades to focus on more targeted areas or to take on projects that are not a priority for larger land trusts. These groups may cover one or more municipalities and actively pursue conservation projects within their designated area.

Local land trusts often work in partnership with larger land trusts to secure funding and to ensure long-term monitoring and stewardship of conserved parcels. Enforcing easements in perpetuity can be a monumental task for a local group.

Several communities have both a

conservation commission and a local land trust. Conservation commissions can serve the same functions as a land trust, but may not have the time or expertise to undertake and manage long-term projects; in some cases, a local land trust has been organized at the recommendation of the conservation commission. A land trust, as a private nonprofit entity, is not accountable to local government and therefore has more flexibility in its work. It does not, however, have the same role as the conservation commission in influencing public policy or participating in local planning and development review. Local conservation efforts are best served when conservation commissions and land trusts work closely together.

When deciding which type of organization is most appropriate locally, it's important to consider both the overall objectives in forming the group and available resources. Land trusts, as nonprofit organizations, typically depend on volunteers and funding from members and outside sources to survive. Where volunteer, staffing, and financial resources are limited, it may be more effective to form a conservation commission or to work through an existing land trust rather than start a new one.

Conservation Easements

Conservation easements are one of the most powerful, flexible tools available to conserve private land. A conservation easement is a recorded legal agreement between a landowner and the municipality or another nonprofit organization, such as a land trust, that permanently restricts the use of a property to protect its conservation values. The easement represents an interest in land that may be purchased, such as through the purchase of development rights, or voluntarily donated by the landowner. The landowner continues to own the property and pay taxes on it, but per-

manently gives up certain agreed-upon rights. Future owners are also bound by the terms of the agreement. It's important to note that easements do not necessarily guarantee public access; public access to private property is allowed only if granted by the landowner, as stated in the easement agreement.

Conservation easements have been used by communities, and by a variety of local land trusts and organizations, to protect open space throughout Vermont. More than 360,000 acres of land are currently under easement in the state, including nearly 100,000 acres of farmland. Easements are often held jointly—for example, through a local land trust, the Vermont Land Trust, the Vermont Housing Conservation Board, or another state agency.

Benefits to the landowner include permanent protection of the land and income from the sale of development rights or tax benefits from a donation. Benefits to the community include the preservation of open space, farmland, woodland, natural and scenic areas, wildlife habitat, and water quality.

Easements are an extraordinarily flexible land-saving tool, but there are some associated costs to the municipality or group that holds the easement. These include the regular costs of doing business in acquiring the easement, such as legal fees, surveys, and appraisals, as well as ongoing costs associated with monitoring, managing, and enforcing the conditions the easement.

More information about the use of easements in Vermont to conserve land is available from the Vermont Housing and Conservation Board and the Vermont Land Trust.

Stewardship Programs

Local stewardship programs—developed and administered by the municipality, a conservation commission, land trust or other nonprofit organi-

zation—focus on the sustainable, long-term management of publicly and privately conserved lands and resources. The first step generally involves the preparation of a long-term management plan for particular parcel—for example, a town forest—or for specified natural or cultural resources. Management plans are required for many public lands, including land under conservation easements, and for participation in federal and state land programs, such as Vermont’s use value appraisal (current use) tax abatement program for forest- and farmland. Management plans also are often required as a condition of state or local approval for development that could impact identified natural or cultural resources, such as a subdivision in the vicinity of a deer wintering yard or a ski area near critical bear habitat.

Management plans may focus on one area, but often integrate management of more than one type of resource, based on community or landowner interests and management objectives. Management objectives in some cases may conflict, resulting in

the need to set priorities in relation to overall management goals for the property. Resources identified on the ground and mapped may include:

- topography, including steep slopes (15 percent or more), prominent peaks and ridgelines.
- groundwaters, including known aquifers and water source protection areas
- surface waters, including streams, floodplains, wetlands, vernal pools, and aquatic habitats
- earth resources, including commercially viable sand and gravel pits, rock quarries, or mineral deposits
- wildlife habitat, including core habitat areas (mast stands, deeryards, and breeding areas) and connecting travel corridors
- rare, threatened, and endangered plant and animal communities
- designated ecological zones
- forestland, including forest stand types and conditions, commercially viable timber stands, and critical habitat areas
- agricultural land, including soil types and physical properties
- recreation resources, including exist-

Vermont’s Use Value Appraisal Program

32 V.S.A. Chapter 24

The state’s use value appraisal program, also known as the Current Use Program, enables landowners who practice long-term farm- and forestland management to have their land appraised for taxation purposes at its current use, rather than fair market, value. This is a voluntary program that can result in significant property tax savings for participating landowners. For program enrollment and continued eligibility, the land must be actively managed under an approved management plan. If the land is withdrawn from the program, or managed or developed improperly, a land use change tax is levied by the state. More information is available from the Vermont Agency of Agriculture, the Division of Forestry, and the Department of Taxes, which administers the program.

- ing and proposed trail systems
- scenic features, including viewsheds, prominent peaks, and ridgelines
- cultural resources, including landscape features (stonewalls and cellar holes), archaeological and historical sites, structures, districts, and landscapes

The management plan should also identify allowed uses within different areas of the parcel, and accepted management techniques or practices for each use, as needed to protect or conserve identified resources. These may include:

- buffering requirements
- restrictions on the removal of vegetation
- accepted agricultural and logging practices
- road and trail construction and maintenance practices
- stormwater management and treatment practices
- erosion prevention and sedimentation control practices
- seasonal use limitations
- recreational use restrictions

Conservation Easements: Rights and Restrictions

Rights Typically Retained by Landowners	Restrictions Typically Placed on Properties
Engage in accepted farming practices	Further subdivision for development
Build barns, sheds, other farm structures	Commercial, industrial, or mining activities
Use, maintain, and expand an existing dwelling	New structures, except for those negotiated in advance
Manage woodlands for timber production	Commercial recreation (as required to obtain federal tax benefits)
Set aside land for one or more additional dwellings in agreed-upon areas or “building envelopes”	
Source: Adapted from <i>Using Conservation Easements to Preserve Open Space: A Guide for Pennsylvania Municipalities</i> , Heritage Conservancy (2002).	

Management plans can be prepared by volunteers, but often some professional assistance is needed. Technical assistance and grant programs are available through federal and state agencies and regional nonprofit organizations, depending on the types of resources to be identified and managed. For example, county foresters can help draft management plans for town forests. The Northern Forest Alliance's Town Forest Project is preparing, in association with the Vermont Department of Forests, Parks and Recreation and the University of Vermont, a town forest stewardship resource guide, scheduled for release in 2006. The Vermont Urban

and Community Forestry Program provides grants for the development of community forest management plans. The U.S. Natural Resource Conservation Service is also a good source of information for resource management systems (RMSs), which include sets of approved resource conservation practices commonly used in Vermont.

Once a management plan is in effect, it needs to be administered and enforced through an ongoing maintenance and monitoring program. This requires a long-term commitment on the part of the community or responsible organization, which may be beyond the capacity of smaller,

all-volunteer organizations.

Given available resources, local stewardship programs often focus on land or easements held by the community, but some community groups, nonprofit organizations, and state and federal agencies also actively work with private property owners interested in land conservation. A local stewardship program can provide information about available cost-sharing and technical assistance programs that support private land conservation and resource management. Local groups also can organize and supply volunteer labor for private conservation projects that have larger community benefits.

Municipal Forests

There are some 120 communities in Vermont that own a total of 140 municipal forests, together making up around 80,000 acres—a small fraction of the state's 4.6 million acres of forestland. Some have been formally designated as "municipal forests" by the Vermont Department of Forests, Parks and Recreation under state law (10 V.S.A. §2653); while others are tracts of forestland owned and managed by municipalities. Many municipal forests have existed for over a century; others date from the 1930s and 1940s, when the state was offering communities money to buy forestland.

A municipal forest, as defined by the state, is "a tract of land primarily devoted to producing wood products, maintaining wildlife habitat, protecting water supplies, providing forest recreation and conservation education." State municipal forest designation is

made by the commissioner of Forests, Parks and Recreation following an examination of the land by the department and a determination that the land is suitable for a municipal forest. Once designated, management of the municipal forest is under the direction of the commissioner. Forest protection is the responsibility of the local tree warden.

A municipality, at a legally warned meeting, may vote a sum of money for the purchase, management, and improvement of a municipal forest within or outside the municipality. Voted appropriations also qualify the municipality to apply for available state and federal matching funds, provided that the use of such funds is approved by the commissioner of Forests, Parks and Recreation. Matching funds not used for the purchase of land can be used in establishing multiple uses and implementing a management program for the municipal forest.

Municipal forests are managed for a

variety of uses, including timber sales, wildlife habitat, protection of public waters supplies, and, increasingly, for outdoor educational and recreational use.

The Vermont Town Forest Project, a statewide effort, is now underway to help Vermont communities establish and manage community forests. Organized through the Northern Forest Alliance, the project involves more than thirty program partners, including the Vermont Department of Forests, Parks and Recreation. The project is working with partner communities to:

- deepen local cultural and educational ties to community forests;
- help develop and implement strong forest stewardship plans and monitoring programs; and
- support community-led acquisition or expansion of local town forests.

For more information, contact the Northern Forest Alliance (www.northernforestalliance.org).