

To: Rural Vermont
From: Food and Agriculture Clinic, VLGS¹
Re: Act 59 Implementation & Alternatives
Date: December 15, 2024 (written); January 19, 2025 (review complete)

MEMORANDUM

“Buy land. They ain’t making any more of the stuff.” ~ Will Rodgers

In 2023, the Vermont legislature passed Act 59 with the twin goals of biodiversity protection and community resilience. The implementation of Act 59 highlights both the opportunities of conservation and its dangers. As the state formulates its plan to conserve 30% of its lands by 2030 (30x30), the opportunity is there to engage communities in biodiversity protection and further the work already underway to ensure resilience. However, the Act 59 process to date also reveals some troubling possibilities. The Act 59 process is trending towards an outcome that may harden inequities in land use and ultimately undermine both the biodiversity and the resiliency goals.

A shift in either Act 59’s language or its interpretation, paired with investment in community-based conservation and agroecological leadership, could encompass more of the landscape and better engage the communities that work those lands daily. As it stands, the legislation requires permanency for all three of its conservation categories—the types of lands that will count towards the 30x30 goal. One alternative is amending the language to include “durable” conservation or something that similarly impresses the importance of longevity without requiring a permanent legal holding. Another could be clarification that “permanence” may be defined broadly to encompass regulatory programs. The Inventory Report’s current recommendations, which recommend counting agricultural land under a conservation easement toward the 30x30 goal, is underinclusive of working lands being managed sustainably to support biodiversity, and likely overinclusive of lands that are technically conserved but not being managed in such a manner.

Additionally, as currently envisioned, achieving the goals of Act 59 will be enormously expensive. Because of the size of the projection, recommendations have turned to payment for ecosystem service schemes, like biodiversity credits and carbon offsets. Many see these market mechanisms as false solutions that contribute to the financialization of nature without effecting any real change. Moreover, these mechanisms potentially place natural resource management in the hands of financial interests who have been central to fueling biodiversity loss and climate change in the first place. Yet, several of the ‘key’ partners guiding the process actively promote market mechanisms as a solution and may have an interest in this outcome.²

¹ This memorandum was written by clinician Christina Reiter with editing, review, and supervision by Emma Scott (Food & Agriculture Clinic Director) in response to questions brought to the clinic by Rural Vermont. This memorandum was written over the Fall 2024 academic semester; many of the issues raised could be scrutinized more deeply than their treatment here.

² See, e.g., *How We Work with Carbon Markets*, THE NATURE CONSERVANCY, <https://www.nature.org/en-us/what-we-do/our-priorities/tackle-climate-change/climate-change-stories/carbon-market-credits-offsets/>.

In contrast, there are mechanisms that begin to break down the traditional, fortress conception of conservation. Community Based Conservation takes many forms and gives democratic control over land resources to the community most affected by its use. Agroecology promotes methods of production that enhance biodiversity on working lands while also taking into account the economic and social needs of those living in those spaces.

This memorandum looks at alternatives to the current Act 59 paradigm. Section I take a critical look at the permanency requirement in the Act’s language. Section II highlights state priorities that appear to be in tension with Act 59’s trajectory. Section III offers some early-stage ideas for preventing the type of corporate opportunism that Act 59 may invite. Finally, Section IV offers ways to approach conservation and production as mutually reinforcing activities.

I. Durability Could Serve Biodiversity and Resiliency Better than Permanency

The term “permanence,” undefined in the Act itself, is currently interpreted to mean “lands that are permanently protected by a legal easement or by fee acquisition by a qualified conservation entity.”³ This definition excludes the tools Vermont has long used to successfully minimize development on private lands—regulatory measures such as land use regulations and the Use Value Appraisal (Current Use) program.

a. The trends of the current Act 59 approach

Act 59 was designed and led by state-level government and state- and national-level non-profits.⁴ Two “key organizational partners” already appear to control a high percentage of the state’s lands. The Nature Conservancy controls 300,000 acres in Vermont, and its national “endowment pool” totals over \$4 Billion.⁵ The Vermont Land Trust governs 620,000 acres (11% of the State) and relies on private donations from 4000 Vermont families as well as government funds.⁶ These acres include working farms, productive forest land, and streams.⁷

The current interpretation of Act 59—which finds that 27% of Vermont land is permanently conserved—leaves about 180,000 acres remaining in need of conservation.⁸ The acquisition of easements or fee ownership of these remaining acres is projected to be roughly \$75 million

³ VT. HOUS. & CONSERVATION BD., FINALIZED INVENTORY COVER LETTER 11 (2024), <https://vhcb.org/sites/default/files/programs/conservation/VCSI/Finalized%20Inventory%20Cover%20Letter092024.pdf>.

⁴ VT. HOUS. AND CONSERVATION BD., ACT 59 OF 2023 – 10 V.S.A. SECTION 2803(B) INVENTORY REPORT 16 (2024), https://vhcb.org/sites/default/files/programs/conservation/VCSI/Act%2059%20of%202023_formatted.pdf [hereinafter INVENTORY REPORT].

⁵ *Vermont*, THE NATURE CONSERVANCY, <https://www.nature.org/en-us/about-us/where-we-work/united-states/vermont/> (last visited Dec. 14, 2024); *Office of Investments*, THE NATURE CONSERVANCY, <https://www.nature.org/en-us/about-us/who-we-are/how-we-work/finance-investing/office-of-investments/>.

⁶ IRS FORM 990 FOR VERMONT LAND TRUST, VERMONT LAND TRUST (2022), <https://vlt.org/wp-content/uploads/2024/05/2022-TR-6.30.23-Vermont-Land-Trust-Inc-990.pdf>.

⁷ *Id.*

⁸ VT. HOUS. & CONSERVATION BD., FINALIZED INVENTORY COVER LETTER 1 (2024), <https://vhcb.org/sites/default/files/programs/conservation/VCSI/Finalized%20Inventory%20Cover%20Letter092024.pdf>. 27% of the state is permanently conserved already, leaving 3%, or approximately 180,000 acres remaining to meet the 30x30 goal.

annually for the next five years.⁹ And this investment, \$375 million, does not include the ongoing land management costs and other administrative expenses.¹⁰ Essentially, the current interpretation could mean funneling a substantial portion of the estimated \$375 million to these large private organizations so that they might acquire fee or conservation easement rights.

The current trend in this conservation effort also raises equity concerns, which did not go unnoticed in the inventory process. As the report of the Aquatic Working Group put it:

The current conservation model in Vermont primarily focuses on large parcels owned by interested landowners who have the ability to work toward conservation over multiple years and local community support for those projects. Project success depends on access to private philanthropy, and State and federal funding, and compliance with the inherent restrictions of those funding sources. This model disproportionately distributes the benefits and costs of conservation in ways that negatively impact Black, Indigenous, People of Color (BIPOC), LGBTQ+, low-income, elderly, disabled, and other historically marginalized communities. This is particularly clear when it comes to the health and functions of our aquatic systems.¹¹

Conservation easements are not universally accessible—particularly for smaller holdings—or desirable for all farmland, even land that is being sustainably managed.¹² Many concerns about the equity and environmental justice implications of conservation easements have been raised as their popularity has grown and these ramifications should be interrogated before Vermont leans too heavily on this conservation mechanism.¹³ As N4J (the group contracted to facilitate the stakeholder input process for the Inventory Report) summarized based on stakeholder engagement:

Some stakeholders expressed frustration that small landowners and small farmers are often limited in their access to conservation programs and funding that enables conservation practices. Easements also were a contentious topic, identified as a tool that pays those who are already wealthy and concentrates control over land-use with these same individuals.¹⁴

In addition, not all conservation easements will be effective: many do not contain provisions around maintenance of the land in a manner conducive to biodiversity.¹⁵ They also operate on a

⁹ VT. HOUS. & CONSERVATION BD., ACT 59 OF 2023 – 10 V.S.A. SECTION 2803(B) INVENTORY REPORT ANNEX 142 (2024), https://vhcb.org/sites/default/files/programs/conservation/VCSI/Consolidated%20Annexes_DRAFT_PUBLIC_6.24_merged.pdf [hereinafter VCSI ANNEX].

¹⁰ *Id.*

¹¹ *Id.* at 90–91.

¹² *See, e.g.*, VCSI ANNEX, *supra* note 9, at 246, 254.

¹³ *See, e.g.*, Norman P. Ho, *Ending the Exceptionalism of Conservation Easements*, 41 VA. ENV'T L.J. 166, 179–181 (2023); Dominic Parker, *The Conservation-Easement Conundrum*, PERC (Feb. 12, 2019), <https://www.perc.org/2019/02/12/the-conservation-easement-conundrum/>; Levi Van Sant, Dean Hardy, & Bryan Nuse, *Conserving What? Conservation Easements & Environmental Justice in the Coastal US South*, 14 HUMAN GEOGRAPHY 31 (2021), <https://doi.org/10.1177/1942778620962023>.

¹⁴ VCSI ANNEX, *supra* note 9, at 190.

¹⁵ *Id.* at 97 (“...forested riparian areas are critical for many aquatic functions organisms but are not required in some conservation easements.”)

parcel level and a voluntary basis. Relying on conservation easements will create scattershot results that will vary greatly between parcels of land.¹⁶

b. Open-space regulation can support durable conservation

As it stands, over fifty percent of the state is already purposely underdeveloped. If the permanency requirement were changed, or interpreted to include regulation, it is possible that Vermont has already achieved not just its 30x30 goal but its 50x50 goal as well.¹⁷ Vermont contains around 6.1 million acres.¹⁸ State and federal entities control roughly 800,000 acres.¹⁹ Another 2.4 million acres are enrolled in the Use Value Appraisal program (Current Use).²⁰ It is unclear how many more acres are protected by further regulations. All of these acres are managed to maintain open space and together they total over half of the state.²¹

This purposeful underdevelopment reflects a fifty-year commitment to the working landscape reflected in the state's laws. Act 250, Vermont's infamous statewide land use law, passed the legislature in 1970 to stem a tide of unplanned development.²² The legislature has resisted attempts to repeal, replace, or otherwise substantially change that law many times since. The legislature enacted the Current Use in 1978 with the explicit intent to prevent the development of forests and farmlands.²³ The Vermont Housing and Conservation Board was created in 1987 with the goal of supporting the state's traditional land use pattern of compact settlements and surrounding open space.²⁴ All of these programs, among others, demonstrate the state's ongoing commitment to protecting open spaces.

The regulatory approach may be more effective for achieving the legislature's goals because regulations can operate across parcels. As the aquatic working group concluded, land conservation is an inadequate tool because it operates solely on parcel level.²⁵ If a valuable natural resource spans several parcels, a conservation easement on just one parcel might not effectively protect that resource. Stakeholders speaking on aquatic systems recommended regulation and statewide incentive programs (like including riparian areas in Current Use) instead for impactful results.²⁶

¹⁶ See *id.* at 33, 83 (“To date, land conservation in Vermont has tended to be opportunistic, happening on a parcel-by-parcel basis.”)

¹⁷ The 2050 goal is defined more broadly: “For purposes of meeting the 50 percent goal of subsection 2802(b) of this title, ‘conserved’ primarily means permanently protected and meeting the definition of ecological reserve area, biodiversity conservation area, or natural resource management area as defined in this section, although other long-term land protection mechanisms and measures that achieve the goals of Vermont Conservation Design that are enforceable and accountable and that support an ecologically functional and connected landscape may be considered.”

¹⁸ VT. CENTER FOR GEOGRAPHIC INFO., HOW TO REFERENCE VERMONT’S LAND AND WATER AREA, <http://vcgi.vermont.gov/resources/how-and-education-resources/how-reference-vermonts-land-and-water-area> (last visited Dec 14, 2024).

¹⁹ *Lands & Habitats*, VT. FISH AND WILDLIFE DEP’T, <https://vtfishandwildlife.com/conservelandsandhabitats> (last visited Dec 14, 2024).

²⁰ FINALIZED INVENTORY COVER LETTER, *supra* note 3, at 2.

²¹ These account for 3.2 million acres, or 52% of the state.

²² ST. OF VT., ACT 250, <https://act250.vermont.gov/act250-program> (last visited Dec 14, 2024).

²³ VT. DEP’T OF TAX, CURRENT USE, <https://tax.vermont.gov/property/current-use> (last visited Dec 14, 2024).

²⁴ VT. STAT. ANN. TIT. 10 § 302.

²⁵ See e.g. VCSI ANNEX, *supra* note 9, at 83.

²⁶ *Id.* at 87–88.

Vermont’s commitment to open space and the natural world does not end at the state level. Local communities also embrace open-space regulation and public natural space. For example, the City of South Burlington has designated significant tracts of land for habitat preservation.²⁷ The city just won a major victory against a developer over designating portions of a property as habitat block.²⁸ In 2018, the city began work on “the prioritization for conservation of existing open spaces, forest blocks, and working landscapes in South Burlington in the sustenance of our natural ecosystem, scenic viewsheds, and river corridors.”²⁹ Over three years, the city developed Land Development Regulations (LDRs) creating a separate Habitat Block overlay district where land development is prohibited.³⁰ The new designation requires that “all lands within a Habitat Block must be left in an undisturbed, naturally vegetated condition,” and prohibits “encroachment of new development activities into, and the clearing of vegetation, establishment of lawn, or other similar activities in Habitat Blocks.”³¹

Under the new LDRs, the developers’ land was designated a “habitat block.”³² The developer challenged this designation, including the value of wildlife conservation, alleging a host of constitutional and statutory violations.³³ Ultimately the city prevailed and South Burlington’s LDRs provide ongoing protection for habitat blocks and habitat corridors.³⁴ As it has done in other circumstances, like energy siting and forest connectivity,³⁵ the state could formulate incentives to encourage local communities to proactively designate conservation areas as South Burlington has.

Finally, by viewing the 30x30 goals as substantially achieved by current layers of incentives and regulation, the state could put resources towards efforts that address the root causes of biodiversity loss. This could mean supporting Vermonters in a move away from extractive industry models, particularly in energy and food production, facilitating a move towards more sustainable systems will support biodiversity in a meaningful way.

²⁷ SOUTH BURLINGTON, LAND DEVELOPMENT REGS. § 12.04(A), (F), (H) (2024)

https://cms6.revize.com/revize/southburlington/_compiled%20LDR%20adopted%202024-11-04.pdf.

²⁸ 835 Hinesburg Rd., LLC v. City of S. Burlington, 2023 WL 2169306, (D. Vt. Jan. 27, 2023), *aff’d*, 2023 WL 7383146 (2d Cir. Nov. 8, 2023), *cert. denied sub nom.* 835 Hinesburg Rd., LLC v. S. Burlington, VT, 2024 WL 4426543 (U.S. Oct. 7, 2024)

²⁹ *Id.* at *2.

³⁰ SOUTH BURLINGTON LAND DEV. REGS. § 12.04(F), (H) (2024).

³¹ *Id.*

³² 835 Hinesburg Rd., 2023 WL 2169306, at *3–4.

³³ *Id.* at *1

³⁴ *Id.*

³⁵ Energy Development Improvement Act, Act 174 2015-16 Vt. Gen. Assemb. (Vt. 2016),

<https://legislature.vermont.gov/Documents/2016/Docs/ACTS/ACT174/ACT174%20As%20Enacted.pdf>;

An Act Relating to Timber Harvesting, Act 171 2015-16 Vt. Gen. Assemb. § 15 (Vt. 2016),

<https://legislature.vermont.gov/Documents/2016/Docs/ACTS/ACT171/ACT171%20As%20Enacted.pdf>.

II. Act 59 Conflicts with Other State Priorities

Act 59’s approach unnecessarily conflicts with state goals on land access and food security. Ultimately, food security must be considered an essential element of community resiliency.³⁶ Two of the state’s primary vehicles for the advancement of food system stability and security are the Land Access and Opportunity Board (LAOB) and Farm-to-Plate (F2P).

A fundamental concern with Act 59 is the reliance on Vermont Conservation Design, which seems to equate agricultural use with conversion to roads or development.³⁷ This approach sets up a conflict between agriculture and conservation. Through this lens, Act 59 is almost certain to exacerbate issues around the availability and affordability of land for production because it discounts the value of agricultural spaces.³⁸

a. Access to productive lands

The LAOB was established in 2022, “to promote improvements in access to woodlands, farmland, and land and home ownership for Vermonters from historically marginalized or disadvantaged communities who continue to face barriers to land and homeownership.”³⁹ The legislature envisioned acknowledging structural racism and addressing prevalent wealth disparities through the LAOB.⁴⁰ In its initial report, the LAOB declared “equitable access—to decent, safe and secure housing, land, and land-based enterprise—is a human right that all inhabitants of Vermont should fully enjoy without the historical and existing barriers that keep many persons from historically marginalized and disadvantaged communities from realizing these objectives.”⁴¹

Based on stakeholder feedback related to equity, N4J recommended using Act 59 to support the work of LAOB.⁴² Stakeholders saw existing conservation programs as primarily benefiting wealthy, current landowners.⁴³ They advocated for using Act 59 to ensure that underserved communities had more access to land, whether conserved or not.⁴⁴

b. Food Security

Vermont also has extensive investment in food security goals. Since 2009, the state has supported Farm-to-Plate (F2P) which seeks to: “1. Increase sustainable economic development and create jobs in Vermont’s food and farm sector; 2. Improve soils, water, and resiliency of the working landscape in the face of climate change; and 3. Improve access to healthy local foods for all

³⁶ See, e.g., PATRICIA PARERA & BRIGITTE HUGH, CTR. FOR CLIMATE & SECURITY, FEEDING RESILIENCE: A REVIEW OF POLICIES AT THE INTERSECTION OF CLIMATE CHANGE, FOOD SECURITY, AND NATIONAL SECURITY POLICY (2024), <https://councilonstrategicrisks.org/2023/08/09/feeding-resilience/>.

³⁷ VERMONT CONSERVATION DESIGN, WHAT IS VERMONT CONSERVATION DESIGN?, <https://storymaps.arcgis.com/stories/dbf37226d46c42d2b17ca2d939a5521e> (last visited Dec. 15, 2024).

³⁸ See e.g. VCSI ANNEX, *supra* note 9, at 196.

³⁹ VT. STAT. ANN. TIT. 10 § 325u.

⁴⁰ An Act Relating to Expanding Access to Safe and Affordable Housing, Act 182 § 22, 2021-22 Vt. Gen. Assemb. (Vt. 2022), <https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT182/ACT182%20As%20Enacted.pdf>

⁴¹ VT. LAND ACCESS & OPPORTUNITY BD., INITIAL REPORT OF LAND ACCESS AND OPPORTUNITY BOARD 1–2 (February 15, 2023), https://vhcb.org/sites/default/files/programs/LOAB/LAOB.Initial.Report.to_.General.Assembly.2.15.23.Final_.pdf.

⁴² VCSI ANNEX, *supra* note 9, at 181.

⁴³ *Id.* at 182.

⁴⁴ *Id.* at 181.

Vermonters.”⁴⁵ As part of its strategic planning, F2P has created a Food Security Roadmap which lays out goals to equitably meet the dietary needs of Vermonters by 2035.⁴⁶ Here again, F2P highlights the need for access to land for farmers in order to achieve these goals.⁴⁷

Despite its potential impact on land access and the agricultural sector, Act 59 passed the Vermont legislature without referral and consideration by the Senate or House Agriculture Committees. House Agriculture Committee Chair David Durfee did introduce an amendment that ultimately incorporated into the Act’s text some consideration of the state’s commitments to “working lands enterprises, rural landowners, and the broad conservation mission implemented by the Secretary and VHCB, including conservation of agricultural land, working forests, historic properties, recreational lands, and surface waters.”⁴⁸ However, these considerations did not alter the fundamental definition of “conserved” or the 30x30 target. Ultimately, the Inventory Report recommends included “all currently conserved agricultural lands in this initial inventory, under the Natural Resource Management Area category, along with public and private conserved working forest lands.”⁴⁹ However, this tool is not universally accessible or desirable for all farmland, even land that is being sustainably managed.⁵⁰

Both the goals of the LAOB and the Food Security programs might be hindered by the current focus on traditional conservation within Act 59. As it stands, Vermont is losing agricultural land, so conservation issues are not, at present,⁵¹ flowing from conversion to agricultural uses as is the case in other parts of the world. In fact, Vermont has lost 64% of its cropland over the last century and 85% of its pastures.⁵² Land is a scarce resource and locking such enormous percentages of it away from production will create tremendous pressure on prices and availability for use.

This approach also risks pushing the impacts of the state’s consumption outside its own jurisdiction and possibly undermining biodiversity on the global scale. Vermont could instead consider its own global footprint and take measures to ensure its citizens’ needs are not being pushed out onto communities that are less able to resist and that could possibly be a more

⁴⁵ FARM-TO-PLATE, VERMONT AGRICULTURE & FOOD SYSTEM STRATEGIC PLAN 2021-2030, https://agriculture.vermont.gov/sites/agriculture/files/doc_library/Vermont%20Agriculture%20and%20Food%20System%20Strategic%20Plan%202021-2030_0.pdf.

⁴⁶ FARM-TO-PLATE, FOOD SECURITY IN VERMONT: ROADMAP TO 2035 3 <https://www.vtfarmtoplate.com/sites/default/files/2024-01/Food-Security-Roadmap-FINAL-Web-pages.pdf>

⁴⁷ *Id.* at 34–35.

⁴⁸ Durfee Amendment to H.126 (Mar. 20, 2023), <https://legislature.vermont.gov/Documents/2024/WorkGroups/House%20Environment/Bills/H.126/Drafts.%20Amendments.%20and%20Legal%20Documents/H.126~David%20Durfee~%20Draft%201.1.%203-20-2023%20Durfee%20Amendment%20-%20Full-text%20Strike-all%20Version~3-22-2023.pdf>.

⁴⁹ INVENTORY REPORT, *supra* note 4.

⁵⁰ *See, e.g.*, VCSI ANNEX, *supra* note 9, at 246, 254.

⁵¹ That’s not to say that the agricultural sector has not historically contributed to biodiversity loss (i.e., wetland conversion) in the state.

⁵² NEW ENGLAND FEEDING NEW ENGLAND, VERMONT STATE BRIEF 12 (2023), <https://nefoodsystemplanners.org/wp-content/uploads/NEFNE-VERMONT-State-Brief.pdf>.

biodiverse area.⁵³ Biodiversity is a global issue, but biodiversity is not evenly distributed.⁵⁴ Preserving biodiversity in Vermont is a worthy goal, but it does not serve the global issue if it means that a more biodiverse area is plowed under to feed Vermont's citizens.

If shifted to emphasize regulation over private conservation, Vermont could do more to protect its farmlands. If Act 59 was interpreted to embrace some agricultural lands (beyond lands conserved through an easement), it could be a vehicle for reversing this trend in productive land loss. The process could include measures like regulatory reform to better protect farmland from conversion, increased support for farmers who steward the land in ways that enhance biodiversity, and better support for small farmers who are too often left out of both agricultural and conservation programs.

III. Preventing Corporate Opportunism

Because the current conception of the conservation program promises to be expensive, some stakeholders suggested exploring ecosystem service markets, like carbon offset trading and biodiversity credit schemes.⁵⁵ Many also expressed skepticism about these mechanisms, concern that the organizations involved in enacting and implementing Act 59 may have conflicts of interest, concern that it would facilitate corporate-backed land grabs, and a desire for increased transparency on how those involved in Act 59 planning could benefit from current or future carbon financing schemes.⁵⁶

Given these concerns, and among other actions, Act 59's planning process could also take into account any issues of corporate land grabbing that might result from the push to monetize ecosystem services. Guardrails on corporate ownership of farmland could help to ensure that, if future conservation programs embrace ecosystem monetization, Vermont farmland is not snatched up by out-of-state or large corporations.

Twenty-one states have legislation or constitutional provisions excluding corporations from farming or owning land used for agricultural production.⁵⁷ This type of legislation is designed to accomplish one of two goals. The oldest anti-corporate farming statutes were designed to protect family farms from corporate competition for land and farming communities from damage flowing from absentee corporate landowners.⁵⁸ These laws often create exceptions for family-owned or controlled corporate entities. More recently, states have enacted bans on foreign

⁵³ THE NATURE CONSERVANCY, BEST PRACTICE IN DELIVERING THE 30X30 TARGET 33 (2023), https://www.nature.org/content/dam/tnc/nature/en/documents/TNC-DEFRA-ENGLISH-30x30_OCT23-new-intro.pdf.

⁵⁴ NAT'L AERONAUTICS & SPACE ADMIN., UNDERSTANDING EARTH BIODIVERSITY & ECOLOGICAL CONSERVATION 3 (2023), https://eosps.nasa.gov/sites/default/files/publications/NASA_Understanding%20Earth_Biodiversity%20%26%20Ecological%20Conservation_3rdEdition_508Vers.pdf.

⁵⁵ VCSI ANNEX, *supra* note 9, at 132.

⁵⁶ *Id.* at 133, 170–71, 196–97.

⁵⁷ *Corporate Farming & Land Ownership Laws – An Overview*, NAT'L AGRIC. L. CTR., <https://nationalaglawcenter.org/overview/corporatefarminglaws/>.

⁵⁸ *Id.*

corporate ownership, generally by a specific group of countries: China, Iran, North Korea, and Russia.⁵⁹

Enacting a traditional ban on corporate ownership of agricultural land (as opposed to the foreign corporate restrictions) could address the concerns that Act 59 will encourage corporate land grabs. The most frequent purpose of traditional anticorporate farming laws is to preserve family farms thereby benefiting local economies, the environment, and society.⁶⁰ These laws have survived challenges under the Equal Protection Clause, Due Process Clause, Privileges and Immunities Clause, and Contract Clause of the United States Constitution because courts have found them to be rationally related to a legitimate state interest.⁶¹

But challenges in the early 2000s under the dormant Commerce Clause have succeeded in circumscribing some elements of these laws (at least in the 8th Circuit).⁶² The dormant Commerce Clause prohibits states from enacting laws that unduly restrict interstate commerce, even in the absence of federal legislation on the subject.⁶³ However, the most recent Supreme Court jurisprudence on the dormant Commerce Clause has curtailed the provision's effect.⁶⁴ In the 2023 case, *National Pork Producers' Council v. Ross*, the court declined to label an animal welfare statute as unconstitutional simply because it had extraterritorial effect.⁶⁵ Any new anti-corporate farming law will still have to take into account the dormant Commerce Clause's bar on discrimination against out-of-state interests, but extraterritorial effect is less of a concern so long as the regulation is nondiscriminatory (i.e., applies equally to in-state and out-of-state actors).

As discussed above, the state's own farmers are already struggling to afford land. Before using market mechanisms to fund conservation, the state could enact a law that ensures that its farmers will not also have to compete with large corporations for those resources. Beyond the issue of corporate capture, the law could help achieve the goals of Act 59 because small, well-managed farms have a less-damaging impact on the environment than agribusiness, can increase biodiversity, and environmental benefits linked to decentralized benefits.⁶⁶

⁵⁹ *Id.*; see also *Statutes Regulating Ownership of Agricultural Land*, NAT'L AGRIC. L. CTR., <https://nationalaglawcenter.org/state-compilations/aglandownership/>.

⁶⁰ Matt Chester, *Anticorporate Farming Legislation: Constitutionality and Economic Policy*, 9 DRAKE J. AGRIC. L. 79, 83 (2004).

⁶¹ *Corporate Farming & Land Ownership Laws – An Overview*, NAT'L AGRIC. L. CTR., <https://nationalaglawcenter.org/overview/corporatefarminglaws/>.

⁶² *Id.*; see *South Dakota Farm Bureau, Inc., v. Hazeltine*, 40 F.3d 583 (8th Cir. 2003); *Jones v. Gale*, 470 F/3d 1261 (8th Cir. 2006); *North Dakota Farm Bureau v. Stenehjem*, 333 F. Supp. 3d 900 (D.N.D. 2018).

⁶³ CONG. RSCH. SERV., SUPREME COURT NARROWS DORMANT COMMERCE CLAUSE AND UPHOLDS STATE ANIMAL WELFARE LAW 1 (2023), <https://crsreports.congress.gov/product/pdf/LSB/LSB11031#:~:text=Overview%20of%20the%20Dormant%20Commerce,no%20reasonable%2C%20nondiscriminatory%20regulatory%20alternative.>

⁶⁴ *Id.*

⁶⁵ *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 143 S. Ct. 1142, 1144, 215 L. Ed. 2d 336 (2023).

⁶⁶ See Matt Chester, *Anticorporate Farming Legislation: Constitutionality and Economic Policy*, 9 DRAKE J. AGRIC. L. 79, 83 (2004); Vincent Ricciardi et al., *Higher Yields & More Biodiversity on Smaller Farms*, 4 NATURE SUSTAINABILITY 651 (2021), <https://doi.org/10.1038/s41893-021-00699-2> (metanalysis of international research);

IV. Breaking Down the Silos of Conservation and Production

Two concepts, community conservation and agroecology, provide guidance on how to blend equitable conservation and production of human needs. In essence, they are examples of how to balance the needs of the environment and humanity that produce better results than most traditional fortress conservation practices.⁶⁷ Using these practices as models, Vermont could move beyond the current top-down conservation paradigm by re-localizing conservation efforts. Some of these efforts already exist in Vermont; the state could redirect resources to supporting these efforts instead of investing in tools that exacerbate inequities.

Community based conservation (CBC) is an approach more often associated with developing countries. CBC approaches biodiversity conservation from a bottom-led, grassroots perspective.⁶⁸ As a result, local communities are involved in the preservation, protection, and management of local biodiversity.⁶⁹ Under this model, state governments and research institutions—rather than leading in a top-down manner—collaborate with local communities for the planning, implementation, and monitoring of restoration or conservation efforts.⁷⁰

Namibia is one of the most cited examples of wide-spread CBC. In Namibia, CBCs now cover roughly 20% of the country.⁷¹ These community efforts are supported by a constitution that recognizes the right of the people to sustainable use of the land, in addition to protections for the environment.⁷² One commentator described Namibia, when it held to this model, as “the only place on earth to have gotten conservation right for rhinos and, incidentally, a lot of other wildlife. For its people, too.”⁷³ In another context, Community Conserved Areas in India were described in the following way:

One of the most critical lessons we learn from CCAs [Community Conserved Areas] is that areas important for biodiversity conservation are often also important for the survival and livelihood security of traditional communities. The issue of people within and around official protected areas has plagued conservationists for decades. Increasingly there is recognition that livelihoods will need to be integrated without compromising the existence of ecosystems and species.⁷⁴

⁶⁷ Bram Büscher et al., *Half-Earth or Whole Earth? Radical Ideas for Conservation, and Their Implications*, 51 ORYX 407 (2017), <https://doi.org/10.1017/S0030605316001228>.

⁶⁸ *What is Community-Based Conservation?*, THINK WILDLIFE FOUNDATION, https://thinkwildlifefoundation.com/what-is-community-based-conservation/#google_vignette (last visited Dec. 14, 2024).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *The State of Community Conservation in Namibia*, NAMIBIAN ASS'N OF CMTY. BASED NAT. RES. MGMT. SUPPORT ORGS., <https://communityconservationnamibia.com>.

⁷² Richard Conniff, *In Namibia, a Lauded Community Conservation Model Is at Risk*, YALE ENVIRONMENT 360 (June 22, 2023), <https://e360.yale.edu/features/namibia-wildlife-conservation-corruption>; see also LEGAL ASSISTANCE CTR., ROLE OF TRADITIONAL AUTHORITIES IN PROMOTING SUSTAINABLE USE OF NAMIBIA'S NATURAL RESOURCES, https://www.lac.org.na/news/probono/ProBono_46-TAs_NATURAL_RESOURCES.pdf.

⁷³ Conniff, *supra* note 72. The article describes recent dynamics that appear to threaten the future success of these efforts.

⁷⁴ NEEMA PATHAK, ICCA CONSORTIUM, COMMUNITY CONSERVED AREAS IN INDIA, https://www.iccaconsortium.org/wp-content/uploads/2017/06/CCADirectory-India_Overview.pdf.

In the United States, the basic principles of CBC are reflected in several different mechanisms: Community Forests, Conservation Communities, and Community Land Trusts. Vermont has experience with the most traditional example, Community Forests. In 1915, the Legislature enacted the Municipal Forest Law, allowing towns to purchase land for its forest resources.⁷⁵ Today, 168 towns across Vermont own 67,000 acres for “town forests” and manage them communally for a variety of uses, from recreation to timber production.⁷⁶ There are also examples of private development that has chosen to self-identify as a community conservation model. In Vermont, the South Village in South Burlington, is a master-planned community that includes development, extensive open-space preservation, and organic agriculture.⁷⁷ Lastly, Community Land Trusts are an alternative to the traditional land trust model in which the controlling members are drawn from within a given geographic boundary.⁷⁸ This ensures close connection between the community and the land management decisions.⁷⁹ Vermont is actually home to the largest community land trust in the U.S., though its efforts have focused on generating affordable housing.⁸⁰ Using land held in a community land trust for development allows that community to embed social and ecological objectives for each site.⁸¹

Each of these mechanisms break down the barriers between the natural resources and the surrounding community. The people adjacent to these lands are empowered to have a voice in the land management.

Agroecology is another example of land management that incorporates considerations of both human and environmental needs.⁸² Agroecology is an agricultural framework that takes a systems approach to food production that seeks to “optimize sustainable interactions between plants, animals, humans and the broader environment.”⁸³ It is a place-based practice that includes social and economic considerations in addition to sustainable production practices.⁸⁴ It is a substantially different approach to the technocratic, industrialized model that dominates in the United States.

⁷⁵ Steve Hagenbuch, *Vermont's Town Forests; A Resource for Birds and People*, AUDUBON (January 18, 2018), <https://vt.audubon.org/news/vermonts-town-forests>.

⁷⁶ *Id.*

⁷⁷ *Vermont's First Conservation Community & Agrihood!*, SOUTH VILLAGE, <https://www.southvillage.com> (last visited Dec. 14, 2024).

⁷⁸ *What Is a Community Land Trust?*, INT'L CTR. FOR COMMUNITY LAND TRUSTS, <https://www.cltweb.org/what-is-a-community-land-trust/> (last visited Dec. 14, 2024).

⁷⁹ *Id.*

⁸⁰ *Community Land Trusts, Then And Now*, THE SANDERS INST., (Nov 2, 2021), <https://sandersinstitute.org/community-land-trusts-then-and-now>; see, e.g., CHAMPLAIN HOUSING TRUST, <https://www.getahome.org>.

⁸¹ Hannah Van Sickle, *Q&A: How Community Land Trusts Help to Preserve Farmland*, MODERN FARMER (April 8, 2024), <https://modernfarmer.com/2024/04/community-land-trusts/>.

⁸² *Urban and Rural Agroecology*, BERKELEY FOOD INSTITUTE, <https://food.berkeley.edu/mission/urban-and-rural-agroecology/> (last visited Dec. 14, 2024).

⁸³ *What is Agroecology?*, AGROECOLOGY FUND, <https://agroecologyfund.org/what-is-agroecology/>.

⁸⁴ BERKELEY FOOD INST., *supra* note 82.

In Nigeria, the Keita Rural Development Project is credited with both stemming ecosystem degradation as well as increasing rural livelihoods.⁸⁵ Begun in 1984, the project is responsible for a 300% increase in forest cover in the region, a \$6 million boost to local incomes, and an increase in food and timber production.⁸⁶ In Cameroon, the Agricultural and Tree Products Program helped local foresters transform their practices from growing commercial timber to instead creating a market for native fruit and fertilizer trees.⁸⁷ In Vermont, communities exist that are working to heal land and rejuvenate biodiversity through agriculture, employing cooperative, community-led principles, such as the organization Land Care Cooperative.⁸⁸

Land use in Vermont is primarily a local issue. Act 59 implementation might be better effectuated by moving decisions back into communities and promoting CBC and agroecological food and forest production. Moving forward, the Act 59 plan could encourage models of broad-based conservation and support local communities in leading biodiversity preservation and enhancement in their region.

V. Conclusion

If implemented poorly and through reliance on market mechanisms for funding, Act 59 will most likely reinforce inequities across the Vermont landscape and, because of this dynamic, will probably fall short of its twin goals of biodiversity protection and community resilience. The current approach undervalues half a century's worth of regulation that has kept the majority of the state free from development. The current interpretation also creates a need for enormous funding streams that may push control of natural resources into the hands of the very corporate actors who caused the biodiversity crisis in the first place. Furthermore, by choosing to include all conserved agricultural lands, the program may end up supporting large, wealthy, industrialized agricultural models over small, ecologically conscious enterprises.

However, if Act 59 planning embraces the decades of regulatory work that have kept the state underdeveloped, there are opportunities to support the small-scale entities at the heart of Vermont communities. The process could examine ways to further the work of LAOB and F2P as they seek to sustain Vermont's communities. The legislature could support this work by considering methods to protect communities from the worst effects of market mechanisms that might subject Vermont's natural resources to the whims of out-of-state corporations' ESG goals. And finally, Act 59 planning should find ways to give communities a greater voice in conservation efforts by supporting models that re-localize conservation decision making. This begins to get at the real driver of biodiversity loss: an extractive economic model driven by massively powerful entities operating in heavily consolidated industries.

Most of the ideas contained in this memorandum are already reflected in the stakeholder input solicited by VHCB/N4J and included in the Annex to the Inventory Report. Further, many

⁸⁵ OAKLAND INST. & THE ALLIANCE FOR FOOD SOVEREIGNTY IN AFRICA, RESTORING ECOLOGICAL BALANCE & BOLSTERING SOCIAL AND ECONOMIC DEVELOPMENT IN NIGER, https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/Restoring_Ecological_Balance_Niger.pdf

⁸⁶ *Id.*

⁸⁷ OAKLAND INST. & THE ALLIANCE FOR FOOD SOVEREIGNTY IN AFRICA, THE AGRICULTURAL & TREE PRODUCTS PROGRAM IN CAMEROON, https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/Agroforestry_Cameroon.pdf.

⁸⁸ *Land Care Cooperative*, FACEBOOK, <https://www.facebook.com/profile.php?id=100095229761802>.

Vermont community members are already engaged in the type of ecosystem enhancing, working land practices described above and are collaborating with their community members to cooperate in these shared endeavors. It is important that Act 59's implementation supports and promotes these existing efforts rather than displacing them and causing additional small, sustainable operations to go out of business or to never get started.