

VERMONT HOUSING AND CONSERVATION TRUST FUND

I. Overview

The State of Vermont has experienced less sprawl compared to other states; however, the pace and pattern of development over the last two decades has threatened the state's rural landscape and natural heritage.¹ Indeed, between 1982 and 1997, Vermont's land development increased by 31 percent and population increased by 14 percent.² In response to these trends, the state legislature passed the Vermont Housing and Conservation Trust Fund Act of 1987, creating the Vermont Housing and Conservation Trust Fund (VHCTF), the state's major open space funding program. The Vermont Housing and Conservation Board (VHCB) administers the VHCTF.³ Since its inception, VHCB grants have helped conserve a total of 364,782 acres—108,491 acres for farmland conservation and 246,291 acres for natural area conservation and outdoor recreation.⁴

The VHCB has statutory authority to conserve land based on biodiversity considerations, as well as other considerations such as affordable housing, recreation, and historical preservation; thus, the VHCB utilizes its biodiversity authority for only a portion its funding.⁵ VHCB officials do not plan to integrate Vermont's wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) into their land conservation priorities. However, the VHCB expects to reward project proposals that demonstrate consistency with the plan.

II. Vermont's Housing and Conservation Board and Trust Fund

The VHCB has a broad statutory mandate to pursue the "dual goals of creating affordable housing for Vermonters, and conserving and protecting Vermont's agricultural land, historic properties, important natural areas and recreational lands."⁶ The VHCB is an independent, state-supported agency that provides grants, loans, and technical support to state and local agencies, municipalities, and nonprofit organizations (including conservation organizations).⁷ The nine-

¹ Vermont Earth Institute, *Fact Sheet: Vermonters and Sprawl*, at <http://www.vtearthinstitute.org/sprawl.html> (last visited May 10, 2005); Vermont Housing and Conservation Board, *Mission and History*, at <http://www.vhcb.org/Mission.html> (last visited May 11, 2005).

² Vermont Smart Growth Collaborative, *Why Form the Collaborative?*, at http://www.vtsprawl.org/Initiatives/sgcollaborative/VSGC_main.htm (last visited May 10, 2005).

³ VT. STAT. ANN. tit. 10, ch. 15 § 301.

⁴ Letter from Billy Coster, Stewardship Director, Vermont Housing and Conservation Board, to Ben Gerhardstein, Research Associate, Environmental Law Institute (April 5, 2005) (on file with authors).

⁵ The degree to which VHCB utilizes its biodiversity authority can be measured cursorily by examining the number of ecological or habitat value-focused conservation awards. Between July 2002 and June 2003, of the 91 awards made for farmland, historic, recreation, and natural area conservation (as listed in the 2003 Annual Report), twelve awards, or thirteen percent, specifically mentioned the project's ecological or habitat value. *See*: Vermont Housing and Conservation Board, *Annual Report to the General Assembly 2003*, at <http://www.vhcb.org/pdfs/ar03a.pdf> (last visited June 5, 2005).

⁶ VT. STAT. ANN. tit. 10, ch. 15 § 302.

⁷ Vermont Housing and Conservation Board, *Adopted Rule for the Vermont Housing and Conservation Trust Fund Program*, at <http://www.vhcb.org/adoptedrule.html> (last visited May 13, 2005).

member board is composed of five citizen members appointed by the Governor (including an advocate for low income Vermonters and a farmer), the Secretaries of Agriculture, Commerce and Community Development, and Natural Resources, and the Executive Director of the Vermont Housing Finance Agency.⁸ While the board is supported by staff with diverse backgrounds, including agriculture and the sciences, eligible applicants are heavily relied upon to assist in evaluating scientific components of proposed projects.⁹

Annual funding for the program comes from the state's property transfer tax and occasional dedicated appropriations from the General Assembly.¹⁰ VHCB is authorized to receive up to 50 percent of the state's revenues from the property transfer tax; however, the legislature has typically appropriated a lesser amount.¹¹ With VHCB approval, monies from other public and private sources can also be deposited in the VHCTF.¹² Through Fiscal Year 2004, the VHCB spent a total of \$180,597,578 on all its programs.¹³ Of that, approximately 42 percent, or \$76 million, was spent on conservation projects (farmland, natural area, and outdoor recreation projects). Annual state funding for the VHCB has averaged \$11.6 million since 1995.¹⁴ Allocating funds among the various VHCB categories is an annual exercise for the board. As of 2005, 60 percent of allocated funds go to housing projects, while 40 percent go toward conservation projects.¹⁵ Conservation funds are then further divided for farmland conservation or natural area/outdoor recreation/historic conservation (50 percent to each category as of 2005).¹⁶ Finally, the natural area/outdoor recreation/historic funds are further split between local projects and projects of statewide significance (50 percent to each category as of 2005).¹⁷ Applicants seeking funding for local conservation projects are required to provide 33 percent matching funds. There is no matching requirement for regular VHCB project funding.¹⁸

III. Land Protection Strategy

Land Protection and Prioritization

The Vermont Housing and Conservation Board funds projects that protect land through fee title acquisition and conservation easements. VHCB's statute prioritizes funding projects that combine the dual goals of housing and conservation, although in practice, true "dual goal"

⁸ Vermont Earth Institute, *supra* note 1; Vermont Housing and Conservation Board, *supra* note 1.

⁹ Email from Paul Hannan, Director of Conservation Programs, Vermont Housing and Conservation Board, to Ben Gerhardstein, Research Associate, Environmental Law Institute (June 27, 2005, 3:53 PM EST) (on file with authors).

¹⁰ VT. STAT. ANN. tit. 10, ch. 15 § 312.

¹¹ *Id.*; Hannan, *supra* note 9.

¹² VT. STAT. ANN. tit. 10, ch. 15 § 312.

¹³ Coster, *supra* note 4.

¹⁴ Vermont Housing And Conservation Board, *State Funding FY1988-FY2005, VHCB Funds and Awards Over Time* (on file with authors).

¹⁵ Coster, *supra* note 4.

¹⁶ Vermont Housing And Conservation Board, *supra* note 14.

¹⁷ A further split is made within the farmland allocation such that a fixed amount (\$375,000 as of 2005) is reserved for local farm projects. *Id.*

¹⁸ Telephone interview with Paul Hannan, Director of Conservation Programs, Vermont Housing and Conservation Board (May 20, 2003).

projects are relatively rare.¹⁹ In prioritizing non-agriculture conservation projects, the program's statutory mandate is to protect "important wildlife habitat and important natural areas."²⁰ The legislature has defined an "important natural area" as "any area containing one or more endangered species...or any area essential to maintaining the ecological diversity or natural heritage of the state."²¹

With respect to natural area projects, typically funded projects preserve lands that support ecological functions, sensitive species, and communities, as well as lands that are geologically significant. In evaluating natural area projects, the board gives preference to projects that will protect a significant occurrence of a currently unprotected natural community type, enlarge an existing protected area, and/or protect wildlife habitat. The board specifies that it will "consider the area's biological diversity in evaluating the project, and will place greater emphasis on protecting areas which have greater diversity."²² Public access and community support are also strongly considered.²³

VHCB uses a flexible project evaluation system based on its establishing policies (discussed above) to prioritize projects for funding. According to VHCB officials, it is rare for the board to have to choose among biodiversity-related projects in any given funding cycle due to the small size of the state and the high degree of coordination among nonprofit conservation organizations.²⁴

The board uses biological information, typically provided by funding applicants in project proposals, to determine projects for funding. Applicants are responsible for identifying sites, mapping, demonstrating connections with existing protected areas, and evaluating the biological characteristics of the proposed site. Applicants generally rely on the Vermont Nongame Natural Heritage Program (VNNHP)²⁵ and data collected by nongovernmental organizations (e.g. The Nature Conservancy) for biological information.²⁶ VHCB applicants are required to consult with the VNNHP to determine whether the site is identified in the Nongame and Natural Heritage Inventory or in the Fragile Areas Registry. Once proposals are submitted, VHCB staff perform fact checks and a site visit.²⁷

As previously discussed, the VHCB conservation program uses half of its non-agriculture monies for local conservation projects.²⁸ Grants of up to \$150,000 are available to

¹⁹ Hannan, *supra* note 9.

²⁰ VT. STAT. ANN. tit. 10, ch. 15 § 303.

²¹ *Id.*

²² Vermont Housing and Conservation Board, *Policy Position: Funding for Natural Area Projects*, at <http://www.vhcb.org/naturalareaspolicy.html> (April 1991).

²³ *Id.*

²⁴ Telephone interview with Billy Coster, Stewardship Director, Vermont Housing and Conservation Board, and Nancy Everhart, Agricultural Program Director, Vermont Housing and Conservation Board (April 5, 2005).

²⁵ The VNNHP is part of the Vermont Fish and Wildlife Department's Wildlife Division and exists to inventory, manage, and conserve the state's nongame wildlife, native plants, and natural communities.

²⁶ Coster and Everhart, *supra* note 24.

²⁷ *Id.*; Vermont Housing and Conservation Board, *supra* note 22.

²⁸ A new initiative to incorporate biodiversity considerations into VHCB farmland conservation projects deserves note. The Vermont Land Trust (VLT) has recently initiated a program in collaboration with The Nature Conservancy (TNC) to use GIS data layers with biological information (e.g. heritage sites) to screen farm projects.

municipalities and nonprofit conservation organizations for projects providing outdoor public recreation, natural area protection, historic preservation, agricultural land preservation, and the maintenance of a community's scenic integrity or identity.²⁹ Priority is given to projects that serve at least two of those conservation goals. Funded groups must provide a 33 percent match (minimum).³⁰

Protection in Perpetuity

Conservation easements on lands protected by state agencies, municipalities, and nonprofits allow for resale to other eligible owners with VHCB approval.^{31,32} VHCB prefers natural area conservation projects that involve at least one partner with a board-approved stewardship plan that provides permanent protection.³³ Approved stewardship partners³⁴ hold the conservation easement along with the VHCB and typically serve as the primary steward of the easement. The VHCB sometimes serves as the sole easement holder for a conservation project. When this occurs, the VHCB follows the same stewardship standards partner organizations implement (although the VHCB cannot fund stewardship endowments for these projects).^{35,36}

Stewardship endowments are required for all VHCB-funded easements involving an approved stewardship partner.^{37,38} When co-holding an easement, VHCB provides a stewardship endowment of \$6,000 to the approved partner organization for monitoring activities, which typically include an annual site visit and landowner survey to ensure that the terms of the easement are being followed. VHCB relies on appropriations to pay for stewardship activities because, due to its quasi-governmental nature, VHCB is not able to create a perpetual endowment for its stewardship funds.³⁹ Money for endowments may come from non-VHCB

If the VLT and TNC find biologically important or sensitive features, a biologist investigates the site and makes recommendations for protection. The conservation easement then incorporates those special recommendations. VHCB officials have indicated that farm projects that have undergone this screening process have a competitive advantage over other farm projects. Hannan, *supra* note 18.

²⁹ Vermont Housing and Conservation Board, *VHCB Local Conservation Policy*, at <http://www.vhcb.org/localconservation.html> (May 11, 2005).

³⁰ Hannan, *supra* note 18.

³¹ Coster and Everhart, *supra* note 24.

³² A small percentage of VHCB-funded non-farm projects are privately owned and can be sold repeatedly without VHCB approval. Vermont Housing and Conservation Board, Conservation Easement Holding and Stewardship Policy, available at <http://www.vhcb.org/pdfs/conspolicy/easeholdstew.pdf>.

³³ Vermont Housing and Conservation Board, *supra* note 22.

³⁴ Organizations interested in co-holding a conservation easement or serving as the primary steward of an easement must be approved by VHCB staff. VHCB staff assesses the organization's compliance with 2004 Land Trust Alliance Standards and Practices (#11 and #12), track record of responsible easement stewardship, organizational capacity for stewardship (staff and financial), and use of approved easement templates for VHCB projects. There are currently seven approved VHCB primary stewardship partners, all of which are nonprofit conservation organizations.

³⁵ Vermont Housing and Conservation Board, *supra* note 32.

³⁶ VHCB holds just under 100 easements (about 15 percent of non-agriculture projects) without a partner. These easements are not endowed. E-mail from Paul Hannan, Director of Conservation Programs, Vermont Housing and Conservation Board, to Ben Gerhardstein, Research Associate, Environmental Law Institute (July 21, 2005, 14:16:43 EST) (on file with authors).

³⁷ Vermont Housing and Conservation Board, *supra* note 32.

³⁸ The VHCB uses VHCTF monies for stewardship endowments, deeming endowments an acquisition and project cost. Hannan, *supra* note 9.

³⁹ *Id.*

sources also; for example, The Nature Conservancy has provided endowments for its projects in the past.⁴⁰ The VHCB also has statutory authority to provide a one-time grant to state or municipal agencies to support the proper management and maintenance of a property protected with VHCB monies.⁴¹ This money is frequently used to formulate management plans for the property.⁴²

IV. State Wildlife Action Plan

The Vermont Fish and Wildlife Department developed Vermont's wildlife action plan, (formerly known as the Comprehensive Wildlife Conservation Strategy). The plan seeks to benefit the full range of Vermont's wildlife, but focuses on "Species of Greatest Conservation Need."⁴³ To determine those species, six teams (representing birds, fish, invertebrates, mammals, plants, and reptiles and amphibians) met to assess the status of Vermont's wildlife. Using assessment criteria, species were ranked according to conservation priority, with those of highest ranking comprising the draft list of Species of Greatest Conservation Need. The list includes 143 vertebrate species, 118 invertebrate species or groups, and 339 plant species.⁴⁴

The wildlife action plan was developed as a collaborative process with input from a broad variety of organizations and interests in the state. While several of the land trusts that regularly apply for VHCB funds were conservation partners in the process, the VHCB itself was not a partner.⁴⁵ Therefore, the plan does not explicitly incorporate VHCB-appropriate implementation strategies. However, VHCB officials expect that grant applicants will use the plan to help determine which conservation projects to target, and that project proposals demonstrating consistency with the plan will be rewarded.⁴⁶

V. Summary

In administering Vermont's major open space funding program, the VHCB has statutory authority to target land acquisition projects that protect biodiversity. Because the VHCB's mandate goes well beyond biodiversity protection to include agricultural, affordable housing, historic, and recreational projects, biodiversity-focused projects make up only a portion of the program. The wildlife action plan will likely be used by VHCB applicants when developing project proposals. The VHCB will likely reward applicants for doing using the plan, but does not foresee formally integrating the plan into their project selection process.

⁴⁰ Coster and Everhart, *supra* note 24.

⁴¹ The grant cannot exceed 10 percent of a property's appraised value. VT. STAT. ANN. tit. 10, ch. 15 § 324.

⁴² Coster and Everhart, *supra* note 24.

⁴³ Vermont Fish and Wildlife Department, Wildlife Programs, *Comprehensive Wildlife Conservation Strategy, Vermont's Species of Greatest Conservation Need (draft 9/21/04)*, at http://www.vtfishandwildlife.com/SWG_list.cfm (© 2003-2004).

⁴⁴ *Id.*

⁴⁵ Vermont Fish and Wildlife Department, Wildlife Programs, *Comprehensive Wildlife Conservation Strategy, Conservation Partners*, at http://www.vtfishandwildlife.com/SWG_Partners.cfm (© 2003-2004).

⁴⁶ Coster and Everhart, *supra* note 24.