

**From:** Gustave Seelig [gseelig@vhcb.org]  
**Sent:** Monday, July 09, 2012 11:56 AM  
**To:** London, Sarah  
**Subject:** easement costs  
**Attachments:** Sarah London Follow up.doc 2.doc

Hi Sarah – I got your voicemail and will try to get you at 1:30 or 3:15. Attached is a draft for you to react to. Hope you had a good weekend. Gus

## **MEMORANDUM**

**TO:** Sarah London, General Counsel to the Governor

**FROM:** Gus Seelig, Executive Director

**DATE:** July 9, 2012

**RE:** Follow Up

### **Background**

Governor Shumlin has raised important questions around transaction and stewardship costs of farm project transactions. In response, the Board has established an ad hoc committee which met in June to review the following questions:

- 1) Are the costs incurred within the industry norms?
- 2) Is the VHCB share at an appropriate level of support?
- 3) Are the activities undertaken, both in project development and stewardship, at an appropriate level? Do they need to be more robust or might we consider our grantees to be over staffed so that a leaner approach could be taken?
- 4) Are there ways in which we can simplify the system that will reduce costs?
- 5) Should we take a different approach than the allocation of resources deal by deal?

### **General Conclusions**

Stewardship costs appear to be within or below industry norms. Both LTA standards and the USDA's Natural Resource Conservation Service suggest that we are under capitalizing the stewardship endowment. NRCS would require endowments of \$10,000. per project for applications directly from nonprofits.

VHCB is charged with leveraging its funds. VHCB's approach has been to provide a share of costs of the farmland programs operated by our partners. The nonprofit partners are raising (through membership and philanthropic support) significant resources for a program that benefits the State of Vermont. In general, VLT raises 55% of the overall costs of the farmland program and 39% of costs affecting stewardship activities; thus, effectively meeting this requirement.

If VHCB had direct access to the \$3.5 million dollar endowment (to which VHCB has contributed), at 4.5%, it would throw off approximately \$170,000 annually. While this would allow the hiring of almost 2 full time equivalents to service approximately 600 easements, it would be an insufficient amount of staffing for that work load. While VHCBs stewardship MOU with its partners calls for on site visits every other year both NRCS (which provides over \$3 million annually and Land Trust alliance accrediting standards call for annual visits). Farmland preservation organizations also argue that working farms are the most labor intensive part of their easement portfolio.

## **Moving Forward**

- 1) VHCB could provide reimbursement only for 3<sup>rd</sup> party costs for transactions and enter into annual performance contracts for services (for personnel and overhead) with measurable deliverables that might include a target number of pre- applications delivered to the Ag Advisory Committee, final applications delivered to the Board, actual closings completed, matching funds for such costs, project fundraising and other measurable criteria.
- 2) VHCB will examine the complexity in easements and the co-holding process to determine whether efficiencies can be achieved. However, even if we achieved a 10-20% more efficient program, assuming we keep our current contributions level, our nonprofit partners would continue to have to fundraise significant funds above the support we provide both for transactions and stewardship.
- 3) VHCB could change its approach from transaction oriented contributions for stewardship to one that analyzed the status of the stewardship fund, the level of stewardship activity, and made annual contributions based upon a number of criteria including the number of new easements undertaken, the performance of the stewardship fund, etc.
- 4) VHCB could consider a sliding scale assessment asking landowners to share in stewardship costs, perhaps dependent upon total funds received, asking landowners to contribute between \$1,000 - \$3,500 for easement purchases above \$200,000. We expect that this will not be popular within the farm community and would recommend that the Secretary of Agriculture convene some meetings with the farm community to discuss such a proposal.

It is important to remember that the reasons farmers have not been asked to contribute has included the significant financial uncertainty and instability from agricultural income (particularly dairy), and the need for a perception of equity and fairness (i.e. all farmers are treated the same). The largest or most expensive deals usually include at least a small bargain sale. Implementation of a required contribution to stewardship will appear to be a requirement that some landowners give twice. If the bargain sales are then be lost it would increase the cost of easement acquisition to the state. In FY '11, bargain sales from landowners accounted for approximately \$515,000 contributing 9% of appraised easement values.

Finally stewardship obligations and benefits also extend well beyond the life of the farmer as the easement benefits future generations of Vermonters. Such requirements may be viewed most unfavorably by retiring farmers involved in a farm transfer.

### **Background Information**

1. Stewardship is a complicated obligation. This is particularly true on working farms that are privately owned with perpetual easements both because of the way easements are structured and because change occurs that no one had anticipated. Stewardship is also costly because of the 3-party partnership currently involved in making stewardship decisions. Eliminating the co holding role or delegating more authority to the primary easement holder has advantages and disadvantages.
2. The most important function of stewardship is the establishment of a strong working relationship with landowners, not only in making sure that the land is conserved but in minimizing violations and promoting economic vitality on the land.
3. Multiple goals imbedded in easements such as river corridor protection or protection of natural and fragile areas add complexity and cost.
4. Landowners do contribute to the stewardship fund when there is a subdivision of an existing conserved parcel.
5. Accreditation by the Land Trust Alliance is important to VHCB's nonprofit partners, not just as a matter of pride but also as a positive response to IRS investigations of poor land trust practices at other places in the United States. Further, many deals today (approximately 1/3) benefit from bargain sales utilizing tax deductions.
6. Amendments to VHCB's statute, just signed into law, formally make farm affordability a goal of Vermont's program. Any transaction involving a new generation of landowners is costly in terms of staff time. Exercising an Option to Purchase at Ag Value is particularly costly. (Note that the OPAV is working as a deterrent to sales to non-farmers as intended. In eight years, VLT has twice exercised an OPAV)
7. There is a low rate of violations, many of which are minor or caused by third parties (compared to available national data Vermont violations are half the national rate). This is at least partially attributed to the high level of communication with landowners (i.e., annual visits required by NRCS and accreditation standards), ultimately reducing the burden on the AG's office which is charged with providing legal services for VHCB.
8. As a policy choice, VHCB has not chosen to require payment by landowners to be the best or fairest method of endowing the stewardship fund which will benefit future generations of Vermonters.

### **Closing Projects in FY `12**

As you may know, the Board approved 12 farms in May and expects 14 new applications to be considered in September. These prospective applications are already the subject of negotiations and in most cases signed purchase and sales agreements. Understanding that the Board will consider a number of program changes, can we agree that program changes should be implemented in FY `13? This will assure appropriate notice to farmers and allow applicant organizations to plan for the implementation of such changes.