

## MEMO

**To:** Sarah London  
**From:** Stephanie Smith   
**Date:** September 14, 2015

**Re:** Governor's Acceptance & Approval  
Patenaude Farm VHCB# 2015-90-01

Attached you will find a Governor's Acceptances for the Patenaude Farm in St. Johnsbury/Waterford in Caledonia County. A memo outlining the project, map, and draft easement are also included for your review. As you know, 6 V.S.A. §14 requires the Governor approve grants of development rights to the VT Agency of Agriculture, Food, and Markets.

As part of VAAFM's review of the conservation project in advance of your receipt we have conducted/contacted the following resources to confirm there are no outstanding violations within ANR and VAAFM's databases.

- VAAFM
  - Agricultural Resource Management Division – none
  - Consumer Assurance:
    - Dairy- none
    - Animal Health- none
    - Meat Inspection- none
- Hazardous materials assessment completed by outside consultant– Wheeler Environmental- no issues
  - Attached is the Executive Summary from this review
- The Vermont Land Trust (VLT) purchased property in March as part of its Farmland Access Program. The VLT enrolled the 35 acres in the Conservation Reserve Enhancement Program in July. As part of this enrollment a 50 foot riparian buffer will be established along the Moose River and a tributary.

I reviewed the documents and obtained VAAFM signatures. Please do not hesitate to contact me via email, [Stephanie.smith@state.vt.us](mailto:Stephanie.smith@state.vt.us) or phone if you have any questions 828-1732.



**AGENCY OF AGRICULTURE, FOOD & MARKETS**

116 State Street  
Montpelier, VT 05620-2901  
Vermontagriculture.com

**TO:** Peter Shumlin, Governor

**FROM:** *Deanne Rothwell* *Deputy Secretary*  
For Charles R. Ross, Jr., Secretary, Vermont Agency of Agriculture, Food & Markets

**DATE:** July 24, 2015 (revised 9/16/15)

**RE:** Acquisition of Development Rights – Monahan and Kominami, Saint Johnsbury and Waterford

Your approval is requested for the acquisition of development rights, conservation restrictions and option to purchase at agricultural value on 35 acres of farmland in St. Johnsbury and Waterford owned by Vermont Land Trust.

The St. Johnsbury Selectboard, Waterford Selectboard, St. Johnsbury Planning Commission, and the Northeastern Vermont Development Association indicate their support of the conservation of this parcel, as evidenced by the attached letters.

**I. Description of Property**

The Vermont Land Trust (VLT) purchased the Patenaude Farm from the estate of Edith Patenaude on March 31, 2015. This purchase was made as part of VLT's Farmland Access Program which strives to provide affordable access to farmland for new and beginning farmers. The farm is located adjacent to the village of East St. Johnsbury on U.S. Route 2. It is highly visible and much-photographed. Emblazoned with "Locust Grove Farm" on the barn, it is an iconic landmark that is well known to Route 2 travelers and locals. The entire farm comprises prime and statewide rated agricultural soils with 26 tillable acres.

VLT conducted a public request for proposal process allowing any interested farmers to submit a proposal. After reviewing proposals, conducting interviews and receiving feedback from VAAFM and VHCB, VLT selected Susan Monahan & Hisa Kominami as buyers and they have been approved for financing to buy the farm by the USDA – Farm Service Agency. VLT, VHCB & VAAFM will receive the development rights upon the sale of the property to Susan and Hisa. VLT began leasing the farm to Susan and Hisa starting April 1, 2014. Susan has several years of farming experience managing fruit and vegetable operations in California and Washington. She has worked for UVM extension since 2010 but plans to run the farm on a full time basis. Hisa will maintain his full time position as a soil conservationist with NRCS as the farm operation gets off the ground.

Susan and Hisa plan to start a new farm operation focused initially on direct marketing of fruits and vegetables from this prominently placed U.S. Route 2 farm. They will bring more land into

production and also plan to add beef cows to the farm. Hisa and Susan conducted market research to understand the gaps in the local farm market and to identify which products they would be most successful selling. During their first growing season on the farm, they anticipate establishing two strawberry beds, constructing a greenhouse and a hoop house and starting to plant blueberries.

Vermont Land Trust enrolled six acres in the Conservation Reserve Enhancement Program (CREP) on July 1, 2015 in order to install a 50 foot riparian buffer along the Moose River and a tributary.

## **II. Need**

The conservation easement will enable Susan Monahan & Hisa Kominami to buy the Patenaude Farm and begin their own farming operation.

## **III. Source of Funds**

The purchase price for the easement with the option to purchase at agricultural value is \$80,000. VHCB approved a grant for the acquisition of the easement for \$20,910.

In addition, the Upper Connecticut River Mitigation Enhancement Fund (MEF) and the Lattner Foundation both contributed funds towards the project. MEF contributed \$30,000 and the Lattner Foundation contributed \$29,090 towards conservation. Other funds were included for associated costs and stewardship endowment.

Susan Monahan & Hisa Kominami will buy the farm and, as a condition of the sale, they will convey a conservation easement to Vermont Land Trust, Vermont Housing & Conservation Board and Agency of Agriculture, Food & Markets

Agency Of Agriculture, Food & Markets  
116 State Street  
Montpelier, VT 05620-2901  
[www.Agriculture.Vermont.gov](http://www.Agriculture.Vermont.gov)

TO: Peter Shumlin, Governor

FROM: *For* Charles R. Ross, Jr., Secretary, Vermont Agency of Agriculture, Food & Markets  
*Deputy Secretary*

DATE: July 28, 2015

RE: Acquisition of Development Rights – Monahan and Kominami, Saint Johnsbury and Waterford

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In addition, the, Upper Connecticut River Mitigation Enhancement Fund (MEF) and the Lattner Foundation contributed funds towards the project. MEF contributed \$40,000. The Lattner Foundation contributed \$60,000.

Susan Monahan & Hisa Kominami will buy the farm and, as a condition of the sale, they will convey a conservation easement to VLT.

**APPROVAL AND ACCEPTANCE OF  
DEVELOPMENT RIGHTS IN REAL PROPERTY**

Now come Peter Shumlin, Governor, and Charles R. Ross, Jr., Secretary, the undersigned, and hereby approve and accept the Grant of Development Rights, Conservation Restrictions and Option to Purchase at Agricultural Value on 35 acres, more or less, of land owned by the Vermont Land Trust located in the Towns of Saint Johnsbury and Waterford, Vermont, by the Vermont Agency of Agriculture, Food and Markets. The Grant is to be recorded in the Land Records of the Towns of Saint Johnsbury and Waterford.

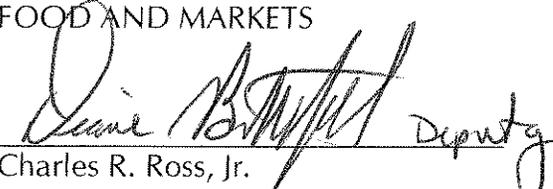
This action is taken pursuant to the authority vested in the Governor and the Secretary of the Vermont Agency of Agriculture, Food and Markets by Title 6, Chapter 1, Section 14 of the Vermont Statutes Annotated.

9/16/15  
Date

STATE OF VERMONT

  
\_\_\_\_\_  
Peter Shumlin  
Governor

9/14/15  
Date

VERMONT AGENCY OF AGRICULTURE,  
FOOD AND MARKETS  
  
\_\_\_\_\_  
For Charles R. Ross, Jr.  
Secretary

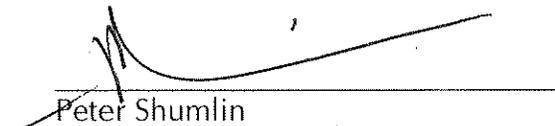
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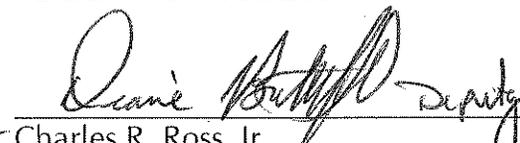
STATE OF VERMONT

9/16/15  
Date

  
Peter Shumlin  
Governor

VERMONT AGENCY OF AGRICULTURE,  
FOOD AND MARKETS

9/14/15  
Date

  
For Charles R. Ross, Jr.  
Secretary

**Vermont Land Trust**  
 Patenaude (Monahan/Kominami) Farm  
 Towns of St. Johnsbury and Waterford  
 Caledonia Co., VT  
 July 2015  
 VLT Project #131305 VHCB #2015-090

Patenaude (Monahan/Kominami) Farm Conservation Plan is based on the following State of Vermont Base Map 1:5000 orthophoto(s):  
 East St. Johnsbury, #196212, 2014

1:5,000      1 inch = 416.7 feet

Feet      250 125 0 250 500 750  
 Meters      50 25 0 50 100 150 200

**Reference(s):**  
 "Subdivision Plan Prepared for Town of St. Johnsbury, U. S. Route #2 - East St. Johnsbury, VT" by Shane B. Clark, Truline, dated May 2003.

**Protected Property**

**Farmstead Complex**

**Riparian Buffer Zone (RBZ)**

**Meander Belt**

**ROW**

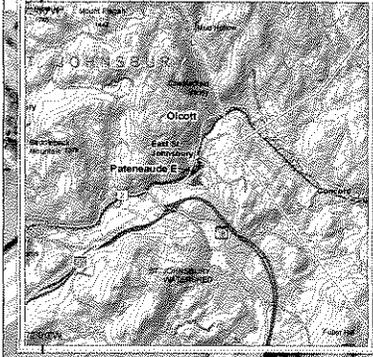
**Farmstead Complex**  
 ± 2.5 acres

U.S. Route #2  
 Patenaude Farm  
 St. Johnsbury  
 Waterford



*This map is not a survey or subdivision plat, and should not be used or construed for such purposes. It was prepared without the benefit of field measurements or extensive title research. It is intended solely to assist the owner(s) of the conserved land and the holder(s) of the conservation easement in the administration and interpretation of the conservation easement by clearly depicting the presumed boundaries of the protected property, calculating the approximate acreages, and showing the approximate locations of any excluded lands, farmstead or homestead complex, farm labor housing complex, or special treatment areas.*

**THIS MAP IS NOT A SURVEY**



**ACREAGE INFORMATION<sup>1</sup>**

Tillable	30.2 acres
Pasture	1.5 acres
Woods	0.8 acres
Farmstead Complex	2.5 acres
<b>Total Protected Property</b>	<b>± 35 acres</b>
Land in St. Johnsbury	18 acres
Land in Waterford	17 acres

1 All acreage is approximate, and exclusive of public road rights of way.

**Reviewed and Accepted by:**

Susan A. Monahan      Date

Hisashi C. Kominami      Date

Duly Authorized Agent of  
 Vermont Land Trust, Inc.      Date

EXHIBIT B

GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS  
and OPTION TO PURCHASE AT AGRICULTURAL VALUE

KNOW ALL PERSONS BY THESE PRESENTS that **SUSAN A. MONAHAN and HISASHI C. KOMINAMI** of St. Johnsbury, County of Caledonia, State of Vermont, on behalf of themselves and their heirs, executors, administrators, successors, and assigns (hereinafter "Grantors"), pursuant to Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to their full satisfaction, do freely give, grant, sell, convey, and confirm unto the **VERMONT LAND TRUST, INC.**, a non-profit corporation organized under the laws of the State of Vermont, with its principal offices in Montpelier, Vermont, and qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code ("VLT"); the **VERMONT AGENCY OF AGRICULTURE, FOOD AND MARKETS**, an agency of the State of Vermont with its principal offices in Montpelier, Vermont ("VAAF"), and the **VERMONT HOUSING AND CONSERVATION BOARD**, an independent board of the State of Vermont with its offices in Montpelier, Vermont ("VHCB"), and their respective successors and assigns (hereinafter collectively "Grantees") as tenants in common, forever, the development rights, right of first refusal, and a perpetual conservation easement and restrictions (all as more particularly set forth below) in certain lands consisting of 35 acres, more or less, with the buildings and improvements situated thereon (hereinafter "Protected Property") located in the Towns of St. Johnsbury and Waterford, County of Caledonia County, State of Vermont, together with a non-exclusive right-of-way for access from the southerly side of U.S. Route 2 in the Town of St. Johnsbury through the Town of Waterford 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 Grantees 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 Title 10 V.S.A. §§ 823 and 6303. The conservation restrictions hereby conveyed to Grantees consist of covenants on the part of Grantors to do or refrain from doing, severally and collectively, the various acts set forth below, to the extent those acts relate to Grantors and not exclusively to Grantees. Grantors and Grantees acknowledge that the conservation restrictions constitute a servitude upon the land and run with the land.

**I. Purposes of the Grant.**

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

1. Consistent with the goals set forth in 10 V.S.A. §§ 821 and 6301, the primary purpose of this Grant is to conserve productive agricultural and forestry lands and soil resources in order to facilitate active and economically viable farm use of the Protected Property now and in the future.
2. As a secondary objective, to conserve scenic and natural resources associated with the Protected Property, to improve the quality of life for Vermonters, and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside.
3. These purposes will be advanced by conserving the Protected Property because it possesses the following attributes:
  - a) 22 acres of agricultural soils of prime significance;

- b) 12 acres of agricultural soils of statewide significance;
- c) 760 feet of frontage on U.S. Route 2, a public highway with scenic vistas;
- d) Historic circa 1911 Dairy Barn;
- e) in the vicinity of one (1) other property previously protected by Grantees;
- f) 4,650 feet of frontage on Moose River, including a site documented to contain Eastern pearlshell (*Margaritifera margaritifera*), a state threatened species; and
- g) wetlands and wildlife habitat.

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

The purposes set forth above in this Section I are hereinafter collectively referred to as "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. 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. The Protected Property shall be used for agricultural, forestry, educational, non-commercial recreation, and open space purposes only.

2. Each time that the agricultural land on the Protected Property lies fallow for more than two successive years (the "fallow land"), Grantors shall cooperate with Grantees, at Grantees' request, to maintain the fallow land in an open condition (meaning without trees and brush) and in active agricultural use. For example, Grantors shall permit access to the fallow land by Grantees and Grantees' contractors to crop, mow, or brush-hog. No obligation is hereby imposed upon Grantors or Grantees to maintain the fallow land in an open condition or in active agricultural use.

3. 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 Grantees, except as otherwise specifically permitted under this Grant, and as appear of record prior to the date of this Grant. Grantees may grant permission for any rights-of-way, easements of ingress or egress, driveways, roads, utility lines, other easements, or other use restrictions, if they determine, in their 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.

4. There shall be no signs, billboards, or outdoor advertising of any kind erected or

displayed on the Protected Property. Grantors, however, may erect and maintain reasonable: (a) signs indicating the name of the Protected Property, (b) boundary markers, (c) directional signs, (d) signs regarding hunting, fishing, trapping, trespassing on the Protected Property or signs otherwise regarding public access to the Protected Property, (e) memorial plaques, (f) temporary signs indicating that the Protected Property is for sale or lease, (g) signs informing the public that any agricultural or timber products are for sale or are being grown on the Protected Property, (h) political or religious signs, or (i) signs informing the public of any rural enterprise approved pursuant to Section III below. Grantees, with the permission of Grantors, may erect and maintain signs designating the Protected Property as land under the protection of Grantees.

5. The placement, collection, or storage of trash, refuse, 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 Grantees, which approval shall not be unreasonably withheld if such placement, collection or storage is consistent with the Purposes of this Grant. 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.

6. 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 this Grant. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.

7. The Protected Property shall not be subdivided or conveyed in separate parcels, nor shall ownership of the buildings on the Protected Property be separated from the ownership of the Protected Property without the prior written approval of Grantees, which approval may be granted, conditioned or denied in Grantees' sole discretion except as otherwise specifically permitted in this Grant.

8. 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 Grantees 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. Grantees, therefore, in their 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 together with the right to construct, maintain, and repair fences and gravel or other

permeable surfaced access roads for these purposes, all in accordance with sound agricultural practices and sound husbandry principles; provided, however, that Grantors shall obtain Grantees' prior written approval to clearcut forest land to establish fields, orchards or pastures. Grantees' approval shall not be unreasonably withheld if such clearcutting is consistent with the Purposes of this Grant.

2. The right to conduct maple sugaring operations, and the right to harvest timber and other wood products, together with the right to construct and maintain roads necessary for both such activities, in accordance with sound forestry practices and in accordance with a forest management plan for which Grantors have received the prior written approval of Grantees. Grantors may conduct maple sugaring operations, and may harvest firewood for heating residences and structures located on the Protected Property, both on existing woods roads only, without submission and approval of a plan. Grantees' approval of forest management plans that may be submitted from time to time shall not be unreasonably withheld or conditioned, if such plans have been approved by a professional forester and if such plans are consistent with the Purposes of this Grant.

3. The right to construct, maintain, repair, renovate, replace, enlarge, rebuild, and use new and existing barns, sugar houses, or similar non-residential structures or facilities, together with necessary access drives and utilities for agricultural and forestry uses, on the Protected Property; provided, however, that (a) the structures are used exclusively for agricultural or forestry purposes, and (b) any new construction, other than normal maintenance and repair, has been approved in writing in advance by Grantees. Grantees' approval may include designation of a complex surrounding the structures and shall not otherwise be unreasonably withheld or conditioned; provided, however, that the structure or other improvement is located outside of the area consisting of approximately 17 acres in and along the Moose River and designated as "Meander Belt" on the "Patenaude (Monahan/Kominami) Farm Plan" more particularly described in Schedule A attached hereto, and otherwise is located in a manner which is consistent with the Purposes of this Grant. Structures, drives and utilities proposed to be constructed within said "Meander Belt" may be approved, conditioned or denied by Grantee in its sole discretion Grantors shall not deem unreasonable a condition by Grantees that certain structures must be located within an existing complex or a complex which may be designated in the future as provided in this Section III.

4. 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. The construction of ponds or reservoirs shall be permitted only upon the prior written approval of Grantees, 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.

5. The right to clear, construct, and maintain trails for non-commercial walking, horseback riding, skiing, and other non-commercial, non-motorized recreational activities within

and across the Protected Property, all in a manner consistent with the Purposes of this Grant. Non-commercial snowmobiling may be permitted at the discretion of Grantors.

6. The right to maintain, repair, renovate, replace, enlarge, rebuild, and use: (a) the existing single-family dwelling for residential purposes, including the right to convert said single-family dwelling to a two-family dwelling (b) the existing farm buildings for non-residential, agricultural uses, (c) the existing non-residential appurtenant structures and improvements, including drives and utilities, normally associated with a dwelling or farm, and (d) construct, maintain, repair, renovate, replace, enlarge, rebuild, use and occupy new farm buildings for non-residential, agricultural uses and appurtenant structures and improvements, including drives and utilities, normally associated with a dwelling or farm, all within the designated Farmstead Complex without the prior written approval of Grantees. With the prior written approval of Grantees, 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 outside of the Farmstead Complex for the benefit of buildings or structures permitted in the Farmstead Complex, provided that such Systems comply with Vermont Department of Environmental Conservation Wastewater System and Potable Water Supply Rules or the then applicable law or regulations governing Systems. The Farmstead Complex is an area consisting of two and one-half (2.5) acres, more or less, and is more particularly described in Schedule B attached hereto and incorporated herein, and is depicted on the Patenaude (Monahan/Kominami) Farm Plan described in Schedule A attached hereto and incorporated herein. Grantors shall notify Grantees in writing prior to commencing construction on any new structure or improvement within the Farmstead Complex.

7. For the purpose of providing housing exclusively for Grantors who are engaged in farming operations on the Protected Property or for persons employed by the Grantors in farming operations on the Protected Property, and for the employee's family or household members, as a nonmonetary benefit of farm employment, the right to construct, use, maintain, repair, renovate, replace, enlarge and rebuild farm labor housing which may be within an existing building or a new building ("the FLH") together with appurtenant non-residential structures and improvements, including drives, utilities, and water and wastewater systems normally associated with a residence; provided, however, that prior to construction, renovation, replacement, enlargement or rebuilding Grantors shall obtain Grantees' written approval which, in Grantees' sole discretion, may be withheld or given subject to such conditions as the Grantees deem appropriate, if Grantors demonstrate to Grantees' satisfaction that the FLH or alteration thereto is:

- a) necessary to the current and reasonably foreseeable farm business on the Protected Property in order to facilitate the active and long-term economically viable agricultural use of the Protected Property; and
- b) located within an existing building complex or, if not, that there are specific reasons why the proposed location is necessary to the current and reasonably foreseeable farm business on the Protected Property and otherwise consistent with the Purposes of the Grant; and
- c) designed and sized to be no larger than is necessary to meet the needs of the current and reasonably foreseeable farm business on the Protected Property and to ensure that the Protected Property remains available for production agriculture, affordable and owned by persons actively engaged in farming; and
- d) otherwise consistent with the Purposes of the Grant.

The FLH shall not be conveyed separately from the Protected Property, but may be subdivided with the prior written approval of Grantees if such subdivision is required by state or local regulation.

If the FLH is not needed for farm labor housing in the future, temporary alternative uses of the structure deemed by the Grantees in their sole discretion to be consistent with the Purposes of this Grant may be permitted with the prior written approval of the Grantees.

8. 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 maintain, repair, enlarge, replace and use permitted structures with associated utility services, drives and appurtenant improvements within a Farmstead Complex, or other designated complex permitted by this Section III. Grantees may approve a new, non-residential, structure for an approved rural enterprise only if an existing structure is not suitable and the new structure is:

- a) located within a permitted Farmstead Complex or other designated complex;
- b) fewer than 1500 square feet as an exterior measure of the footprint and no more than 25 feet from the lowest undisturbed ground level to the roof peak;
- c) inclusive of all storage space so that no part of the business is conducted outside of the structure;
- d) of a nature, intensity, scope, size, appearance, type and quantity compatible with the existing agricultural structures;
- e) located in a way that minimizes negative impact on future operations and expansion of agricultural uses, does not interfere with current agricultural operations and does not displace farm or forestry storage, use or functions;
- f) non-residential; and
- g) not inconsistent with the Purposes of this Grant.

No use or structure contemplated under this Section III(8) shall be commenced, constructed or located without first securing the prior written approval of Grantees, which approval Grantees may deny or condition in their sole discretion. All structures and uses shall conform with all applicable local, state and federal ordinances, statutes and regulations. Grantees' 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. Grantee VHCB shall not approve a new structure for a non-agricultural approved rural enterprise unless the proposed structure meets factors (a) through (g), above. However, VHCB may waive factors (b), (c) or (d) if the Grantees determine that the unique circumstances of the situation warrant waiver and approval.

9. 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(9) and the number and location of such structures are consistent with the Purposes of this Grant.

#### **IV. Enforcement of the Restrictions.**

Grantees 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, Grantees may make periodic inspection of all or any portion of the Protected Property, and for such inspection and enforcement purposes, Grantees shall have the right of reasonable access to the Protected Property. In the event that a Grantee becomes aware of an event or circumstance of non-compliance with this Grant, Grantee shall give notice to Grantors and the other Grantees of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action by Grantors 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 Grantees to incur extraordinary costs, including staff time, in investigating the non-compliance and securing its correction, Grantors shall, at Grantees' request, reimburse Grantees for all such costs 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 Grantees within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle Grantees 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 Grantees to corrective action on the Protected Property, if necessary. If the court determines that Grantors have failed to comply with this Grant, Grantors shall reimburse Grantees for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that a Grantee initiates litigation and the court determines that Grantors have not failed to comply with this Grant and that one or more of Grantees have initiated litigation without reasonable cause or in bad faith, then the Grantee(s) who commenced the court proceedings 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 Grantees 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 Grantees at law, in equity, or through administrative proceedings.

No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantors shall impair Grantees' 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, when the event or circumstance of non-compliance occurred after said prior owner's ownership or control of the Protected Property terminated.

#### **V. Riparian Buffer.**

The Riparian Buffer Zone consists of all lands and premises on the Protected Property lying within fifty feet (50') of the Moose River ("the River"), and a small tributary stream as they may move from time to time, measured from the top of the banks of the River and stream, and also including any land located between the top of said banks and the low water mark of the River. The general location of the Riparian Buffer Zone (hereafter "RBZ") is depicted on the Patenaude (Monahan/Kominami) Farm Plan, described in Schedule A attached hereto, and shall be subject to the following limitations and restrictions which shall supersede the foregoing Sections II and III of this Grant to the extent these limitations and restrictions are inconsistent with those sections:

The principal goal for management within the RBZ is the establishment and maintenance of a high quality buffer that provides an array of ecological benefits including, but not limited to:

- 1) buffering aquatic and wetland plants and animals from disturbance;
- 2) preventing wetland and water-quality degradation;
- 3) providing important plant and animal habitat; and
- 4) providing organic matter, nutrients, and structure to aquatic systems.

Within the RBZ the following restrictions shall apply:

1. All forest management activities planned and conducted within the RBZ, including the silvicultural system, harvest timing, equipment employed, and harvest intensity, shall be focused on the goals of retaining soil integrity, natural hydrology, water quality values, and the natural structure and species composition of the RBZ and other natural communities present.
2. All timber management activities shall be subject to a forest management plan that is consistent with the Purposes of this Grant and this Section. Any such activities must comply with the provisions of the publication, "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont" (AMPs) or successor publications adopted by the Department of Forests, Parks and Recreation to meet the requirements of the "Vermont Water Quality Standards." The forest management plan shall rely on the best current biological and silvicultural science to determine appropriate management methods.
3. Approval of a forest management plan submitted to Grantees pursuant to Section III(2), above, shall not be unreasonably withheld or conditioned, if such plans are consistent with the Purposes of this Grant and with the provisions of this Section V and if such plans have been approved by a professional forester.
4. All agricultural activities planned and conducted within the RBZ shall be focused on the goals of retaining soil integrity, natural hydrology, water quality values, and the natural structure and species composition of the RBZ and other natural communities present. Prior to conducting any agricultural activities within the RBZ, Grantors shall secure the prior written approval of the Grantees, which approval shall not be unreasonably withheld or conditioned if such activities are consistent with the Purposes of this Grant and the provisions of this Section IV.

#### **VI. Option to Purchase at Agricultural Value.**

Grantee shall have an option to purchase the Protected Property at its agricultural value in

accordance with the terms and provisions of this Section VI ("this Option"). This Option is an integral part of this Grant and constitutes a restriction and a right and interest in real property that runs with the land. This Option shall be perpetual in duration and is given on the following terms and conditions.

1. **Option Trigger.** Grantors shall not sell, transfer or convey the Protected Property, in whole or in part, without first offering the Protected Property for sale to Grantee pursuant to this Section VI; provided, however, that the following described transactions shall not trigger Grantee's rights under this Option:

- a) Any mortgage, pledge, or other assignment of the Protected Property to a lender as security for indebtedness, provided the Grantee's interest under this Option is treated as an interest in real estate such that in the event of foreclosure Grantee is deemed a necessary party defendant in such foreclosure case and has the right to redeem the Protected Property from the foreclosure action; and
- b) Any conveyance by the Grantors to Grantors' family, as the latter term is defined in Section VIII below, by gift, inheritance, sale or other transfer; and
- c) Any conveyance of the Protected Property to a person who presently earns at least one-half of his or her annual gross income from the "business of farming," as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986 and who, in connection with the farming operations on the Protected Property, will continue to earn at least one-half of his or her annual gross income from the "business of farming" ("a Qualified Farmer"); and
- d) Any lease to a Qualified Farmer or a lease having a term of 15 years or less, including renewal rights; provided, however, that any such lease shall expressly provide that, unless otherwise agreed by Grantee, the lease shall terminate and possession shall be delivered free and clear of any rights of the tenant upon a closing of the sale of the Protected Property following exercise of this Option.

This Option shall apply to all other sales and conveyances of the Protected Property, including any sale or conveyance of any interest in the Protected Property including any conveyance by, or conveyance of any interest in a corporation, limited liability company, partnership or other holding entity.

2. **Notice of Intent to Sell.** Whenever Grantors receive an offer from a person or persons ("Buyer") to purchase or lease for a term in excess of fifteen (15) years, including renewal rights, all or any part of the Protected Property including an offer involving property other than the Protected Property ("the Offer"), and Grantors accept the Offer subject to this Option, Grantors shall deliver to Grantee at its principal place of business by certified mail, return receipt requested a Notice of Intent to Sell, which notice shall include:

- a) A complete duplicate of the Offer, together with such other instruments as may be required to show the bona fides of the Offer; and

- b) A written description of the Buyer's training and experience as an agricultural producer and an agricultural business plan for the Protected Property, including a description of the agricultural activities to be conducted or facilitated by Buyer, proposed improvements to the Protected Property, and a statement of anticipated agricultural income and expenses for the three-year period following Buyer's acquisition of the Protected Property or, if Buyer has no such training and experience or intention of operating an agricultural business on the Protected Property, a written statement to that effect; and
- c) If the Buyer is purported to be a Qualified Farmer or family member, the documents necessary to establish the Buyer as such, including the Buyer's most recent federal income tax filing, if applicable; and
- d) The Grantors' current mailing address.

Information delivered to Grantee pursuant to this clause shall remain confidential and shall not be released to any person or entity not a party to this Grant, without the prior consent of Grantors.

3. **Exercise of Option.** This Option may be exercised by Grantee as follows:
- a) A Grantee shall give written Notice of Intent to Exercise not more than thirty (30) days following receipt of the Notice of Intent to Sell described in Section VI(2); failure by a Grantee to provide such notice shall constitute a waiver of its rights under this Option; and
  - b) Thereafter, Grantors and Grantee shall fix the purchase price for the Protected Property by establishing a Price Agreement in the manner described in Section VI(4), below.
  - c) A Grantee shall exercise this Option by giving written Notice of Intent to Purchase not more than thirty (30) days following Grantors' and Grantee's establishment of the Price Agreement.

Notices required by this Section VI(3) shall be delivered to Grantors either personally or by certified mail, return receipt requested to the address provided by Grantors in the Notice of Intent to Sell described in Section VI(2), above.

4. **Purchase Price.** The Purchase Price shall be determined by mutual agreement of Grantors and Grantee; provided that if no such agreement can be reached, the purchase price of the land only shall be the greater of:

- a-1) \$75,000 plus an inflation adjustment determined by multiplying the foregoing value by 1 (one) plus the fractional increase calculated from the date hereof in the Consumer Price Index for all Urban Consumers, Northeast, All Items published by the Bureau of Labor Statistics, U.S. Department of Labor, or a successor index published by the United States government to the date of the Offer; or
- a-2) The full fair market value of all Protected Property land subject to the Offer

(including the site of any structures) assuming its highest and best use is commercial agricultural production commonly occurring within the market area where the Protected Property is located on the date of the Offer, as determined by a mutually approved disinterested appraiser selected by Grantors and Grantee, with the expense of such appraisal divided equally between Grantors and Grantee. Permanently installed land improvements, such as in-ground irrigation systems, farm roads, and drainage tiling shall be considered part of the land. This appraisal shall take into consideration the permitted and restricted uses set forth in, and the impact on value caused by the Grant.

With respect to any agricultural, forestry or minor incidental structures and improvements in existence as of the date of the Offer, then in addition to the foregoing land value, the Purchase Price shall also include:

- b) The value of all such structures and improvements on the Protected Property as of the date of the Offer excluding all land (which is included in the Section VI(4)(a) valuation, above). The value of the structures and improvements shall be determined using the replacement cost approach to valuation (i.e., the cost to replace the structures and improvements with those of comparable size and utility, less depreciation and functional obsolescence) by a mutually approved disinterested appraiser selected by Grantors and Grantee, with the expense of such appraisal divided equally between Grantors and Grantee.

With respect to any residence(s) in existence as of the date of the Offer, then in addition to the foregoing land value, the Purchase Price shall also include:

- c) The value of the residence and its appurtenant structures and improvements as of the date of the Offer excluding the value of the land upon which these structures sit (which is included in the Section VI(4)(a) valuation, above). The value of the residence and appurtenant structures and improvements shall be determined using the replacement cost approach to valuation (i.e., the cost to replace the residence, structures and improvements with those of comparable size and utility, less depreciation and functional obsolescence) by a mutually approved disinterested appraiser selected by Grantors and Grantee, with the expense of such appraisal divided equally between Grantors and Grantee.

Grantors and Grantee shall establish the Purchase Price by either entering into a written agreement fixing the Purchase Price as provided in this Section VI(4), within ten working days of reaching mutual agreement or, if no such agreement is reached, the Purchase Price shall be based upon the appraised values which shall be the Purchase Price unless another Purchase Price is mutually agreed upon in writing by the parties within ten working days after the last party's receipt of the appraisals. The passage of said ten working days shall constitute the effective date of establishing the Purchase Price. ("Price Agreement")

5. **Entry onto the Protected Property.** After receiving the notice from Grantors described in Section VI(2), above, and upon reasonable notice to the Grantors, the Grantee shall have the right to enter upon the Protected Property from time to time for the purpose of preparing for the purchase and disposition of the Protected Property, including but not limited to preparing

appraisals, conducting soils tests or engineering studies, advertising, showing prospective buyers or assignees, or obtaining other information about the Protected Property. Grantee's entry onto or testing of the Protected Property shall be conducted in a manner that minimizes any disturbance to the land and to the use and enjoyment of the Protected Property by the Grantors or any tenants in possession.

6. **Closing of the Purchase.** If this Option is exercised, the parties shall close on the sale on or before thirty (30) days from the delivery of the Notice of Intent to Purchase described in Section VI(3)(c), above, unless otherwise agreed. The following conditions shall apply to said closing:

- a) Grantors shall, by Vermont Warranty Deed, deliver good, clear, record and marketable title to the Grantee, free of all liens or other encumbrances (including discharge or release of outstanding mortgages), sufficient for the Grantee to secure title insurance at Grantee's sole expense. Grantee agrees to accept title subject to (i) customary utility distribution easements, (ii) rights of the public to use roads laid out by municipalities, the state or federal government, (iii) rights of way and other easements that do not, in the Grantee's opinion, materially impair beneficial use of the Protected Property; and (iv) the terms and conditions of this Grant. The state of title to the Protected Property shall be determined by a title examination paid for by the Grantee.
- b) Grantors agree to use reasonable efforts to deliver marketable title as set forth in Section VI(6)(a), above. In the event Grantors are unable to give marketable title, then the Grantee may elect to terminate its exercise of this Option. The Grantee shall have the right to elect to accept such title as Grantors can deliver and to pay the purchase price without reduction.
- c) Grantors agree to obtain at their sole expense any and all permits and approvals required under law or regulation for the conveyance of the Protected Property to Grantee under this Option. The parties shall extend the closing date as necessary to enable Grantors to obtain all such final permits and approvals.
- d) Grantors represent to Grantee that Grantors are not aware of any hazardous waste having been dumped or placed upon the Protected Property. Grantors will update this representation in writing upon the Grantee's delivery of the Notice of Intent to Exercise described in Section VI(3)(a), above. Grantors agree that the Grantee may, at the Grantee's expense, perform any and all tests and/or inspections necessary to confirm these representations. In the event that the Grantee discovers that hazardous wastes have been dumped or placed upon the Protected Property, the Grantee may at the Grantee's option declare its exercise of this Option to be null and void.
- e) The Grantors and the Grantee shall prorate property taxes as of the date of closing.
- f) The Grantors shall not physically alter the Protected Property or the improvements on the Protected Property or enter into any lease after Grantee delivers the Notice of Intent to Exercise provided in Section VI(3)(a), above, and while the Grantee may purchase pursuant thereto, except to perform generally accepted agricultural

practices and normal repairs. In the event any structure is substantially destroyed by fire or other casualty, Grantee may elect to (1) proceed to closing and accept the proceeds of any insurance policy Grantors may have with respect to such destruction; or (2) if such insurance proceeds are less than the value of the structure as determined under Section VI(4), above, proceed to closing and accept the proceeds of said insurance policy and reduce the purchase price by the difference between such value and insurance proceeds; or (3) withdraw its election to exercise this Option.

- g) The Protected Property shall be conveyed free of all leases, tenancies, tenants and occupants, unless Grantee otherwise agrees in writing.
- h) All personal property, livestock, machinery and equipment not included in the sale shall be removed from the Protected Property, and all other waste and debris shall be removed from the Protected Property prior to closing. Grantors and Grantee will jointly inspect the Protected Property 24 hours prior to closing.
- i) After closing, this Option shall remain in full force and effect with respect to all subsequent conveyances of the Protected Property, except as identified in Section VI(1), above.

7. **Partial Release of Option.** At the request of Grantor, Grantees shall execute a partial release of their rights under this Option Agreement ("the Partial Release"), and upon the first to occur of the following events, the Grantees shall immediately deliver the Partial Release to the St. Johnsbury Town Clerk and the Waterford Town Clerk for recording in the St. Johnsbury and Waterford Land Records:

- a) Grantee's failure to deliver the Notice of Intent to Exercise as described in Section VI(3)(a), above;
- b) Grantee's failure to deliver the Notice of Intent to Purchase as described in Section VI(3)(c), above; or
- c) Grantee's election to terminate its exercise of this Option based on title defects as provided in Section VI(6)(b), hazardous materials as provided in Section VI(6)(d), or destruction of structures as provided in Section VI(6)(f).

Should Grantee not exercise this Option as provided in Section VI(3), above, or should Grantee fail to close following its delivery of the Notice of Intent to Purchase, Grantors may proceed to close on the sale to the Buyer on the terms and conditions described in the Notice of Intent to Sell, within twelve (12) months of the delivery of said Notice to Grantee. Provided, however, this Option shall remain in full force and effect with respect to all subsequent conveyances of the Protected Property, except as identified in Section VI(1) above.

8. **Partial Assignment by Grantee.** Grantee may partially assign its rights under this Option, provided:

- a) No such assignment shall be made prior to Grantors and Grantee establishing the Price Agreement described in Section VI(4), above;
- b) Such assignment shall be in writing, with the assignee undertaking to discharge all obligations of Grantee with respect to purchase of the Protected Property, and a copy of the written assignment shall be delivered to Grantors;
- c) The assignee shall be a party which, in the reasonable opinion of the Grantee, will use or will facilitate the use of the Protected Property for commercial agricultural production; and
- d) The partial assignment shall pertain only to a single exercise of this Option in response to a discrete Notice of Intent to Sell delivered to Grantee. While no consent of Grantors shall be required for said single exercise, Grantee shall not otherwise assign all of its rights and interests under this Option without the prior written consent of Grantors.

## **VII. Historic Buildings**

Grantors and Grantees acknowledge that the dairy barn circa 1911 depicted as "Barn" on the Patenaude (Monahan/Kominami) Farm Plan (hereafter "the Building") is an outstanding historical resource important to Vermont's architectural heritage for the following reason:

- a) The Building is an excellent example of a turn of the century traditional style, timber frame dairy barn.

Grantors shall consider the Secretary of Interior's Standards for Rehabilitation (or such successor standard identified by Grantees) in planning additions and physical or structural alterations to the Building. Further, notwithstanding the provisions of Permitted Use Section III above, Grantors shall not move, demolish, remove or raze the Buildings, physically alter or remove the Building's exterior, make any addition to the Building, or structurally alter the Building without providing written notice to Grantees at least thirty (30) days prior to the commencement of such activities (the "notice period"). Upon request by Grantees, Grantors shall (i) contact the Vermont Division for Historic Preservation (or any successor historic preservation expert identified by Grantees) within seven (7) days of the request and (ii) consult with the Division (or any successor historic preservation expert identified by Grantees) within the notice period, but in no event shall Grantors be compelled to comply with any recommendation of the Division for Historic Preservation

## **VIII. Miscellaneous Provisions.**

1. Where Grantors are required, as a result of this Grant, to obtain the prior written approval of Grantees before commencing an activity or act, and where Grantees have 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 Grantees. Grantors shall reimburse Grantees or Grantees' designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantees' approval; but not to include those costs which are expected and routine in scope. Upon the request of Grantors, Grantees shall deliver to

Grantors, in written recordable form, any approval, disapproval, election, or waiver given by Grantees pursuant to this Grant.

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 Towns of St. Johnsbury and Waterford and the State of Vermont and at Grantors' sole expense.

3. It is further agreed that the Protected Property is accurately depicted and described in both the Patenaude (Monahan/Kominami) Farm Plan and a Baseline Documentation Report ("BDR") signed by the original Grantors on or about the date of this Grant and held by Grantee VLT, on behalf of all Grantees. Grantees may use the Patenaude (Monahan/Kominami) Farm Plan or BDR in enforcing this Grant, but are not limited in their use of the Patenaude (Monahan/Kominami) Farm Plan and BDR to show a change of conditions.

4. Grantees shall transfer the development rights, right of first refusal, and conservation easement and restrictions conveyed by Grantors herein only to a State agency, municipality, or qualified organization, as defined in Chapter 34 or Chapter 155 Title 10 V.S.A., in accordance with the laws of the State of Vermont and the regulations established by the Internal Revenue Service governing such transfers.

5. In the event the development rights or conservation restrictions conveyed to Grantees herein are extinguished by eminent domain or other legal proceedings, Grantees shall be entitled to any proceeds which pertain to the extinguishment of Grantees' rights and interests. Any proceeds from extinguishment shall be allocated between Grantors and Grantees in accordance with the value of their respective interests as determined by an appraisal commissioned by Grantees at the time of extinguishment; provided, however, that the allocation of proceeds to Grantees shall be no less than \_\_\_\_\_% of the full fair market value of the Protected Property exclusive of the value of improvements. Grantors and Grantees agree that this percentage figure is the relative value of the conservation restrictions as compared to the unrestricted value of the Protected Property as of the date of this Grant: ***[The Percentage Figure is determined by the relative value of the conservation restrictions as compared to the "unrestricted value" of the Protected Property at the time the Rights are purchased]***. Grantees shall use any such proceeds to preserve undeveloped and open space land in order to protect the aesthetic, agricultural, educational, scientific, forestry and natural resources of the State through non-regulatory means.

6. In any deed or lease conveying an interest in all or part of the Protected Property, Grantors shall make reference to the conservation easement, restrictions, and obligations 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 Grantees of the name(s) and address(es) of Grantors' successor(s) in interest.

7. Grantees 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 St. Johnsbury and the Town of Waterford 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.

8. While title is herein conveyed to Grantees as tenants in common, the rights and interests described in this Grant, including enforcement of the conservation easement and restrictions, may be exercised by Grantees collectively, or by any single Grantee individually; provided, however, that court enforcement action by a single Grantee shall foreclose action on the same issue(s) by the other Grantees who shall be bound by the final determination.

9. The term "Grantors" includes the heirs, executors, administrators, successors, and assigns of the original Grantors, Susan A. Monahan and Hisashi C. Kominami. The term "Grantees" includes the respective successors and assigns of the original Grantees, VLT and VHCB. 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.

10. 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.

11. Grantors warrant that Grantors have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.

12. Grantors shall hold harmless, indemnify and defend Grantees from and against any liabilities, claims and expenses, including reasonable attorney's fees to which Grantees 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.

13. If any Grantee takes legal title to Grantors' interest in the Protected Property, the Grantee acquiring title shall commit the monitoring and enforcement of the Grant to another Grantee until the Grantee acquiring title conveys title to a successor Grantor.

14. 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.

15. Grantor and Grantee recognize that rare and unexpected circumstances could arise that justify amendment of certain of the terms, covenants or restrictions contained in this Grant. To this end, this Grant may be amended only by mutual agreement of Grantor and Grantee; provided that Grantee determines in its sole discretion that such amendment furthers or does not materially detract from the Purposes of this Grant. Amendments shall be in writing, signed by both Grantor and Grantee, and shall be recorded in the Town of St. Johnsbury and Town of Waterford Land Records. Notwithstanding the foregoing, Grantor and Grantee have no right or power to agree to any amendment that would limit the term of the Grant, or adversely affect the qualification of this Grant or the status of Grantee under applicable laws, including without limitation Title 10 V.S.A. Chapters 34 and 155, Section 170(h) and 501(c)(3) of the Internal Revenue Code, as amended, and

regulations issued pursuant thereto.

INVALIDATION of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights, right of first refusal and a perpetual conservation easement and restrictions and right of way, with all the privileges and appurtenances thereof, to the said Grantees, **VERMONT LAND TRUST, INC., VERMONT AGENCY OF AGRICULTURE, FOOD AND MARKETS, and VERMONT HOUSING AND CONSERVATION BOARD**, their respective successors and assigns, to their own use and behoof forever, and the said Grantors, **SUSAN A. MONAHAN and HISASHI C. KOMINAMI**, for themselves and their heirs, executors, administrators, successors, and assigns, do covenant with the said Grantees, their successors and assigns, that until the ensealing 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, not intending hereby to reinstate any interest or right terminated or superseded by this Grant, operation of law, abandonment of 27 V.S.A. Ch. 5, Subch. 7; and they hereby engage to warrant and defend the same against all lawful claims whatever, except as aforesaid.

We herein set our hands at \_\_\_\_\_, Vermont this \_\_\_\_ day of \_\_\_\_\_, 2015.

GRANTORS

\_\_\_\_\_  
Susan A. Monahan

\_\_\_\_\_  
Hisashi C. Kominami

STATE OF VERMONT  
\_\_\_\_\_ COUNTY, ss.

At \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2015, Susan A. Monahan and Hisashi C. Kominami 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: 02/10/2019

Approved by the VERMONT HOUSING AND CONSERVATION BOARD:

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its Duly Authorized Agent

=====  
**SCHEDULE A**  
**PROTECTED PROPERTY**

Being all and the same lands and premises, with any and all structures and improvements that may be situated thereon, conveyed to Grantor by warranty deed of Vermont Land Trust, Inc., of near or even date and to be recorded herewith in the St. Johnsbury Land Records and the Waterford Land Records.

Meaning and intending to include in this description of the Protected Property all of the land with the buildings and improvements thereon lying easterly of U.S. Route 2 in the Towns of St. Johnsbury and Waterford, Vermont, and generally described as containing 35 acres, more or less.

Grantor does freely give, grant, sell, convey and confirm unto Grantee, and its successors and assigns, forever, a perpetual and separately assignable, non-exclusive, easement for a right-of-way (all as more particularly set forth below) over an existing farm road running from the southerly side of U.S. Route 2 to the Protected Property. Said right-of-way shall be on, over, under and across the right-of-way conveyed by Paul E. Gingue and Rosemary H. Gingue in their Easement Deed to Union Bank, Successor Trustee under the Edith Patenaude Trust, dated March 16, 2015, and recorded in Book 394, Page 172 of the St. Johnsbury Land Records and in Book 115, Page 9 of the Waterford Land Records. Said right-of-way is also described in the Warranty Deed conveyed by Union Bank, Successor Trustee under the Edith Patenaude Trust to Vermont Land Trust, Inc., dated March 20, 2015, and recorded in Book 394, Page 179 of the St. Johnsbury Land Records and in Book 115, Page 14 of the Waterford Land Records, and in the Warranty Deed of Vermont Land Trust, Inc. to Grantor, dated \_\_\_\_\_, 2015, and recorded in Book \_\_\_\_, Page \_\_\_\_ of the St. Johnsbury Land Records and in Book \_\_\_\_, Page \_\_\_\_ of the Waterford Land Records. Said right-of-way is depicted as "ROW" on the Patenaude (Monahan/Kominami) Farm Plan.

Such easement and right of way 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.

**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 Grantor and Grantees have used their best efforts to depict the approximate boundaries of the Protected Property and any excluded parcels, complexes or ecological protection zones on a plan entitled "Vermont Land Trust - Patenaude (Monahan/Kominami) Property, Towns of St. Johnsbury and Waterford, Caledonia Co., VT, July 2015" signed by the Grantor and VLT (referred to throughout this Grant and its Schedules as "Patenaude (Monahan/Kominami) Farm Plan"). The Patenaude (Monahan/Kominami) Farm Plan is based upon Vermont Base Map digital orthophotos and other information available to VLT 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 Patenaude (Monahan/Kominami) Farm Plan and any metes and bounds descriptions herein are intended solely for the use of the Grantor and Grantees 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

Westerly along the northerly boundary of Arthur Patenaude in a line running parallel to the southerly boundary of Arthur Patenaude a distance of 119 feet, more or less, to an iron stake; thence turning and proceeding

Westerly a distance of 105 feet, more or less, along the northerly boundary of Arthur Patenaude a distance of 105 feet, more or less, to an iron stake on the easterly sideline of U.S. Route 2 at a point about equidistant between the northerly side of the house of Arthur Patenaude and the southerly side of the house of Grantors; thence turning and proceeding

Northerly a distance of 155 feet, more or less, along the easterly sideline of U.S. Route 2 to the point of beginning.

## 1.0 EXECUTIVE SUMMARY

Wheeler Environmental Services, LLC (WES) was retained by the Vermont Land Trust of Montpelier, Vermont (the user) to conduct a Phase I Environmental Site Assessment (ESA) of the Patenaude farm located at 978 U.S. Route 2 in East Saint Johnsbury, Vermont (the Site). The Site consists of approximately 35 acres of primarily agricultural land. The Site includes a farmhouse with attached buildings, a large dairy barn and other agricultural use structures.

This ESA was completed in conformance with the American Society of Testing and Materials' Standard Practice for Environmental Site Assessments, ASTM E 1527-13.

The purpose of the ESA was to identify potential hazardous materials issues associated with the Site and its surroundings to the degree that they may affect the Site. The ESA included a review of existing information, determining the Site's regulatory status, reviewing the historical uses of the Site, investigating the potential for past releases of petroleum products and/or hazardous materials on the Site, and conducting a site reconnaissance to visually inspect the Site and its surroundings and to note whether evidence of releases of hazardous materials or petroleum products exists.

The historical and regulatory research for the Site did not reveal any information regarding the Site or nearby sites that would be considered as recognized environmental conditions under the ASTM standard.

The site reconnaissance identified no recognized environmental conditions at or near the Site. We do not recommend any additional investigation or remediation of this Site.

Town of Waterford  
Po Box 56  
Lower Waterford VT 05848

Telephone 802-748-2122  
Fax 802-748-8196  
[www.waterfordvt.org](http://www.waterfordvt.org)

April 13, 2015

Vermont Land Trust  
Tracy Zschau  
PO Box 427  
St Johnsbury VT 05819

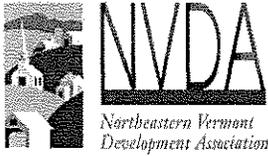
Dear Tracy:

Regarding the Edith Patenuade Trust farm on US Route 2, the Selectmen of the Town of Waterford find that the portion that is in Waterford is in compliance with town planning and zoning.

Sincerely,



Brent Beck, Chairman  
Waterford Selectboard



March 6, 2015

Vermont Land Trust  
P.O. Box 850  
Richmond, VT 05477

Dear Britt Haselton:

The Northeastern Vermont Development Association supports the VHCB's proposed purchase of development rights for the following farm and forest properties in the Northeast Kingdom Towns of Newport, Morgan, St. Johnsbury and Waterford:

Mark & Tiffany Marquis - Newport, VT  
Richard & Helen Morin - Morgan, VT  
Edith Patenaude Trust - St. Johnsbury and Waterford, VT

Agriculture and forestry have long been important sectors of the region's economy, and we expect this will continue into the future. The proposed purchase of development rights on these properties furthers our regional vision of "compact villages surrounded by working farms and forests". The proposed project also furthers the following land use goals identified in the 2013 *Regional Plan for the Northeast Kingdom*:

1. Farming and agriculture should remain an important and viable sector of the regional economy.
2. Contiguous tracts of prime agricultural soils should be preserved.
3. Sustainable forestry should remain an economically viable tool to preserve woodlands, open space for recreation, and local character.

NVDA would like to thank VHCB and all parties involved for working to protect Vermont's most valuable land resources.

Sincerely,

David Snedeker  
Executive Director  
Northeastern Vermont Development Association



## Town of St. Johnsbury

*Planning Commission*

51 Depot Square, Suite 3

St. Johnsbury, VT 05819

Tel: 802-748-3926

Fax: 802-748-1267

February 23, 2015

Tracy Zschau  
Conservation Director  
Vermont Land Trust  
P.O. Box 427  
St. Johnsbury, VT 05819

Dear Ms. Zschau,

On August 19, 2014, the St. Johnsbury Planning Commission unanimously voted to support the Vermont Land Trust's effort to secure a conservation easement for the Patenaude Farm in East St. Johnsbury Village. The 2011 St. Johnsbury Town Plan emphasizes this effort through the Land Use Section which states as its goals: LU 1.0: To protect and preserve important natural and historic features of the town landscape; LU 3.0: To encourage and strengthen agricultural and forest industries. Under goal 3.0 we have policy 3.1: The Town should protect long term viability of agricultural and forest lands and 3.3 The Town should minimize development pressure on agricultural and forest land. In addition, LU 4.0 states: To plan industrial, commercial, and residential development so as to maintain the historic character of compact village separated by rural countryside. This section of our Land Use is headed by a picture of the Patenaude Farm (see below). The conservation efforts will help us preserve this iconic landmark for generations to come.

Sincerely,

A handwritten signature in cursive script, reading "Susan A. Cherry".

Susan A. Cherry, Chair  
St. Johnsbury Planning Commission





# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Lake Champlain Fish and Wildlife Resources Office  
11 Lincoln Street  
Essex Junction, Vermont 05452

In Reply Refer To:  
FWS/Region 5/LCFWRO

January 5, 2015

Tracy Zschau  
Vermont Land Trust  
P.O. Box 427  
St. Johnsbury, VT 05819

Re: Riparian Restoration and Invasive Plant Control – Upper Connecticut River Mitigation and Enhancement Fund

Dear Tracy:

The U.S. Fish and Wildlife Service (USFWS) strongly supports the Vermont Land Trust's (VLT) proposal to the Upper Connecticut River Mitigation and Enhancement Fund for the riparian restoration project on the Patenaude farm, as described in your grant proposal narrative. For the past 6 years the USFWS has conducted post-project monitoring at 27 riparian restoration sites throughout the state. Monitoring observations indicate site maintenance such as invasive plant control will greatly increase tree and shrub survivorship, thus greatly increasing the overall success of riparian restoration. When Japanese knotweed is found within a project area, we feel very strongly that a long-term management plan including several follow-up treatments is critical to the project's increased survivorship and overall success. Increasing survivorship will restore and create more valuable fish and wildlife habitat as well as functioning buffers that are better equipped to assist in improving water quality and flood resiliency. The VLT has demonstrated the ability to successfully develop and oversee stewardship projects throughout the state, specifically developing maintenance plans, managing work crews, and providing valuable outreach and public education.

The USFWS is pleased to support the VLT in applying to the Upper Connecticut River Mitigation and Enhancement Fund. The VLT and the USFWS have cooperated on many successful projects over the last several years and plan to continue collaborating on these restoration and conservation efforts. The Service's Partners for Fish and Wildlife Program will continue to provide technical and funding assistance to the VLT and its partners as we select, organize, coordinate, and implement riparian habitat improvement projects.

If you require any additional information please contact me at the above address or by phone at (802) 872-0629.

Regards,

Katherine Kain  
Biologist, Partners for Fish and Wildlife Program



## Smith, Stephanie

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**From:** gabos, ben - NRCS, St. Albans, VT <Ben.Gabos@vt.nacdnet.net>  
**Sent:** Wednesday, July 22, 2015 4:49 PM  
**To:** Smith, Stephanie  
**Cc:** Jensen, Sylvia; DiPietro, Laura  
**Subject:** RE: Monahan-Kominami Farm in St. J

To the best of my knowledge the farm is currently in compliance with all AAPs. Susan and Hisa are currently leasing the land from VLT (will be purchasing soon) but, much of the land is still rented for hay from a nearby MFO. Susan and Hisa do not have livestock yet and have only started a few vegetable plots and maybe some berry patches. We will be installing fence next spring to completely exclude beef cattle from all surface waters on the farm.

Ben Gabos  
CREP Coordinator, VT Agency of Agriculture  
27 Fisher Pond Rd, Ste. 1  
St. Albans, VT 05478

phones:  
802-461-3814 (work cell)

802-524-6505, ext. 122 (St. Albans landline)

fax: 802-524-4575 (St. Albans)

[Ben.Gabos@vt.nacdnet.net](mailto:Ben.Gabos@vt.nacdnet.net)

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**From:** Smith, Stephanie [<mailto:Stephanie.Smith@state.vt.us>]  
**Sent:** Wednesday, July 22, 2015 4:26 PM  
**To:** gabos, ben - NRCS, St. Albans, VT <[Ben.Gabos@vt.nacdnet.net](mailto:Ben.Gabos@vt.nacdnet.net)>  
**Cc:** Jensen, Sylvia <[Sylvia.Jensen@state.vt.us](mailto:Sylvia.Jensen@state.vt.us)>; DiPietro, Laura <[Laura.DiPietro@state.vt.us](mailto:Laura.DiPietro@state.vt.us)>  
**Subject:** Monahan-Kominami Farm in St. J

Hi Ben,

I understand that you are developing a CREP Plan with a farm in St. J. This farm will be conserved and co held by the Agency- along with Vermont Land Trust and Vermont Housing and Conservation Board.

Because you have been on the farm, we wanted to check in for an assurance that the farm is in compliance with AAPs or has a plan for compliance. Do you have a short summary (something you may have already created) stating compliance or a plan for compliance?

Thanks.  
Stephanie

STEPHANIE ANN SMITH, AICP, CHIEF POLICY ENFORCEMENT OFFICER  
AGENCY OF AGRICULTURE, FOOD AND MARKETS  
116 STATE STREET

## Smith, Stephanie

---

**From:** Quenneville, Randy  
**Sent:** Monday, August 31, 2015 9:46 AM  
**To:** Roberts, Carrie; Scruton, Dan; Marckres, Henry; McNamara, Katherine; Mitchell, Mike; Mehlenbacher, Shelley; Smith, Stephanie  
**Cc:** Haas, Kristin; Jensen, Sylvia  
**Subject:** RE: Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

No issues that I am aware of. Thanks

### *Randy J. Quenneville*

Meat Programs Section Chief  
Vermont Meat Inspection Service  
Vermont Agency of Agriculture, Food and Markets  
116 State Street, Montpelier, Vermont 05620  
802-828-2426 Fax 802-828-5983

Please note email address change – [Randy.Quenneville@vermont.gov](mailto:Randy.Quenneville@vermont.gov)

**The Vermont Agency of Agriculture's mission is to facilitate, support and encourage the growth and viability of agriculture while protecting the working landscape, human health, animal health, plant health, consumers and the environment.**

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**From:** Roberts, Carrie  
**Sent:** Monday, August 31, 2015 7:52 AM  
**To:** Scruton, Dan; Marckres, Henry; Quenneville, Randy; McNamara, Katherine; Mitchell, Mike; Mehlenbacher, Shelley  
**Cc:** Haas, Kristin; Jensen, Sylvia  
**Subject:** FW: Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

Please see attached and report your responses directly to Sylvia – thank you!

**From:** Jensen, Sylvia  
**Sent:** Friday, August 28, 2015 5:38 PM  
**To:** Roberts, Carrie <[Carrie.Roberts@vermont.gov](mailto:Carrie.Roberts@vermont.gov)>  
**Subject:** Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

Good Afternoon Carrie:

Can you please forward to your key people in your division who can make the determination if the former Edith Patenaude (now owned by Vermont Land Trust since 03-2015) have any outstanding violations?

Please do not hesitate to contact me if you have any further questions or concerns.

Sylvia.

## Smith, Stephanie

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**From:** Mehlenbacher, Shelley  
**Sent:** Monday, August 31, 2015 10:39 AM  
**To:** Smith, Stephanie  
**Cc:** Jensen, Sylvia  
**Subject:** FW: Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf  
**Attachments:** Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

No outstanding violations in Animal Health

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**From:** Roberts, Carrie  
**Sent:** Monday, August 31, 2015 7:52 AM  
**To:** Scruton, Dan; Marckres, Henry; Quenneville, Randy; McNamara, Katherine; Mitchell, Mike; Mehlenbacher, Shelley  
**Cc:** Haas, Kristin; Jensen, Sylvia  
**Subject:** FW: Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

Please see attached and report your responses directly to Sylvia – thank you!

---

**From:** Jensen, Sylvia  
**Sent:** Friday, August 28, 2015 5:38 PM  
**To:** Roberts, Carrie <[Carrie.Roberts@vermont.gov](mailto:Carrie.Roberts@vermont.gov)>  
**Subject:** Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

Good Afternoon Carrie:

Can you please forward to your key people in your division who can make the determination if the former Edith Patenaude (now owned by Vermont Land Trust since 03-2015) have any outstanding violations?

Please do not hesitate to contact me if you have any further questions or concerns.

Sylvia.

## Smith, Stephanie

---

**From:** Jensen, Sylvia  
**Sent:** Monday, August 31, 2015 9:20 AM  
**To:** Smith, Stephanie  
**Subject:** FW: Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

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**From:** Houston-Anderson, Wendy  
**Sent:** Monday, August 31, 2015 8:46 AM  
**To:** Jensen, Sylvia  
**Subject:** RE: Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

Hi Sylvia, ARM does not have any current enforcement action with this farmer.  
W-

*Wendy Anderson*

Enforcement Coordinator  
Agricultural Resource Management Division  
VT Agency of Agriculture  
116 State Street  
Montpelier, VT 05620-2901  
802-828-3475 (phone)  
[wendy.houston-anderson@vermont.gov](mailto:wendy.houston-anderson@vermont.gov)

**Please note my new email address!!**

---

**From:** Jensen, Sylvia  
**Sent:** Friday, August 28, 2015 5:40 PM  
**To:** Houston-Anderson, Wendy <[Wendy.Houston-Anderson@vermont.gov](mailto:Wendy.Houston-Anderson@vermont.gov)>  
**Subject:** Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

Good Afternoon Wendy:

Please review your outstanding violations to determine if the former Edith Patenaude Farm (now owned by VT Land Trust since 03-2015) has any outstanding violations.

Please do not hesitate to contact me if you have any further questions or concerns.

Sincerely,  
Sylvia.

## Smith, Stephanie

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**From:** Mitchell, Mike  
**Sent:** Monday, August 31, 2015 9:38 AM  
**To:** Smith, Stephanie  
**Subject:** FW: Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

No issues with-in the Meat Inspection group. Mike

*Michael Mitchell*

*Meat Safety Compliance and Enforcement Specialist*

Vermont Agency of Agriculture Food & Markets  
Food Safety & Consumer Protection Division  
116 State Street  
Montpelier, Vermont 05620-2901  
[mike.mitchell@vermont.gov](mailto:mike.mitchell@vermont.gov)  
Phone 802-828-2426  
Fax 802-828-5983

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**From:** Scruton, Dan  
**Sent:** Monday, August 31, 2015 9:23 AM  
**To:** Smith, Stephanie  
**Cc:** Haas, Kristin; Jensen, Sylvia; Roberts, Carrie; Marckres, Henry; Quenneville, Randy; McNamara, Katherine; Mitchell, Mike; Mehlenbacher, Shelley  
**Subject:** RE: Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

No problem in Dairy  
Dan

---

**From:** Jensen, Sylvia  
**Sent:** Monday, August 31, 2015 9:21 AM  
**To:** Roberts, Carrie; Scruton, Dan; Marckres, Henry; Quenneville, Randy; McNamara, Katherine; Mitchell, Mike; Mehlenbacher, Shelley  
**Cc:** Haas, Kristin  
**Subject:** RE: Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

I am out all week therefore, please respond to Stephanie Smith.

---

**From:** Roberts, Carrie  
**Sent:** Monday, August 31, 2015 7:52 AM  
**To:** Scruton, Dan; Marckres, Henry; Quenneville, Randy; McNamara, Katherine; Mitchell, Mike; Mehlenbacher, Shelley  
**Cc:** Haas, Kristin; Jensen, Sylvia  
**Subject:** FW: Emailing - Edith Patenaude Estate\_Vermont Land Trust\_St. Johnsbury-Waterford.pdf

Please see attached and report your responses directly to Sylvia -- thank you!