Intergenerational Transfer of Forestland Working Group Recommendations

In response to Act 171 of 2016

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Developed by:

Intergenerational Transfer of Forestland Working Group

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INTRODUCTION

In 2014 the Vermont General Assembly enacted Act 118 (S.100), an act relating to forest integrity, with findings that:

> The forests of Vermont are a unique resource that provides habitat for wildlife, is a renewable resource for human use, provides jobs for Vermonters in timber and other forest-related industries, and generates economic development through a productive forest products industry;
>
> Large areas of contiguous forest are essential for quality wildlife habitat, preserve Vermont's scenic qualities, are needed to implement best practices in forest management, and are critical to ensuring the continued economic productivity of Vermont's diverse forest products industry; and
>
> Subdividing forests into lots for house sites or other types of construction fragments Vermont's forests. Forest fragmentation is the breaking of large, contiguous forested areas into smaller pieces of forest, typically by roads, agriculture, utility corridors, subdivisions or other human development. It usually occurs incrementally, beginning with cleared swaths or pockets of non-forest within an otherwise unbroken expanse of tree cover. Then, over time, those non-forest pockets tend to multiply and expand and eventually the forest is fragmented and reduced to scattered, disconnected forest islands. The remnant forest islands that result from fragmentation are surrounded by non-forest lands and land uses that seriously threaten the health, function, and value of those forest islands for both animal and plant habitats and for human use.

Today, more than 2.9 million acres or 62% of Vermont's forestland is owned by families and individuals. The demographics of these landowners are changing. Males over the age of 55 comprise over 65% of the population of forestland owners. Fifteen percent of Vermont's forestland is owned by people over the age of 75 (Butler et al 2015). As landowners age, the way that they transfer their land to younger generations will, at least in part, determine the future of Vermont's forests. The transfer of forestland in a way that keeps it intact will protect forests while the transfer of land in a way that results in smaller parcels will drive fragmentation and the degradation of forest integrity.

While real estate transactions are occurring all the time, with the aging of forestland owners in Vermont, the likelihood of an increased pace of land transfer is real. According to surveys conducted by the Sustaining Family Forests Initiative, more than 17% of Vermont landowners (owning more than 10 acres) plan to transfer or sell their land in the next 5 years.

The process of transferring land, however it occurs, is complex. It may involve complicated family dynamics, concerns about equity of inheritance among heirs, intimidating and confusing legal and tax language, and at times, conflicting visions for the land and property. These challenges are often compounded when, upon the sickness or death of a landowner, decisions must be made quickly and with an incomplete understanding about options or implications of the decisions. This report makes recommendations regarding what information, trainings and strategies could be made available to clarify and expand land transfer options in Vermont and increase landowner confidence to sell or donate land in a way that prevents forest fragmentation and preserves forest health.

Summary of Act 171 Intergeneration Transfer of Forestland Working Group Recommendations

Estate and Successional Planning; Awareness, Outreach and Education:

A.1 - Centralize technical assistance programs and funding; fully fund VHCB and increase funds available to the Viability Program, match with other private and NGO funding.

A.2 - Increase training for service providers.

A.3 - Expand existing Agricultural Sector succession planning services/capacity to forest land owners.

A.4 - Provide grants to landowners to help cover costs of legal, accounting and other necessary services.

A.5 - Develop a VT Succession Planning Curriculum.

A.6 - Develop materials for landowners.

A.7 - Host Your Neighbor.

Tax Incentives, Options and Tools:

B.1 - Conserved Land Deduction.

B.2 - Large Parcel Multiplier.

B.3 - Vermont Tax Credit.

Conservation Opportunities and Tools

C.1 - Fully fund VHCB.

C.2 - Replicate Farmland Access and Land-Link type Programs for Forestland.

C.3 - Targeted Deployment of Technical Assistance Providers.

C.4 - Identify new funding sources to support expanded conservation of private forestland.

C.5 - Target or otherwise prioritize conservation funding for forestland in HPFB's.

C.6 - Target or otherwise prioritize conservation funding for the purchase of easements that facilitate a transfer to new ownership.

C.7 - Incentive Fund for Donated Conservation Easements.

Use Value Appraisal (Current Use) Opportunities and Strategies

D.1 - Increase Awareness of Succession Planning through UVA.

D.2 - Enhanced Training for County Foresters.

Workgroup and Process

Given the many important values of Vermont's unfragmented forestland, the challenges and complexity associated with the transfer of intact forests, and the current demographics of forestland owners in the state, in 2016 the Vermont General Assembly enacted **Act 171** (H.857), an act related to timber harvesting, which in Section 10 of the act called upon the Commissioner of Forest, Parks and Recreation to:

> establish a working group of interested parties to develop recommendations for a statewide program to improve the capacity of providing successional planning technical assistance to forestland owners in Vermont.

The Intergenerational Transfer of Forestland Workgroup (ITF Workgroup) was established in August of 2016 and first convened on September 2, 2016. The group included interested citizens, professionals and Agency staff representing a broad and comprehensive set of skills, expertise and experience related to forestland ownership, conservation and tax policy.

Invited ITF Workgroup members included:

- Deb Markowitz, Agency of Natural Resources (chair)
- Deb Brighton, Vermont Community Foundation
- Ela Chapin, Vermont Farm and Forest Viability Program
- Billy Coster, Agency of Natural Resources
- Jamey Fidel, Vermont Natural Resources Council
- David Marvin, Butternut Mountain Farm
- John Roe, Upper Valley Land Trust
- Kim Royar, Department of Fish and Wildlife
- Gus Seelig, Vermont Housing and Conservation Board
- Lisa Sausville, Vermont Coverts
- James Shallow, Audubon Vermont
- Bruce Shields, Ethan Allen Institute
- Steve Sinclair, Department of Forests, Parks and Recreation
- Mary Sisock, University of Vermont
- Siobhan Smith, Vermont Land Trust
- Michael Snyder, Department of Forests, Parks and Recreation
- Keith Thompson, Department of Forests, Parks and Recreation
- Sarah Tischler, Langrock, Sperry & Wool
- Kathleen Wanner, Vermont Woodlands Association
- Louise Waterman, Agency of Agriculture

The group selected ANR Secretary Markowitz as its chairwoman and held four workgroup meetings on:

- September 2, 2016
- October 19, 2016
- November 10, 2016
- December 12, 2016

Targeted Incentives – Vermont Conservation Design High Priority Forest Blocks

Given the extent of forestland in Vermont, the ITF Workgroup agreed in its early meetings that resources and services that facilitate the transfer of intact forestland should focus on the areas of forest that provide the greatest ecological and forestry values. To identify these areas, the group sought guidance from the Vermont Department Fish and Wildlife's Vermont Conservation Design (VCD) project, (http://www.vtfishandwildlife.com/get_involved/partner_in_conservation/vermont_conservation_design).

The VCD project, completed in December of 2015, analyzed Vermont's landscapes using forested "coarse-filters", a scientifically accepted way to quantify needed functions in an ecologically sound landscape. This approach uses landscape elements to identify habitat needed to maintain Vermont's current biodiversity. That said, the habitat of some rare or specialized species is not captured with this broad approach. A key outcome of the coarse-filter analysis is the identification of connected habitat that is necessary to maintain genetically viable populations of certain species and includes predictions of changes to wildlife habitat in the face of climate change.

"While each landscape element is important on its own, it cannot function in isolation. Maintaining or enhancing an ecologically functional landscape in Vermont depends on both the specific functions of each element, and the ability of the landscape elements to function together. Interactions between elements are what support Vermont's environment and are essential for long-term conservation of Vermont's biological diversity and natural heritage" (VCD 2015).

The final Vermont Conservation Design map aggregates the five key coarse filters, with two levels of priority for maintaining ecological function in those areas. They are called Priority and Highest Priority portions of an Ecologically Functional Landscape. The Steering Committee that oversaw the VCD project said, "We are highly confident that ecological functions must be maintained within these areas if Vermont is to have an ecologically functional landscape into the future." The committee elaborated with: "The highest priority areas are those that are critical for maintaining an ecologically functional landscape. The priority areas are also important but there is more flexibility available for conserving ecological function within these areas" (VCD 2015). The areas shown as Highest Priority are equivalent to what is identified in this report as Highest Priority Forest Blocks (HPFB).

While intact forestland parcels of all size possess value, the ITF Workgroup felt that recommendations involving tax benefits, conservation investments, direct services and other items that may require financial or human resources should be targeted towards forestland identify as HPFB's in the VCD analysis. This approach ensures the resources support a public policy focused on what is most critical to remain as forest; however, many of the tools and resources recommended in this report, once established, will benefit all owners of forest land who are planning for a transition in ownership.

RECOMMENDATIONS SECTION

A. <u>Estate and Successional Planning; Awareness, Outreach and Education</u>

Individualized technical assistance in succession and estate planning is critical to maintaining forestland in Vermont. Additional outreach and education about this assistance will encourage intact forests. Some forest landowners are able to work through a succession plan with their family and obtain the legal and financial consultations needed to develop plans for and complete their land transfer to a next generation or non-family owner interested in continued stewardship of the forest. Many other landowners and families struggle with difficult issues and barriers.

In addition to succession planning, forest landowners in Vermont must make numerous decisions about their current forestland management. They consider whether to enroll in the Use Value Appraisal program and address issues relating to timber management, climate change, water quality, and the spread of invasive species. More resources, outreach and education are needed to help landowners gain awareness of these overlapping issues and build tools to address them.

Because of the potential complex issues associated with forestland transfer and ownership, it is critical for landowners to be informed and have resources available to guide their decisions. The more times a person sees information about a resource that might be useful to their circumstance, the more likely they are to pursue it. Conventional marketing wisdom suggests that a person needs to "hear" a message seven times before he or she will take action. Education and promotion of forestland planning resources might follow the pyramid diagram below to ensure that there are ample opportunities for forestland owners to see or hear a message. Foresters, conservation organizations, lawyers and other industry and state professionals can all provide outreach services to landowners considering land transfers. Effective marketing of readily available online and printed resources applicable to forestland owners in Vermont would also encourage forest integrity during land transfers. Landowners interested in hands-on help from a professional could attend educational workshops and events, and then receive one-on-one consultations if requested.

Forest Landowner Succession Planning & Technical Assistance

Pyramid of outreach, education & training to be made available to forest landowners

Baseline Conditions:

Individualized succession planning and estate planning assistance has been available to farmers in Vermont for many years and has proven to support successful transitions of intact farmland. This has primarily been provided through the VT Farm & Forest Viability Program at VHCB that provides in-depth business and succession planning services to farm, food and forestry businesses, as well as a variety of workshops and online resources available through UVM Extension on farmland succession. The Viability Program contracts with nonprofit organizations to provide these services, particularly UVM Extension's Farm Viability Program, the Intervale Center, and Land for Good. Utilizing this framework, VHCB has begun providing funding for forestland succession planning. In 2016/2017, several organizations including the VT Woodlands Association, Upper Valley Land Trust and VT Coverts will provide a mix of succession planning workshops and in-depth succession coaching for forest landowner families with workshops and trainings provided for landowners, as well as lawyers, estate planners, foresters and other stakeholders that support forestland success and estate planning. A case study of one landowner receiving succession planning is found in **Appendix C.**

Workgroup Recommendations:

A.1 - Centralize technical assistance programs and funding; fully fund VHCB and increase funds available to the Viability Program, match with other private and NGO funding – Currently VHCB is providing funding for one-on-one, in-depth, long term technical assistance or coaching around forestland succession to families/landowners, as well as workshops and trainings. VHCB funds this work through the VT Farm and Forest Viability Program with contracts with the VT Woodlands Association, Upper Valley Land Trust and other nonprofits to provide services and trainings to forest landowners. In FY16 approximately $30,000 will go to 3 organizations to provide individualized services to 8-10 forest landowners and 4-5 workshops or trainings for landowners and other stakeholders. There is a much larger need for this assistance across the state; we estimate $140,000 a year would cover individualized TA to 30 forest landowners, a series of landowner workshops, and trainings for service providers. If VHCB was fully funded for FY18, service could immediately be provided to 15-20 forest landowners.

A.2 - Increase training for service providers – Trainings will raise awareness of the challenges of forestland succession with various providers and stakeholders, and educate them about relevant resources, individuals and organizations providing technical assistance and support, and help ensure quality referrals are made to forest landowners. The more times a forest landowner encounters someone that is knowledgeable about this issue who points them towards assistance, the more likely they are to reach out, attend a workshop, or enroll in a program.

Trainings for service providers may be led by the Agency of Natural Resources, or nonprofits such as the VT Woodlands Association, UVM Extension, VT Coverts, or others that already provide workshops and trainings. The primary audience of service providers and stakeholders might include staff from land trusts and conservation organizations, county foresters, UVM Extension, conservation districts and Viability business advisors, as well as individuals/professionals including lawyers, estate planners, tax accountants, consulting foresters and others. Bringing these providers and professionals together for trainings also has a networking benefit, helping each individual get to know the other stakeholders and organizations supporting forestland succession.

A.3 - Expand existing Agricultural Sector succession planning services/capacity to forest land owners – Expanding existing programs to include more dedicated succession planning for forestland owners would be in keeping with other recent program expansions that now offer services entities across the working lands spectrum. UVM Extension, for example, provides a number of online farm transfer planning resources, offers farm transfer workshops, and has even offered to open up these workshops to forest landowners and forest based businesses planning for an intergenerational transfer. The Viability Program has already expanded their farm viability and farm transfer planning services to the forestry and forest landowner population. Other organizations, such as the VT Farm Bureau and Vermont Natural Resources Council, may also have resources to extend to the forest landowner sector.

A.4 - Provide grants to landowners to help cover costs of legal, accounting and other necessary services – Funds to assist forest landowners and their families in the expensive consulting and transactional costs of succession planning and transfer will make it more financially feasible for many to undertake and succeed at this often difficult, lengthy and expensive process. Legal and accounting fees can be a large transaction cost. A cost-share program or subsidy could be offered through the Agency of Natural Resources, or through a program like the Viability Program which also regularly contracts with legal and accounting professionals to assist in the succession planning phase.

A.5 - Develop a VT Succession Planning Curriculum – There are programs that exist regarding the passing of land. However, these programs are not specific to New England or Vermont. In Vermont we primarily have family forest owners, not plantation forests. The model for passing lands differs in this realm as many do not own their forest as a business. A curriculum developed specifically to address the issues of Vermont landowners will go a long way to getting buy-in from landowners as they move through the process of passing their land.

A.6 - Develop materials for landowners – There is a need for introductory materials addressing the subject of passing lands in order to spark a landowner to begin thinking about this process and provide information on how to move forward. These materials should include a brochure, website and a listing of professionals with experience in this arena. These resources could be provided to landowner groups, county and consulting foresters, accountants and others to share with forestland owners.

A.7 - Host Your Neighbor - Provide opportunities for "Host Your Neighbor" house party type gatherings for landowners to share their experiences, ideas and concerns regarding the passing of land. These gatherings could host an expert (lawyer, financial planner or other professional) that could offer guidance on steps to take to move the process of estate planning forward.

B. <u>Tax Incentives, Options and Tools</u>

Taxes tied to land and estates can sometimes hinder a landowner's ability to transfer unfragmented forestland to the next generation in a way that is affordable. At the same time, a marker for tax credits sold to finance land conservation efforts would make the intergenerational transfer of unfragmented

forestland much more affordable for a wide range of families. This section recommends ways to use tax policy – through either the estate tax or tax credits – to incentivize the conservation of HPFB's and facilitate the transfer of those lands to then next generation.

Baseline Conditions - Estate Tax:

Two facts are critical for any discussion of Vermont estate tax effects on farm and forestland as it transitions through estates. First, the assets of all Vermont family farms (largely land and buildings) are already exempt from Vermont estate tax based on a statute passed in 2001. Second, no estate is subject to Vermont estate tax until it totals more than $2.75 million dollars in value. Given that the current value of most undeveloped forestland in Vermont is not high, and the fact that most ownerships are not truly large acreage, the vast majority of forestland owners will not be subject to Vermont estate taxes; or at least their forest holdings are not driving that estate value. However, for those few properties where estate tax could impact a transfer of unfragmented land, an estate tax incentive could be critical. Therefore, the ITF Workgroup recommends changing the Vermont estate tax laws to create an incentive for landowners to permanently conserve those forestlands within HPFB's as identified by VTF&W.

Workgroup Recommendation – Vermont Estate Tax:

B.1 - Conserved Land Deduction – In an effort to minimize process and create a program that potentially affects more than a total of a few people, the ITF Workgroup recommends that the basic incentive be the elimination of the value of a forest parcel, if owned by an individual or a pass-through entity, from an estate if the forest parcel is at least partially within a HBFB and fully protected by a donated conservation easement approved by the VTF&W or other entity of the state. Based on existing estate tax rates, that incentive would remove a tax valued at 16% of the fair market value (FMV) of the parcel. This approach could theoretically protect land outside but immediately adjacent to the high priority forest block but by requiring the parcel to be fully forested it still will keep Vermont forests unfragmented.

B.2 – Large Parcel Multiplier – To focus the Estate Tax Deduction on the state's largest parcels, the ITF Workgroup recommends increasing the incentive outlined above for larger parcels of forest where much of the tract is within the identified HPFB. One approach would be to double the incentive (2 times the FMV would be subtracted from the overall estate) for parcels or aggregate ownerships of over 500 acres where 50% lie with the HPFB. This is equivalent to a 32% FMV incentive.

Both of these incentives would only be available for easements donated after the change was made in the estate tax law. Land with easements donated prior to that date would simple be taxed as normal at their FMV calculated with an easement on the land. The ITF Workgroup does not recommend changing any aspect of an easement's deductibility under income tax law. Therefore, someone donating an easement after the change in the estate tax law would still get their income tax benefits at the time of donation, and then the estate tax benefits at the time of their death.

It is not possible to determine how many parcels this incentive might affect, since nearly all parcels fall well below the $2.75 million estate value cut-off, and there is no way to know the overall value of the landowners' estates. The expectation of the ITF Workgroup is that this incentive would be used not

more than a couple times a year, but would likely be focused on large, high value parcels. The Joint Fiscal Office last year indicated that they estimated that the incentive would apply to potentially one property a year with a fiscal impact of approximately $80,000 to $128,000 for one transaction of 500 acres depending on the estimated value of an acre of forestland (range was estimated to be $1,000 to $1,600 an acre).

The ITF Workgroup believes it important to create parity with farms in how important forestlands are treated under our estate tax regulations, but we acknowledge this incentive will be most useful for higher income landowners simply because of how our income tax is structured. It is important to note that there is also a federal estate tax incentive for easements, but it is only a 40% reduction of the FMV of the land under easement. It only becomes important for huge farm ownerships in the Midwest and West and is most likely irrelevant in Vermont as an incentive, particularly for relatively low value forestland. The incentives proposed by the Intergenerational Transfer of Forest Working Group are more direct and much more likely to be true incentives.

Baseline Conditions – Tax Credits:

Tax credits are a dollar for dollar reduction in a specific tax, in this case a state income tax. They are a relatively widely used way to incentivize desired public policy by using the tax code rather than direct grants. The sale of tax credits is one of the drivers of affordable housing finance in Vermont and elsewhere. Tax credits to create an incentive to protect conservation land, usually by easements or fee acquisition, are currently available in 16 states. The earliest statute was in 1983 in North Carolina, most were enacted between 1999 and 2010, and the most recent is in Massachusetts, which became fully operational in 2012. In roughly half of those states, the credit is narrowly targeted at specific geographic areas or habitat types, similar to HPFB's, in widely varying degrees of complexity. There are some programs that are quite different than the majority (New York and Florida focus on a credit against property tax, CT is only available to corporations, and Mississippi is limited to 50% of the transaction costs once in a lifetime and capped at $10,000) but this report by the ITF Workgroup focuses on the basic framework of the majority of the programs for which there is enough experience to learn from other state's experience. Discussions among the ITF Workgroup considered tax credits to be complimentary to the estate tax incentive described above; if properly designed, tax credits provide more equitable incentives for landowners of more modest means than the estate tax incentives will. Recommendations below are oriented around that perspective.

Workgroup Recommendation:

> **B.3 - Vermont Tax Credit** – The ITF Workgroup recommends that the state create a modest conservation tax credit to encourage the donation of conservation easements on forestland in HPFB's. If designed well it could be a significant incentive for donated easements and could be designed with modest scope to limit state revenue liability. The scope would primarily be limited by only offering the program to support conservation of parcels in HPFB's. Capping the amount of credits available per year would also limit the risk of having too many people respond at the same time. The ITF Workgroup felt the incentive should be a compliment to the estate tax proposal above. The former fits larger wealthier landowners while the credit would help more modest income landowners. A landowner should be able to choose which fits their particular situation best, but not be able to use both incentives.

A conservation tax credit program with a $100,000 credit cap calculated at 40% of FMV, with a 10 year carry-forward and a maximum use of $30,000 annually on any particular tax return, might be a place to start the discussion. These numbers represent a program of modest incentive tipped a bit more toward use by landowners of modest wealth. Adding transferability would be a benefit and make a more robust program, but could be added later once there is more feedback from people interested in using the program. A much more detailed overview of key tax credit components and examples from other states is provided in **Appendix A** of this report.

If a fund were also created to help support the transactional costs associated with easement donations (discussed in the next section of this report) the state would have a targeted program to use donated conservation easements as an efficient strategy to advance forestland conservation. Some forestland easements would still need to be purchased through VHCB or other funding sources, but these incentives would increase the ease with which forests could be permanently conserved in a very cost efficient manner as lands transitions to the next generation of owners.

C. Conservation Opportunities and Tools

Vermont has a long, successful track record protecting important natural resources and supporting the rural economy through land conservation. Conservation can also be an effective tool to assist in the transfer of large areas of forestland. The purchase or donation of development rights severs, on average, half the property value from a given parcel, allowing the sale of the remaining property interest to the next generation at an otherwise less-than-market rate. Conservation prior to or at the time of transfer may also alleviate certain tax burdens that may otherwise complicated a transfer.

Conservation transactions that limit subdivision and residential development also serve as a succession planning tool, whereby families and interested parties may engage in a dialog around the nature, scope and terms of a conservation easement, encumber the property, and thereby establish the future use of the land, which can often simplify any transfer that may follow. Targeting estate planning and other services to landowners contemplating conservation will also increase the value of land conservation as an intergenerational transfer tool.

While the working group largely agrees that conservation of forestland results in a wide range of public benefits, it is worth noting, that one member of the ITF Workgroup offers the comment that not all rural interests find the expansion of Conservation Easements desirable, and that some Vermonters would prefer that those who create and service such easements market their arrangements via privately funded efforts.

Baseline Conditions:

Conservation work has a long history in Vermont, involving the public sector as well as the private sector, through non-profit charities called land trusts. Initially, conservation work focused on actual public ownership of land, such as the Green Mountain National Forest and large state holdings for Wildlife Management Areas and state forests and parks. Early land trusts, such as the Vermont Nature Conservancy formed in 1963, also initially focused on outright ownership of land. However, by the time the Vermont Land Trust was formed in 1977, conservation work increasingly involved the use of

conservation easements. These are permanent property interests, held by public entities or land trusts, that remove the development rights from land, and often define a range of allowed uses and specific protection for natural resources and wildlife. The land itself stays in private hands.

The number of land trusts increased rapidly throughout New England between 1970 and 1990; in Vermont that included 2 regional land trusts, Lake Champlain Land Trust in 1978 and Upper Valley Land Trust in 1985, as well as many local land trusts, sometimes just serving one town or one watershed. As the amount and scale of all types of conservation work increased, the need for a dependable statewide funding source increased. The affordable housing interests of Vermont, also increasingly being driven by affordable housing focused land trusts, joined with the conservation land trusts (as well as historical preservation interests) to create the Vermont Housing and Conservation Board (VHCB) in 1987.

For nearly 30 years VHCB, in partnership with communities, agencies, organizations and other funders, has invested in the dual goals of creating affordable housing for Vermonters and conserving Vermont's agricultural land, forestland, historic properties, important natural areas, and recreational lands. Transactions involving the sale and donation of conservation easements is a cost-effective strategy to help reduce forestland fragmentation and bring stability to the underlying resource. Conservation projects are also facilitating transfers to new owners at more affordable prices and providing co-benefits including water quality protection and resiliency to the impacts of climate change. Since 2013, when VHCB's statute was amended to explicitly make forestland protection part of the mission, VHCB has responded with an emphasis on protecting forestland, including providing funding for sugarbush and private working forest protection and expanding the Viability Program to include forestry. VHCB's Farm & Forest Viability Program (VFFVP) supports intergenerational transfers of businesses and forestland through business planning that includes developing succession plans. VFFVP also assists farm and forest businesses in utilizing best management practices through implementation grants.

<u>Workgroup Recommendations:</u>

C.1 - Fully fund VHCB – VHCB is the primary state funding source for the purchase of development rights in Vermont. VHCB also supports the administrative functions of the VT Farm & Forest Viability Program. Fully funding VHCB at the prescribed statutory levels and maintaining a reasonable balance between the Housing and Conservation goals of the organization will provide the necessary funding to implement many of the recommendations set forth in this report.

C.2 - Replicate Farmland Access and Land-Link type Programs for Forestland – The Vermont Land Trust (VLT) and other organizations have been very successful in matching one generation of farmland owners interested in selling their farms with a new generation of farmers looking for access to land of their own. Through their farmland access program, VLT maintains lists of farms on the market or farms that may be available in the near future as well as lists of potential, vetted, buyers, and actively matches sellers with farmer buyers interested in the type of resource they have available. This model should be expanded to sellers and buyers of forestland, especially well managed land in HPFB's. The VT Farm & Forest Viability Program may be an appropriate entity to coordinate this program and would also have the capacity to deploy targeted technical assistance to sellers and buyers to ensure transfers are successful. The simultaneous conservation of land often makes intergenerational transfers more successful, in part by making the land more affordable to the buyer.

C.3 – Targeted Deployment of Technical Assistance Providers – Working with the VT Farm & Forest Viability Program, the ITF Workgroup recommends that the services of succession planning, business development and other consultants be deployed strategically and matched with landowners conserving or transferring already conserved forest land (buyers and sellers), especially forestland in HPFB's. This targeted outreach and assistance at critical decisions points will result in more efficient and successful intergenerational transfers and forestland conservation projects that provide the best structure for that land to remain unfragmented, owned and managed for sustainable forest products or other ecological services in the future.

C.4 - Identify new funding sources to support expanded conservation of private forestland – Given the demand for existing conservation funding sources, the ITF Workgroup recommends the state and its non-profit and academic patterns work to develop new, additive sources of funding targeted for forestland conservation in HPFB's. One example of a new source is the aggregated sale of carbon offsets in regional carbon markets. Carbon offsets or credits may be generated when a working forest parcel is managed above existing requirements to maximize carbon sequestration and retention. Given the size of most Vermont parcels and the relatively slow growth of our forests, revenue derived from a single woodlot may not be sufficient to fund additional conservation, but aggregating carbon credits across a portfolio of land, such as land conserved by VHCB or through one of the state's other conservation partners, may result in sufficient funds to leverage the conservation of additional forestland.

C.5 - **Target or otherwise prioritize conservation funding for forestland (including working forestland) within High Priority Forest Blocks** – Public funding for land conservation is in high demand in Vermont; however, the ITF Workgroup recommends that a modest amount of funding be targeted at forestland conservation projects within HPFB's and especially for parcels that add onto existing areas of conserved forestland. Current funding target areas should largely be held harmless, however some funding targeted to these properties could assist with intergeneration transfers. Aggregating large areas of conserved forestland maximizes the ecological and recreation values of those areas and provides increased opportunities for forest management, which makes long term ownership of large tracts more viable. Given the extent of forest across Vermont's landscape, prioritizing conservation funding for land in HPFB's that add onto other areas of conserved land provides an appropriate and strategic framework for the deployment of funds.

C.6 - Target or otherwise prioritize conservation funding for the purchase of easements that facilitate a transfer to new ownership – Similar to recommendation C.5, a modest amount of conservation funding should be targeted and used to facilitate transfers of land from one generation to the next. Purchasing development rights at the point of transfer allows sellers to achieve their revenue goals and allows buyers to obtain the land at a lower cost. Funding should be limited to or prioritized within HPFB's, and should largely hold current funding targets harmless. These funds could work in conjunction with recommendations C.2 and C.3.

C.7 - Incentive Fund for Donated Conservation Easements – Establish a small source of private/public funds to provide matching grants intended to cover the transactional costs of conservation easement donation for forestland in the midst of an intergenerational and/or within a HPFB. Donated easements make up a sizeable portion of the state's conserved land portfolio, and while many landowners are in a position to provide cash payments to cover transactional costs in addition to their donation of a property interest, many others are not and those costs emerge as the primary obstacle to completing the deal. Creating a reliable fund to cover these modest costs will

result in more interest in easement donations, more successful transactions, and greater opportunities to facilitate intergenerational transfers through land conservation. A more detailed overview of this recommendation is found in **Appendix B**.

D. Use Value Appraisal (Current Use) Opportunities and Strategies

The Use Value Appraisal (UVA) program provides a property tax reduction for qualifying landowners engaged in the practices of forestry and agriculture. Instead of the normal ad valorem approach, assessing property taxes based on the potential development value of those undeveloped, working lands, UVA assesses property tax based on the current use of those lands for forestry or agriculture, resulting in a significant reduction for enrolled parcels. Cumulatively, nearly 15,000 parcels in Vermont have forestland enrolled in UVA and on average each parcel is over 130 acres. Together, these parcels comprise nearly 1.9 million acres of forestland.

The UVA program has very tangible benefits for both enrolled landowners and the State and its citizens. This program supports landowners in the maintenance of a forested condition that contributes to the clean water, wildlife values, cultural and aesthetic character and an economic foundation for the state.

The population of landowners with forestland enrolled in UVA are among those who may be most receptive and benefit most from access to tools and information that will support the transfer of their forestland in such a way that it remains intact. According to the Vermont Woodland Owners Survey, landowners enrolled in UVA are more likely to identify protection of nature, wildlife, water, and growing of timber products as reasons for owning land than landowners not enrolled. Furthermore, the landbase that UVA forestland comprises may be among the most important privately owned forestland to keep intact. On average, UVA enrolled parcels are larger than unenrolled parcels and comprise more than half of the total eligible forestland in the state. The economic and environmental values that the UVA enrolled forestland provides to the state combined with the stewardship ethic of many of the landowners enrolled in the program make UVA landowners an ideal target audience for services that support intergenerational transfer of forestland.

Baseline Conditions:

There is an open line of communication with owners of forestland in UVA. It is the job of county foresters and consulting foresters engage with these landowners on a recurring basis. Foresters will often provide landowners with tools, resources and advice on a diversity of topics related to landownership and forest management. The report submitted to the legislature entitled 2016 Report on County Forester Staffing and UVA Delivery provides a good summary on the roles and benefits of county forester work with UVA enrolled land owners. Some specific opportunities to engage with landowners occurs:

- Every ten years when county foresters conduct inspections.
- Every ten years when forest management plans are updated; most frequently by a consulting forester.

- When forest management activities must be implemented on enrolled forestland, county foresters or consulting foresters may be engaged to provide advice.
- Outside of the forest management activities, plan updates, and inspections, both county and consulting foresters are engaged to help advise landowners on other land ownership or management questions.
- Annually, the Department of Taxes sends a mailing to all UVA enrolled landowners.
- Through workshops provided by county foresters to UVA landowners
- Through web pages maintained by Department of Forests, Parks and Recreation focused on UVA and other landownership resources such as www.VTCutWithConfidence.com.

Workgroup Recommendation:

D.1 - Increase Awareness of Succession Planning through UVA – The value of county forester interactions with landowners can be increased through the delivery of written materials that summarize processes for transfer of forestland, describe available incentives or catalog the professional resources that can support landowners in the transfer of their forestland.

D.2 - Enhanced Training for County Foresters – Additionally, the training of county foresters in discussing the transfer of forestland could help foresters be confident in their understanding of the resources that are available to landowners, and how to discuss a sensitive topic with landowners.

These recommendations could also be extended to the network of private consulting foresters working with Vermont landowners. Many consulting foresters already provide some level of succession planning information and assistance, but opportunities exist to expand that area of service. Many of the outreach and education tools recommended in Section A of this report should be provided to consulting foresters once developed, and service providers should work closely with the consulting forester community share information and reinforce the importance of succession planning.

CONCLUSION

The majority of the state's wooded acres will change hands in the coming two decades. As this forestland is transferred from one generation to another, if historic trends are sustained, Vermont's forests will be further parcelized and fragmented leading to reduced opportunities for forest based recreation, jobs in the forest products industry and an erosion of forest health. The ITF Workgroup offers the suite of recommendations contained in this report as starting point for the important conversation with legislators, policy makers and the public at large focused on how best to support landowners through the transfer of their land so that they may achieve their personal and financial goals, while maintaining the ecological integrity and management potential of the working landscape for generations to come.

APPENDIX A:

Key Components of Forestland Tax Credit Incentive: All states enact their conservation land credit programs as incentives, with a goal of increasing the conservation of important lands by leveraging a public investment with a private donation. The incentive is always aimed at the donations of conservation easements, but in most states also supports the conveyance of fee land to a public entity or land trust. However, various reports looking at the success of programs (the one most formally targeted at comparisons was State Conservation Tax Credits – Impact and Analysis done by The Conservation Resource Center in Colorado in 2007) found that simply making credits available did not automatically result in more easements being donated; the specific terms of the programs were critically important. This has been born out in the older programs as they have adjusted to make them more effective. There is always a fine balance between making the programs truly a widely used incentive and how much risk or investment a given state wants to make, since credits are a direct cost to tax revenues. While there has not been enough data to make a definitive statement, it seems clear that the two most important factors in effectiveness are the transferability of the credits (in other words, whether the credits can be sold to a third party which can use them to offset taxes the creator of them doesn't have) and the size of the maximum credit allowed per transaction.

Credit limits: The maximum credit that a taxable entity may use from a given project ranges widely from $5,000 annually to no cap. Most states set a maximum credit between $50,000 and $100,000, and a few move that up to over $300,000. Virginia, a very successful program, puts a cap on credits used per year by an individual at $100,000 but puts no cap on the amount of credits a transaction can create. One state, S. Carolina, determines a cap by the lesser of 25% of the federal income tax deduction of the donation or $250 per acre. Experience has show that if the cap is set too low very little interest is generated in a program. Because the amount of credits is the landowners' measure of the compensation they get for their donated easement that should not be too surprising. However, that measure is linked to two other concepts that vary with programs – transferability discussed next and a provision for carry forward any unused credits in the year of the donation. Both of these aspects of credits are what make them incentives for modest income landowners to donate easements. The variability in carry forward limits is also huge – from none to unlimited! Most programs provide between 5 and 10 years of carry forward, which allows many landowners to fully use the maximum credits unless those limits are very high. However, it is important to realize that the credits only offset state taxes so dollar amounts of benefit may be relatively modest. Many states do set a maximum to the number of credits that can be used by a particular taxable entity in any given year.

Most states also set some types of limits on the amount of credits they will issue in any year. Again the range is huge (Virginia often permits $100 million per year) but there is some loose correlation with higher amounts in states where the rate of development and land values are higher. Basically, this cap on credits is how states define and limit their incentive investment or risk to their annual tax revenue stream, depending upon one's perspective.

Transferability: The ability for a landowner to transfer credits created by their donation of an easement is the single most important way to get tax credits to benefit modest wealth landowners according to most review of programs. By selling the credits to entities which can use them to offset large income the landowner benefits immediately from making a donation rather than having to wait years to

gradually use the credits against their own smaller income. Markets in tax credits are well established and in those states where credits are transferrable the sale price of the credit is usually at a 10-15% discount to their face value.

The drawback to transferability is that it adds considerable complexity and cost to a credit program. In addition, if the credit market is small then the benefit to the seller of the credit may actually be substantially reduced, and therefore defeat the idea that transferability brings the benefits to the more modest income landowners. In the larger states with larger populations, such as Colorado and Virginia, the generation of substantial amounts of credits has led to efficient markets. In a small state like Vermont the market for credits may be tiny – the small geography and relatively small number of landowners results in a relatively small number of easement transactions trying to sell credits to the relatively few taxpayers with large tax bills. This is likely to create a real risk that the incentive benefits won't accrue significantly to the modest income landowner because offers to purchase them will be few without competing offers.

In addition, the only problems with conservation tax credits have been found in states that have large markets for conservation tax credits. Colorado had the most problems of abuse because the process was easy with relatively little oversight. There was so much money to be made using credits that it led to inflated easement values and subdivisions that were completed simple to get around the credits limits available for any one easement. That program has since been changed, but unfortunately with more oversight came very large fees that may create a barrier to the use of the program by many. It is simply too soon after the changes to tell. Placing transferability into a potential Vermont conservation tax credit program will have to be done very carefully to avoid any abuse of the system and yet also providing the intended benefit to landowners who help conserve the state priorities around important forest blocks.

Massachusetts Program: The Massachusetts conservation tax credit program is unique in the country. It is basically direct compensation for an easement. Most analysis of programs feel this is the best way to ensure that the incentive is most attractive to landowners of modest means, without creating a program of transferability with its complexity and disproportionately reducing the taxes of the wealthy. The MA program does this by directly paying the landowner for any credit that is not used by the landowner in the year of the gift. There is no carry forward provision. The maximum credit is also relatively modest, at the lesser of 50% of FMV of the donated easement or $75,000. In the early years the maximum number of credits allowed in the whole program was $2 million, but demand has been so high and leverage so beneficial for the state that there are efforts to increase this state cap. Currently there is over a two year waiting list to receive credits.

Fair Market Value (FMV): This is used to determine the value of the credits, up to the maximum. The percentage of FMV that are considered tax credits is the measure of leverage for the state's incentive, or put another way, how much benefit the state is getting from the tax credit program. As with all other aspects of conservation tax credits the model in other states varies widely – from 25% of FMV to the full 100% of FMV. The latter is used only by Maryland and is basically another way similar to MA to fully compensate the landowners with modest holdings, while not providing much to the more wealthy donors because the maximum credit is capped at $80,000. Unfortunately in terms of encouraging people to participate, the maximum credit that can be applied to taxes annually is just $5,000 so it

would take someone 16 years to fully use the credit. That is not much of an incentive, even though MD allows a full 100% of FMV as the starting point.

The overwhelming number of programs use 40% or 50% of FMV to calculate the tax credit. This represents a 60% leverage for the incentive, which provides a strong argument that the state is receiving a very good deal in a very efficient manner. Most easement purchase program develop less leverage and it is often cumbersome as usually it involves matching grants.

Federal Tax Deductibility: None of the other conservation credit programs change the deductibility of the donated easements under federal tax law. In fact, most programs specifically require that the easement meet the federal requirements related to conservation values under IRC Section 170(h). It is the combination of the state incentive through tax credits on state taxes and the federal incentive through deductibility on federal taxes that combined to provide enough indirect compensation to a landowner that they are willing to donate an easement to conserve the land they care about.

State oversight and review: The type and extent of the oversight of credit programs varies from state to state, but it is safe to say that experience in Colorado has shown that it would be difficult to have a successful program without some oversight. The two critical areas of oversight in other states tend to be certification of the tax credit and a review of the conservation values protected in the easement. If Vermont were to implement a conservation tax credit program for the Highest Priority Forest Blocks it would be important to do both in a two-step process. The first would be a certification that the landowner qualifies for the credit, both because their land is within the mapped area and because the specific local conditions for protection of the conservation values still exist as mapped. This second determination will be particularly important in connectivity areas since they tend to be located in less remote areas; events on the ground could have changed so that the block no longer actually carries the values the remote sensing work had identified. The second level of review would be for the Department of Fish & Wildlife to actually approve the proposed easement to make sure the conservation values of the particular block, which vary from place to place in the landscape, are actually protected by the easement limitation on future uses.

APPENDIX B:

Incentive Fund for Donated Easement Project Costs

For all of the land trusts in Vermont donated easements make up a substantial proportion of the land protected each year. Landowners' love of their land and a desire to see their stewardship of it carried into the future after they are gone, is the root of land conservation at the local scale in every state, and why so many land trusts have formed over the past several decades. The purchase of conservation easements came later in most states, including Vermont, as a means to focus the benefits of easements on public policy around a specific type of conservation effort, often farmland protection. However, the donation of easements to conserve land represents a large, often unappreciated charitable act that has been key to shaping the landscapes we all enjoy in Vermont. Rather than purchasing easements with their greater costs, the Intergenerational Transfer of Forest Land Work Group (ITF Workgroup) recommends the creation of a fund that will help incentivize more donated conservation easements to conserve the High Priority Forest Blocks identified by the Vermont Department of Fish & Wildlife.

As one might expect, donated easements tend to be made by people with greater financial resources. However, it is often not the lost land value represented by a donation that drives that result. Particularly for easements on forestland, the project costs associated with an easement donation are often too high for a landowner of modest means to cover. The business model for nearly every land trust requires that the staff costs of developing the easement (negotiation, legal drafting, mapping and baseline documentation of existing conditions) and the easement stewardship endowment are billed directly to a project. General fundraising is simply not able to cover all of the operating costs of a land trust, so project costs are recovered by the funding sources of the project. In the case of a donated easement, that means the landowner has to not only donate the easement but also donate cash. People of all financial means care deeply about their land and want to protect it, but for landowners of more modest means there is simply no way to cover the associated costs of the project. When a land parcel carries high conservation value, every land trust finds ways to cover those costs on a sporadic, case-by-case basis when someone cannot afford to make a donation. However, no land trust has found a way to build a sustainable program over the long-term without charging most landowners for the endowment and costs associated with their particular project. That ask for a further donation when the landowner is already giving up so much by donating the easement is one of the hardest discussions in land trust work.

The Vermont Land Trust has had enough experience with incentives for donated easements to know they work. One (the Staying Connected Initiative State Wildlife Grant project) active between 2010 and 2012 was structured similarly to what the ITF Workgroup envisions. That grant fund was created to encourage donated easements on forested parcels of land that were located at critical, narrow pinch-points in wildlife corridors in certain areas of Vermont. This clearly resulted in donations that otherwise would not have happened. Other experience with foundations or donors underwriting project costs confirms that incentives increase the number of donated easements if they remove or dramatically reduce project costs to the easement donor.

Based on data from the Upper Valley Land Trust and the Vermont Land Trust most donated easements on forested lands have project costs that average between $12,000 and $15,000. As mentioned above, these fall within four categories: 1) project negotiation staff time (including an ecological assessment), 2) legal time associated with drafting the easement, review of title and closing, 3) staff creation of a baseline report to document (including mapping and photo-documentation) the land at the time of

easement donation, and 4) a stewardship endowment to annually monitor that the easement conditions are met in perpetuity. The specific amounts vary within each category according the project details, but on average the endowment makes up roughly 40-50% of the project costs. However, very large acreage projects do create outliers to those averages. Land Trust Alliance Accreditation Standards require that the baseline document and the endowment be created at the time of project closing. Those standards also dictate that the endowment amount be determined by the parcel specific conditions found in the easement and on the ground.

The Intergenerational Transfer of Forest Land Work Group recommends the creation of a fund solely aimed at encouraging donated easements that protect land identified by the State as being within a Highest Priority Forest Block. Such a fund should be efficient and inexpensive to administer. It should be open to all donated easements that protect those forest priorities on a first-come-first-served basis, and use documentation of result rather than complex competitive grant rounds. One possible approach would be a simple reimbursement grant once the easement was recorded. The ITF Workgroup feels an incentive fund could leverage a significant amount of forest land conservation with an extremely modest investment. Many landowners care deeply about Vermont's forestland and this incentive would remove an important proven barrier to easement donation, especially those of modest means.

APPENDIX C:

A Case Study of Forestland Succession Planning: Starr family, North Troy

Four generations of the Starr family from North Troy, pictured above, worked with advisor Audrey Winograd through the Vermont Woodlands Association (VWA). Situated at the confluence of Bugbee Brook and the Missisquoi River and between two large blocks of forest, the Starr family's approximately 400-acre block of forestland is actively managed for timber, supports water quality by acting as a densely forested buffer, helps maintain forest integrity, and acts as a wildlife corridor. But for the Starrs, it is also a gathering place and a glue that keeps family together.

Throughout 2016, Viability Program advisor Audrey Winograd with VWA helped the family in the development of a succession plan for the property. Trained as both an attorney and a social worker, Winograd facilitated large family meetings on the subject of succession and helped the family understand the legal tools available to them and what implications each would bring.

Ila, the family matriarch, said that by working directly with their advisor, "we were so much better informed about what was possible." Her son, Jim Starr, said that "having a neutral, non-family member involved made it easier to digest some things that might be hard to hear." According to Jim, for most of the family "the legal documents are just words on a page, but that Audrey's emphasis on building family cohesion around the planning process was valuable for it to be successful."

Virgil Starr, another of Ila's sons, added that, "this process pushed us to make important decisions and not put them off."

Excerpts from report by succession advisor Audrey Winograd, JD, MSW
December 28, 2016
RE: Starr Family Meeting & Succession Plan Updates

The family's planning began when Jim, his daughter, Leah and his brother Gary attended a *Ties to the Land* all day workshop with Kathleen Wanner of the Vermont Woodlands Association, Mary Sisock, PhD, UVM extension forester and guest speakers. They were then referred to me to facilitate the conversation with their family and assist them with their succession plan.

I began working with the Starr family during the first week of November, 2015. The woodlot which is the subject of this consultation consists of two parcels both of which are in year 5 of a current use plan. The land is owned by the six siblings. The next generation consists of twelve children (ages 22-45) and spouses; there are 13 grandchildren at present. The Starr family has family meetings held 2-3 times per year, primarily to discuss economic activity such as logging revenues.

At the first meeting I explained the role I could take in helping their family to create a shared vision for the land and following this goal through the succession planning process. We discussed the conversations they have had thus far as well as the advisors in place and those that may be asked to join their team. Through a series of phone consultations, we outlined the scope of our work together, aimed at keeping their woodlot in North Troy, Vermont, intact and in the family.

The first half of 2016 was dedicated to outlining each successor's interest and determining the current legal status and best use of each parcel, in alignment with the shared values of the family. I then prepared for the family succession planning meeting by way of individual consultations with family members, relationship and property mapping. The all-day Starr Family Succession Planning meeting took place on October 8, 2016. We began the day in the Starr family tradition with a big breakfast in the cabin. We then got down to business. Using a combination of tools from the *Ties to the Land* program (provided by Mary Sisock), Family Firm Institute and family systems theory, each family member shared their values with respect to the land and their hopes for the future of the family forest. They talked openly about family communication styles and what might work best moving forward as their family can no longer sit around one big table. We used an action planning tool to determine who will do what tasks in terms of the succession plan, land and tenant management, recreation, forestry and sustainability. We packed a lunch to take with us as we spent the afternoon touring the land, all the while discussing vital aspects of their longstanding relationship and stewardship of the forests, streams and wildlife. The Starr family's values are aligned with their goal to keep the land intact, in the family, managed and enjoyed by all.

Following the meeting we had several phone consults to develop a plan to incorporate the family's stated wishes into a legal plan. In consultation with our advising attorney, I reviewed draft documents for alignment with what I learned. I met with their attorney to transmit this information. We began our inter-professional discussion regarding the pros and cons of LLCs or trusts. I have followed up in person and by phone and email. Jim Starr has done so as well. It is important to note that while our VWA team consults with the family advisors, we do not recommend any advisors, nor do we recommend or direct the family or professional with regard to any legal, tax or financial matters.

Our goals for 2017 are: (1) for the family in consultation with their attorney, to make a decision as to legal form, (2) to encourage a dialogue between the family and professional that leads to understanding of how the document works now and into the future, (3) to encourage that once understood the documents are executed, and (4) to have a family meeting to discuss implementation of the plan into their current and near future operations and to create a decision

making system and conflict resolution plan to keep it working. VWA advisor Attorney Kurt Mehta is available to help the family discuss the details of an operating agreement while Mary and/or I elicit the information necessary to prepare that. We would then send the family back to their attorney to prepare the operating agreement.

Respectfully submitted by: Audrey B. Winograd, JD, MSW
Law and Social Work Fellow, UVM/VT LEND
Member: Family Firm Institute, Vermont Woodlands Association, Vermont Land Trust, National Association of Social Workers (VT)