**MODEL PROCEDURE FOR**

**APPROVING THE EXERCISE OF RESERVED/PERMITTED RIGHTS**

**1. INTRODUCTION**

[LAND TRUST] holds conservation easements in perpetuity through voluntary agreements with landowners. In some cases, an easement deed may grant the landowner a reserved or permitted right to conduct certain activities that do not negatively impact the property’s conservation values. But when there is a possibility that the exercise of a reserved or permitted right will negatively impact the conservation values, the easement deed may require the land owner to seek approval from [LAND TRUST] before exercising the reserved right. Constructing a house or a road, conducting timber harvests, or building ponds or wetlands are examples of reserved rights for which [LAND TRUST] may require prior approval. In considering landowner requests for approval of the exercise of reserved rights, [LAND TRUST] will follow the following procedure.

**2. GENERAL GUIDELINES**

A request for approval of the exercise of a reserved or permitted right must adhere to the following guidelines.

1. The proposed action must be consistent with the purpose of the easement, and must preserve, to the greatest extent possible, the property’s conservation values.
2. The proposed action must not impede [LAND TRUST]’s ability to monitor and enforce the easement.
3. Granting the request must not result in the partial termination of the easement; nor may it violate any provision of the Internal Revenue Code or any applicable federal or state law.
4. Granting the request must not confer private inurement or any impermissible private benefit on the landowner or any other person.
5. The request must conform to the form and requirements for such requests specified in the conservation easement deed.

**3. PROCEDURE**

1. The landowner must submit the approval request in writing to the land trust, in keeping with the requirements of the easement deed. The request must describe the proposed action, state why it is being sought, and show that it is consistent with the reserved rights granted by the easement. Supporting documents such as maps, blueprints, written plans, etc. should be attached to the request.
2. The approval request will be reviewed by [REVIEWING INDIVIDUAL OR COMMITTEE] to determine whether it conforms to the easement’s requirements and the guidelines listed above. Additional documents, such as the baseline documentation report and monitoring reports will also be reviewed, as appropriate. Consultation with natural resource professionals, municipal officials, legal counsel, and other experts will be obtained, as needed.
3. When it is determined that the approval request conforms to the guidelines above and includes the necessary supporting documents, it will be presented to the [DECISION-MAKING BODY]. If the [DECISION-MAKING BODY] concludes that the request is legally permissible, consistent with [LAND TRUST] policy, and clearly warranted by circumstances, the committee may approve, approve with modification, or deny the request. The [DECISION-MAKING BODY]’s decision will be communicated to the landowner in writing, by certified mail (return receipt requested) and regular mail.
4. If a request is denied by the [DECISION-MAKING BODY], the landowner will be notified of his or her right to resubmit the request for reconsideration by the land trust. The request for reconsideration, along with additional written documentation justifying it, must be received by the land trust within 30 days of the notice of denial. Failure to resubmit the request within the required time period shall be deemed a waiver of this right for reconsideration.
5. If the landowner resubmits the request and additional written documentation within 30 days, the [INDIVIDUAL OR COMMITTEE] will review the resubmitted documents and present the request to the [DECISION-MAKING BODY] for a final decision. The land trust will notify the landowner of the [DECISION-MAKING BODY]’s decision in writing, by certified mail (return receipt requested) and regular mail.
6. The landowner shall reimburse the land trust for any extraordinary costs incurred in considering the approval request, e.g. professional consultation, legal fees, etc.

**4. AVOIDING PRIVATE INUREMENT/IMPERMISSIBLE PRIVATE BENEFIT**

Conferring benefit upon a private party without having that party reciprocate with an equivalent public benefit could threaten the land trust’s tax-exempt status as an organization that is federally recognized as operating exclusively for charitable purposes. A reciprocal public benefit must be measured in actual conservation value – either additional land conserved that has resource value or additional restrictions that have equivalent value. Treasury regulations set forth the “private benefit test” and reflect the legal requirement that [LAND TRUST] be “primarily engaged in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3)”: that it be operated exclusively for charitable purposes and not confer benefit on private parties. In rare cases, determination of whether the exercise of a reserved right confers private inurement or impermissible private benefit may need to be confirmed by an opinion from a professional appraiser. In this situation, the appraisal is paid for by the requesting landowner.

adopted: 2010