**PROCEDURE FOR APPROVING**

**THE EXERCISE OF RESERVED RIGHTS,
USES UNDER A “DISCRETIONARY CONSENT” CLAUSE, AND REQUESTS FOR USE OF SLT-OWNED LANDS**

**1. INTRODUCTION**

**Sample Land Trust** (“**SLT**”) holds conservation easements in perpetuity through voluntary agreements with landowners, as well as owning in fee numerous parcels of land. In most cases, an easement grants the landowner reserved rights to conduct certain activities that do not negatively impact the property’s conservation values. In other cases, conservation easements contain “discretionary consent” provisions which allow **SLT** to permit certain activities that may not have been foreseen when the easement was drafted.

**SLT** also currently owns in fee many parcels of conservation land, and more are acquired each year. These parcels include active farmland, trails, watercourses, hunting preserves, and forestland. **SLT**’s mission includes the use and active management of its lands by **SLT**, the general public, contractors, farmers/lessees, and the like. **SLT** must assess and approve all uses of lands to evaluate and balance the impacts of the proposed use on the land, its conservation values, **SLT**’s mission, and **SLT**’s role as a landowner, neighbor, and accredited land trust.

In considering landowner requests for approval of the exercise of reserved rights or uses under the discretionary consent clause on easement protected land, and in considering requests to use fee-owned parcels, **SLT** will follow the following guidelines and procedure.

**2. GENERAL GUIDELINES**

Conservation Easements

A request for approval of the exercise of a reserved right or request under a discretionary consent clause must adhere to the following guidelines.

1. The proposed action must be consistent with the purpose of the easement, and must have a positive, or not less than neutral, effect on the property’s conservation values.
2. The proposed action must not impede **SLT**’s ability to monitor and enforce the easement.
3. (1) In the case of a reserved right, the request must conform to the requirements of the terms in the conservation easement. (2) In the case of a request under the discretionary consent clause, the proposed action must not be prohibited by the conservation easement.
4. 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, state, or local laws.
5. Granting the request must not confer private inurement or any impermissible private benefit on the landowner or any other person or entity.
6. Granting the request under this policy must not circumvent the process or requirements under **SLT**’s Conservation Easement Amendment and Enforcement Policies. Discretionary consent shall not be used to allow an activity that is specifically prohibited by the conservation easement, is permanent or of extended duration, or negatively impacts the conservation values or public benefits.
7. In reviewing requests, **SLT** shall consider whether granting the request would set a precedent that could have a serious adverse impact on the organization in the future.
8. The request must conform to the form and requirements for such requests specified in the conservation easement.
9. When assessing the request, **SLT** shall consider the totality of the action [including requesting party’s non-monetary offsets/grants etc., **SLT**’s net of the transaction]

Fee-owned lands, including farm properties

A request to use or lease **SLT**’s fee-owned lands must consider the following guidelines:

1. The proposed action must be consistent with **SLT**’s mission, any documented donor intent, any deed restrictions, and must not negatively impact the property’s conservation values over the long-term.
2. The proposed action must not impede **SLT**’s ability to monitor and access the property.
3. Granting the request must not violate any provision of the Internal Revenue Code or any applicable federal, state, or local laws.
4. Granting the request must not confer private inurement or any impermissible private benefit on the user or any other person.
5. The user must carry appropriate workmen’s compensation and liability insurance in at least the following amounts--$1 million per occurrence, $2 million in the aggregate--must fully indemnify **SLT**, and name **SLT** as an additional insured on the user’s policy. All insurance documents shall be presented to **SLT** and updated annually.
6. If a short-term or one-time use, the user must leave **SLT** property in as good or better condition as when the use began.
7. The user must be sensitive to **SLT**’s status in the community and appreciate **SLT**’s role as a public charity and conservation organization.
8. In reviewing requests, **SLT** shall consider whether granting the request would set a precedent that could have a serious adverse impact on the organization in the future.
9. When assessing the request, **SLT** may consider the totality of the action and **SLT**’s multiple roles as landowner, neighbor, and accredited land trust.

**3. 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. Treasury regulations set forth the “private benefit test” and reflect the legal requirement that **SLT** 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. 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 cost of the appraisal commissioned by **SLT** is paid by the requesting landowner.

**3. PROCEDURES**

*Note: Where* ***SLT*** *holds both a conservation easement and the fee interest in the same area of land, the terms and procedures contained in the conservation easement shall take precedence in considering any requests for approvals.*

*Notice of* ***SLT****’s decision shall be delivered in writing to the requesting party.*

Conservation Easements

1. The landowner must submit the approval request in writing to the land trust and in keeping with the requirements of the easement. 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 as necessary.

In the case of a request under the discretionary consent clause, the request must show the reasons for the request.
2. The approval request will be reviewed by **SLT** staff to determine whether it conforms to the easement’s requirements and the guidelines listed above. *If the easement requires a specific review and approval process which differs from this Procedure, the Executive Director will discuss the required procedure with the Chair of the Acquisition and Stewardship Committee or Board of Directors as appropriate.*  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. The landowner shall reimburse the land trust for any costs incurred in considering the approval request, e.g., professional consultation, legal fees, etc. **SLT** staff may deny a landowner's request without further review by the Acquisition and Stewardship Committee or the Board
3. The Executive Director will determine whether the request is of a “sensitive nature.” “Sensitive” requests include those that:
	1. may be of significant concern to the community;
	2. are prohibited by the terms of the easement;
	3. involve a violation or potential violation encompassed by **SLT**’s Conservation Easement Enforcement Policy;
	4. require an amendment to a conservation easement;
	5. involve significant investments of money, other resources, and/or time by the landowner;
	6. fall under **SLT**’s Conflict of Interest Policy;
	7. could result in private benefit or private inurement;
	8. may have a significant long-term or permanent change to the land, even though the impact on conservation values is neutral or positive;
	9. may have important issues of precedent;
	10. require evaluation by outside experts, consultants, or legal counsel;
	11. require significant staff time to review.

If the request is determined to be “sensitive,” or if staff is concerned the request may be sensitive, staff will bring the request to the Acquisition and Stewardship Committee for full review.

1. For requests that are not sensitive in nature, the Executive Director shall review against the easement and guidelines above, other **SLT** policies and procedures, and approve or deny the request in writing. **SLT** may attach any and all appropriate conditions to any approval. Staff shall inform the Acquisition and Stewardship Committee of all such requests and approvals at the next Committee meeting.
2. Sensitive requests shall be presented to the Acquisition and Stewardship Committee. If the Acquisition and Stewardship Committee concludes that the request is legally permissible, consistent with this procedure and other **SLT** policies and procedures, and warranted by circumstances, the Committee shall make a recommendation to **SLT**’s Board of Directors to approve or approve with modification. A recommendation to deny the request shall also be referred to the Board.

Fee-owned lands, including farm properties

1. The requesting party must submit the approval request in writing. The request must describe the proposed action, state why it is being sought, the duration, location/portion of the property, all parties involved, and proof of insurance. Supporting documents such as maps, blueprints, written plans, etc. should be attached to the request as necessary.
2. The approval request will be reviewed by **SLT** staff to determine whether it conforms to the guidelines listed above. Additional documents, such as the management plan 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. Costs associated therewith shall be borne by the requesting party. **SLT** staff may deny a landowner's request without further review by the Acquisition and Stewardship Committee or the Board
3. The Executive Director will determine whether the request is of a “sensitive nature.” “Sensitive” requests include those that:
	1. may be of concern to the community;
	2. the property is also restricted by a conservation held by **SLT** or another organization;
	3. are contrary to the donor’s written intent;
	4. involve a first-time lease or license agreement;
	5. involve significant investments of money, other resources, and/or time by the landowner;
	6. fall under **SLT**’s Conflict of Interest Policy;
	7. could result in private benefit or private inurement;
	8. may be considered to have a long-term or permanent change to the land, even though the impact on conservation values is neutral or positive;
	9. require evaluation by outside experts, consultants, or legal counsel.
	10. require significant staff time to review.
	11. may have important issues of precedent;
	12. would result in a permanent interest in land owned by **SLT** (such as a right-of-way)
	13. In the case of a farmed property, if the request is a significant change from previous farming activities (i.e., from hay to pasture for livestock, or a request to erect a greenhouse)

If the request is determined to be “sensitive,” or if staff is concerned the request may be sensitive, staff will bring the request to the Acquisition and Stewardship Committee for full review.

1. For requests that are not sensitive in nature, staff shall review against the deed restrictions and guidelines above, other **SLT** policies and procedures, and approve or deny the request in writing. **SLT** may attach any and all appropriate conditions to any approval. Staff shall inform the Acquisition and Stewardship Committee of all such requests and approvals at the next Committee meeting.
2. Sensitive requests shall be presented to the Acquisition and Stewardship Committee. If the Acquisition and Stewardship Committee concludes that the request is legally permissible, consistent with this procedure and other **SLT** policies and procedures, and warranted by circumstances, the Committee shall make a recommendation to **SLT**’s Board of Directors to approve or approve with modification. A recommendation to deny the request shall also be referred to the Board.

**4. RECORD KEEPING**

All requests under this policy, and all supporting documentation and approvals, shall be stored in **SLT**’s permanent land records under the organization’s Record Management and Retention Policy.