



Conserving land for our community.

November 1, 2022

Re: Interested Party Status Request on Project # 6971

Dear Town of Stowe Development Review Board:

Stowe Land Trust (SLT) is writing to request interested party status on Project #: 6971, "Increase area of AG-PUD by adding Landmark Meadows; Amend Available Density within AG-PUD" ("Project") and to clarify SLT's legal interest in and rights with respect to the Landmark Meadow parcel.

In 1998, SLT purchased the 16-acre Landmark Meadow parcel ("Protected Property") from Normad Ramsey for \$500,000, then sold the parcel to Paul Percy subject to a "Warranty Deed and Reservation of Conservation Easement Rights and Restrictions" ("Easement") at its agricultural value for \$20,000. The Easement is attached for reference. In the Easement, SLT reserved "all development rights in the Protected Property." Before the sale of the Protected Property to Mr. Percy, SLT obtained an independent appraisal to determine the market value of the development rights and the agricultural value of the land after conservation. In valuing the development rights that were retained by SLT, the appraisal specifically included a valuation of the Transferable Development Rights (TDR) associated with the Protected Property in the context of Stowe's newly established TDR program. The appraisal estimated each TDR associated with the Protected Property would have a market value of \$25,000 and a gross value of \$400,000 for 16 units of transferrable density.

After consulting with SLT's legal counsel at Monaghan Safar Ducham, SLT has been advised that such development rights include the rights to the density allocation that exist on the Protected Property. SLT retained all "development rights" on the Protected Property, and therefore, these rights are not Mr. Percy's to convey. SLT has been advised that there is a very strong likelihood that a court interpreting the Easement on Landmark Meadow would determine that the rights that SLT retained include the right to use the Protected Property for density allocations. The law in many areas makes clear that the density allocation associated with land is a solid stick in the bundle of sticks that make up property rights. That trading card is being played all over the country, in various municipalities, in various ways to cluster and barter for development.

SLT's legal counsel has also reviewed whether the Town of Stowe considers density allocation to be a development right. Town of Stowe Zoning Regulations do not provide a specific definition for development rights; however, the inclusion of "Density" within the "Transferable Development Rights" section of the Regulations indicates that the Town considers density to be a development right. Further, the Town allows that development rights that have been removed from one parcel but not yet applied to the receiving parcel may be stored in a "TDR Density Bank" administered by the DRB. This density bank tracks the densities removed from certain parcels and allows that they can be held before being reallocated to another parcel(s). Density allocation is an integral part of what the Town addresses in its "Transferable Development Rights" section of the Regulations. Further, in reviewing other definitions of "Development Rights" within Vermont, the definitions typically relate to and include density. For example, the Vermont Natural Resources Council, on its website states that a, "Transfer of Development Rights

(TDR) authorizes a landowner to remove their right to develop all or a portion of a parcel of land, and to transfer that right to develop to another parcel of land which could then be developed more intensively than otherwise possible under the zoning standards.

Given that Stowe is one of the few municipalities in Vermont to have a Transfer of Development Rights (TDR) program and the Protected Property is in the TDR sending district, this issue is particularly relevant to the Protected Property. If the Town permits Mr. Percy to reallocate the density from the Protected Property to another area of his fee ownership, any ability for SLT to participate in the TDR program now or in the future as the owner of the development rights would be stripped since density is the unit of measurement and currency to value development rights within the program. As the property title owner of the “density stick” of the Protected Property’s bundle of property rights, it should be up to SLT – not Mr. Percy - to decide if, when and how to convey the density allocation to another party

SLT qualifies as an interested party in the project under § 4456(b), part A, “A person owning title to property... affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case,” for the following reasons:

- (1) SLT is a registered 501(c)(3) nonprofit. Under Vermont Law, Title 11, Chapter 3, “Nonprofit Corporations”, § 3.02. states that “Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name *and has the same powers as an individual* to do all things necessary or convenient to carry out its affairs...” Thus, SLT qualifies for personhood with respect to the Town’s interested party status definition.
- (2) If approved, the Project would impose on the Protected Property an unreasonable restriction of present or potential use; SLT’s development rights would be inappropriately affected because only SLT has the legal authority to grant title to its held development rights to another party and the unauthorized loss of the density allocation could reduce the value of SLT’s real property interests.

This Project will set a precedent for how density allocation rights are considered in the context of other acquisitions of development rights via conservation easements in Stowe. These easements apply to acres of land and hundreds of units of density in Stowe that are held by SLT, Vermont Land Trust, and in some cases, the Town of Stowe itself. It should also be noted that, over the years, the Town of Stowe has invested significant public funding in the purchase of development rights through conservation easements on private property including Nichols Field in 2004 (\$125,000) and, most recently, the Ricketson Farm in 2022 (\$200,000).

Thank you for your consideration.

Sincerely,



Kristen Sharpless
Executive Director

CC: Mr. Paul Percy
Claudine Safar Esq. and Kristen E. Shamis, Esq. of Monaghan Safar Ducham PLLC

WARRANTY DEED AND RESERVATION OF CONSERVATION EASEMENT,
RIGHTS, AND RESTRICTIONS

COPY

WHEREAS, FRIENDS OF STOWE CONSERVATION, INC. dba STOWE LAND TRUST, is the owner in fee of certain real property in Stowe, Vermont, and which has aesthetic, recreational, and natural resource values in its present state;

WHEREAS, this property contains 16.1 acres of undeveloped land which has in the past been used for agriculture and is suitable now for agricultural use; and

WHEREAS, FRIENDS OF STOWE CONSERVATION, INC. dba STOWE LAND TRUST, desires to convey this property subject to permanent conservation restrictions allowing agricultural, forestry, open space, and other uses as described herein, in order to further the purposes set forth in Title 10 V.S.A., Section 6301; and

NOW, THEREFORE,

KNOW ALL PERSONS BY THESE PRESENTS that the FRIENDS OF STOWE CONSERVATION, INC. dba STOWE LAND TRUST, a non-profit corporation with its principal offices in Stowe, Vermont (hereinafter "Grantor"), on behalf of itself, its successors and assigns, in consideration of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto Paul E. Percy of Stowe, Vermont, and his heirs, executors and administrators (hereinafter "Grantee") forever, a certain parcel of land in the Town of Stowe, Lamoille County, Vermont (hereinafter "Protected Property"), said parcel being more fully described in Schedule A attached hereto and incorporated herein.

GRANTOR EXCEPTS AND RESERVES from this conveyance unto itself and its successors and assigns the following rights and interests:

1. All development rights in the Protected Property, except those rights as Grantee shall reasonably require to carry out the uses hereinafter permitted on the Protected Property;
2. A perpetual conservation easement and restrictions as more particularly set forth below. The conservation easement and restrictions consist of covenants on the part of Grantee to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that these covenants shall constitute a servitude upon the land and shall run with the land. Grantor reserves such covenants in order to conserve productive agricultural uses, wildlife habitats, and other natural resource and scenic values of the Protected Property for present and future generations.

I. Purposes of the Reserved Easement and Restrictions.

Grantor and Grantee acknowledge that the Purposes of this Reservation are as follows (hereafter "Purposes of Reservation"):

- 1) To contribute to the implementation of the policies of the State of Vermont designed to foster the conservation of the state's agricultural, forest, and other natural resources through planning, regulation, land acquisition, and tax incentive programs;
- 2) The principal objectives of this Reservation are to conserve productive agricultural lands, wildlife habitats, and other natural resource and scenic values of the Protected Property.
- 3) To advance these objectives by conserving the Protected Property because it possesses the following attributes:
 - a) 16.1 acres of statewide important soils;
 - b) 1450 feet of frontage on Route 108;
 - c) is located in the vicinity of two other properties intended to be protected by Grantee within one year and one other property to be protected within five years;
 - d) scenic vistas of Mount Mansfield and Smugglers' Notch from Route 108;
 - f) wildlife habitats and watercourses.

Grantor and Grantee recognize these agricultural, scenic and natural values of the Protected Property, and share the common purpose of conserving these values by the reservation of the conservation easement and restrictions and development rights, to prevent the use or development of the property for any purpose or in any manner which would conflict with the maintenance of these agricultural, scenic and natural resource values. Grantee accepts the reservation of such conservation easement and restrictions and development rights in order to conserve these values for present and future generations.

II. Restricted Uses of Protected Property.

The restrictions hereby imposed upon the Protected Property, and the acts which Grantee shall do or refrain from doing, are as follows:

1. The Protected Property shall be used for agricultural, educational, non-commercial recreation, and open space purposes only. 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 Deed.. Grantee shall ensure that the existing meadowland remains in an open condition, either in active agricultural use or so as to retain its potential for agricultural use. Grantor shall be permitted to access to the Protected Property to crop, mow or brush-hog in the event Grantee is unable to maintain the property in an open condition; however, no obligation shall be imposed upon Grantor to maintain the land in an open condition.

2. Except as otherwise specifically permitted under this Deed, no rights-of-way, easements of ingress or egress, driveways, roads, or utility lines or easements shall be constructed, developed or maintained into, on, over, under, or across the Protected Property, without the prior written permission of the Grantor. Grantor may grant such permission if it determines, in its sole discretion, that any such improvement would be consistent with the

Purposes of this Deed, and not adversely affect the agricultural potential or the scenic beauty of the Protected Property.

3. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that the Grantee may erect and maintain reasonable signs indicating the name of the Protected Property, boundary markers, directional signs, signs restricting hunting or trespassing on the Protected Property, memorial plaques, temporary signs indicating that the Protected Property is for sale or lease, signs informing the public that any agricultural or timber products are for sale or are being grown on the premises, and political or religious signs.

4. The placement, collection or storage of trash, human waste, or any 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 Grantor. The storage and spreading of manure, lime, or other fertilizer for agricultural practices and purposes and the temporary storage of trash in receptacles for periodic off-site disposal shall be permitted without such prior written approval.

5. 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 the terms of this Deed. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.

6. The Protected Property shall not be subdivided or conveyed in separate parcels without the prior written permission of the Grantor. Further, the Protected Property shall not be transferred or conveyed separately from ownership of those other lands of the Original Grantee, Paul E. Percy, known as the Bouchard Farm without written consent of Grantor. Said Bouchard Farm is more particularly described in Schedule A of a Grant of Development Rights and Conservation Restrictions conveyed by Paul E. Percy to Friends of Stowe Conservation, Inc. dba Stowe Land Trust of even date herewith.

7. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the reasonable opinion of the Grantor, is or may possess the potential to become inconsistent with the Purposes of this Reservation.

III. Permitted Uses of the Protected Property.

Notwithstanding the foregoing, Grantee shall have the right to make the following uses of the Protected Property:

8. The right to establish, reestablish, maintain, and use cultivated fields, orchards, and pastures in accordance with generally accepted agricultural practices and sound husbandry principles.

9. The right to utilize and maintain existing water sources and courses within the Protected Property for uses otherwise permitted hereunder, provided that Grantee does not unnecessarily disturb the natural course of the surface water drainage and runoff flowing over

the Protected Property, except where such disturbance is made in order to improve the drainage of areas used for agricultural purposes.

10. 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. Snowmobiling may be permitted at the discretion of the Grantee.

IV. Enforcement of the Restrictions.

Grantor shall make reasonable efforts from time to time to assure compliance by Grantee with all of the covenants and restrictions contained herein. In connection with such efforts, Grantor may make periodic inspection of all or any portion of the Protected Property, and for such inspection and enforcement purposes, the Grantor shall have the right of reasonable access to the Protected Property. In the event that Grantor becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, Grantor shall give notice to Grantee of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action 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, Grantee shall reimburse Grantor all reasonable costs, including staff time, incurred in investigating the non-compliance and in securing its correction.

Failure by Grantee to cause discontinuance, abatement, or such other corrective action as may be demanded by Grantor within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle Grantor to bring an action in a court of competent jurisdiction to enforce the terms of this Deed and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by Grantor to corrective action on the Protected Property, if necessary. If such court determines that Grantee has failed to comply with this Deed, Grantee shall reimburse Grantor for any reasonable costs of enforcement, including Grantor's staff time, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that Grantor initiates litigation and the court determines that the Grantee has not failed to comply with this Deed and that Grantor has initiated litigation without reasonable cause or in bad faith, then Grantor shall reimburse Grantee for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees. The parties to this Deed specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss, and damage to the Protected Property and accordingly entitle Grantor 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 Grantor at law, in equity, or through administrative proceedings.

No delay or omission by Grantor in the exercise of any right or remedy upon any breach by Grantee shall impair Grantor's 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, where the event or circumstance of non-compliance shall have

occurred after said prior owner's ownership or control of the Protected Property has terminated.

V. Miscellaneous Provisions.

1. Where Grantee is required, as a result of this Deed, to obtain the prior written approval of Grantor before commencing an activity or act, and where Grantor has 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 the Grantor. Grantee shall reimburse Grantor or Grantor's designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantor's approval; but not to include those costs which are expected and routine in scope. When Grantor has authorized a proposed action requiring approval under this Deed, Grantor shall, on request, provide Grantee with a written certification in recordable form memorializing said approval.

2. It is hereby agreed that any use of the land permitted under this Deed shall be in accordance with all applicable ordinances, statutes and regulations of the Town of Stowe and the State of Vermont.

3. Grantor shall transfer the development rights and conservation easement and restrictions retained by Grantor herein only to a qualified conservation organization that agrees to enforce the conservation purposes of this Deed, in accordance with the regulations established by the Internal Revenue Service governing such transfers. Grantor and Grantee covenant and agree that Grantor, Friends of Stowe Conservation, Inc. may, in its sole discretion, convey an executory interest in the retained rights and interests to the Vermont Land Trust, Inc., a non-profit conservation organization with principal offices in Montpelier, Vermont.

4. In the event the development rights or conservation easement and restrictions retained by Grantor herein may be extinguished by eminent domain or other legal proceedings, Grantor shall be entitled to any proceeds which pertain to the extinguishment of Grantor's rights and interests. Any proceeds from extinguishment shall be allocated between Grantor and Grantee using a ratio based upon the relative value of the development rights and conservation restrictions, and the value of the fee interest in the Protected Property conveyed by this Deed, as determined by any qualified appraisal performed at the direction of either the Grantor or the Grantee in the year of this conveyance. Grantor shall use any such proceeds to preserve undeveloped and open space land in order to protect the aesthetic, cultural, educational, scientific and natural resources of the state through non-regulatory means.

5. In any deed conveying an interest in all or part of the Protected Property, Grantee shall make reference to the conservation easement and restrictions described herein and shall indicate that said easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity. Grantee shall also notify the Grantor of the name(s) and address(es) of Grantee's successor(s) in interest.

6. Grantor shall be entitled to rerecord this Deed, or to record a notice making reference to the existence of this Deed, in the Town of Stowe 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.

7. The term "Grantor" shall include the successors and assigns of the original Grantor, Friends of Stowe Conservation, Inc. dba Stowe Land Trust. The term "Grantee" shall include the heirs, executors, administrators, successors, and assigns of the original Grantee Paul E. Percy.

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

TO HAVE AND TO HOLD said granted premises, subject to Grantor's reservation of development rights, conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said Grantee, Paul E. Percy, his heirs, successors and assigns, to his own use and behoof forever, and the said Grantor, FRIENDS OF STOWE CONSERVATION, INC. dba STOWE LAND TRUST, for itself and its successors and assigns, does covenant with the said Grantee, his heirs, executors and administrators, that until the ensealing of these presents, it is the sole owner of the premises, and has good right and title to convey the same in the manner aforesaid, that they are free from every encumbrance, except those set forth on Schedule B and the rights and restrictions reserved herein, and it hereby engages to warrant and defend the same against all lawful claims whatever.

IN WITNESS WHEREOF, it sets its hand and seal this 15th day of July, 1998.

Signed, sealed and delivered
In The Presence Of:

By George K. Ahear
Witness to SLT

GRANTOR
Friends of Stowe Conservation Inc.,
dba Stowe Land Trust

By R. Bruce Nourjian
Its Duly Authorized Agent

By Robert J. [Signature]
Witness to Paul E. Percy

GRANTEE

By Paul E. Percy
Paul E. Percy

STATE OF VERMONT
LAMOILLE COUNTY, ss.

At Stowe, this 15th day of July, 1998, R. Bruce Nourjian, duly authorized agent of Friends of Stowe Conservation Inc., dba Stowe Land Trust, personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Stowe Conservation Inc., dba Stowe Land Trust, before me.

George K. Ahear
Notary Public
My commission expires:

STATE OF VERMONT
LAMOILLE COUNTY, ss.

At Stowe this 15th day of July, 1998, Paul E. Percy personally appeared and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed, before me.

Robert J. [Signature]
Notary Public
My commission expires: 10 FEB 1999

**SCHEDULE A
PROTECTED PROPERTY**

A parcel of land situated on the easterly side of Route 108, containing 16.1 acres, more or less, being a portion of Lot H as shown on a plan entitled "Plat Plan of Lots and Areas of Sugar House Hill, Mountain Road and Edson Hill Road, Stowe, Vermont" as recorded in Map File #6M (now slides 95A-99A) of the Town of Stowe Land Records. Being further described as all of Lot H, excepting the lot of land conveyed to Donald Moore by Warranty Deed dated December 1, 1980 as recorded in Book 96, Page 451 of said Land Records, said Moore property being shown on a survey plan entitled "Proposed Sale - Land Associates, Inc. to Donald Moore, Sugar House Hill, Stowe, Vermont, October 1980" recorded in Map Book 4, Page 88 of said Land Records.

Included with said parcel of land is a right-of-way over the Sugar House Hill Development roadways until they are accepted as public highway and over the Moore parcel from either Houston Farm Road or Sugar House Road at a location to be determined by Donald Moore. This right of way from the development roadways is 50 feet in width and is for residential purposes only.

Being all of the land conveyed to Normand Ramsey by Warranty Deed of Ramsey Associates, Inc., dated December 30, 1997 and recorded on April 17, 1998 in Book 351, Page 75 of the Stowe Land Records and being all and the same land and premises conveyed to Ramsey Associates, Inc. by Warranty Deed of Land Associates, Inc. dated March 25, 1981 as recorded in Book 101, Page 237 of said Land Records.

Being all of the land conveyed to Friends of Stowe Conservation, Inc. dba Stowe Land Trust, by Warranty Deed of Normand Ramsey dated July 12, 1998 and recorded immediately prior hereto in the Stowe Land Records.

Reference may be made to the above described deeds and records, and to the deeds and records referred to therein for a more complete and particular description.

SCHEDULE B
LIST OF ENCUMBRANCES

Pole line rights and rights incident thereto granted to the Village of Stowe and New England Telephone & Telegraph Company granted prior to 1962 by Mary L. Houston. Ms. Houston owned 138 acres and the location of the easement is unknown.

The land may also be subject to an easement to the Village of Stowe for a water main, which easement was granted prior to 1962 by Mary Houston. The recorded plan shows a water line extending easterly of the highway.

A utility easement from Ramsey Associates, Inc. to the Village of Stowe Electric Department dated November 2, 1982 as recorded in Volume 106 at Page 255.

Stowe, Vt. Record Received
July 15, 1998 at 2:42 P. M.
Marie N. Betterley, Town Clerk

TRANSFER TAX RECEIVED July 15, 1998
MARIE N. BETTERLEY, TOWN CLERK, STOWE, VT.