

References for draft of Executive Summary re: Fairlee Town Forest

To: Peter Berger, Chair, Fairlee Selectboard
Date: February 21, 2023
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Vermont Statutes: Legal Implications of Selling Town Property

[24 V.S.A. § 1061](#): Conveyance of Real Estate (Town Property)

Selling town property can't be done legally without voter approval. (Trees, while they are attached to the land, are real town-owned property.) There has not been a Town vote to approve a Timber Sale Contract since at least since 2000. During that time the selectboard has overseen approximately 9 such contracts.

[24 V.S.A. § 1061](#): A clear directive to Vermont Town Officials

Provided to Vermont Town Officials by the Vermont League of Cities and Towns explaining the requirement for the sale of Town Property.

The legal requirements of 24 V.S.A. § 1061 are important for all real property transactions involving the sale of public property. Town officials, however, are breaking the law if they attempt these transactions as if they were private landowners. Fairlee Town officials do not own town property; their duty, if they wish to sell it, is to protect the interests of those who do own the land.

[13 V.S.A. § 2015](#): Transferring realty without notice of encumbrance

[This paragraph appears in Vermont Statutes Annotated under Title 13: Crimes and Criminal Procedure under Chapter 047: Frauds]

As recorded in the Town of Fairlee's Land Records:

[Lange Forest Deed](#) Book 33, pp. 1-3

[Lange Forest Map](#) Map Book 2

Both recorded Land Records above refer to the Town's "H.C.R.S Recreational Project and the Access Roads Thereto." [The H.C.R.S Project is a contract](#), effective in perpetuity and recorded as an *encumbrance* on the deed of conveyance of the property from the Langes to the Town of Fairlee.

Continuing adherence to that contract, in perpetuity, and complying "... with all of the enclosed documents..." is a commitment made by the Fairlee Selectboard to the Lange family, to Fairlee's townspeople, to the Vermont Agency of Environmental Conservation and to the U.S. Department of the Interior.

All logging in Fairlee since 2000 has been conducted on forest lands whose deeds are encumbered as explained above. Contained in these contractual encumbrances are severe

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restrictions on logging and very clear requirements which must be met before logging can be approved.

Notes:

Vermont's former AEC is now its Agency of Natural Resources

The Land and Water Conservation Fund, managed formerly by the H.C.R.S, is now managed by the National Parks System. It is the direct result of an [Act of Congress](#).

[13 V.S.A § 2501](#): Larceny and Embezzlement

A Timber Sales contract inherently requires the sale of real property and the receipt and expenditure of money. For such a contract to be executed on town property, each of these *three* actions require voter approval.

For decades, the public has had no way of knowing that a Timber Sales contract in Fairlee was being contemplated or negotiated or that it had been signed. Once logging had begun, the public inherently had the right to trust its Town Officials that the project was being planned, conducted, and managed legally, according to all applicable local, state, and federal statutes, rules, regulations, and contractual agreements.

Once logging had been completed, the financial results have been hidden 1) by the illegal flow of monies *within* the sales contracts, and 2) by the illegal flow of money *through* bogus forest fund accounts (see 24 V.S.A. § 2804 below) from year to year. Notwithstanding any information our Town Officials may have provided to our independent CPA, that firm is obligated to follow professional governmental accounting standards when completing its audit for the town. Those (GASB) rules have not been followed, greatly contributing to misleading our voters: the year-to-year changes in the bogus fund balances were more than enough clue to have triggered further review of financial reporting procedures by a professionally licensed CPA. Merely observing the year-to-year changes in fund balances should have triggered the CPA to inquire why. The presence of income derived from and expenses incurred to outside sources (the "why") is the indicator that there are "enterprise" accounts involved. Furthermore, the CPA's inspection of the source entries would have revealed the presence of the Timber Sales Contracts, which should have prompted more questions from the CPA.

Since 2010, more than \$148,000 worth of timber at market value has been sold. During that same time the Town Forest "funds" (which legally do not exist) have been depleted by about \$12,000, resulting in a loss to the town of approximately \$160,000, all the result of unauthorized sales of encumbered town property. Facts presented below show that these damages and losses continue to accrue daily.

It appears that a tiny number of Town Officials, from at least 2 Town Boards, and our T-A, have acted in virtual secrecy. Our selectboard created an appointed forest board, contrary to the town's vote to have an elected forest board. Our selectboard delegated authority it did not have (to sell

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town property) to its appointed forest board. In addition to the forest board, the selectboard now owns the results of misuse of that authority. Both boards together have agreed in concert, after intentionally building the forest management governance structure which has deprived Fairlee's voters of their rights *and* their responsibilities, to appropriate town-owned and contractually encumbered property, and to spend the proceeds of those sales to satisfy their own interests. In that process they have misled the public regarding environmental damages and financial losses and have effectively hindered the full and accurate reporting of the financial effects of their violations.

This "process" has worked for 43 years. There may be "mitigating" circumstances. I've asked the T-A and our selectboard for nearly three years to show me any. They haven't.

My opinion, based solely upon the records I've researched:

Even putting aside the question of an appointed vs elected forest board, what our own town archives show is two town boards, one of them the legislative body of the Town of Fairlee, working together to commit a host of serious violations of the law..

Those violations have resulted in direct financial losses and in *predictably continuing erosion and environmental damages*, accumulating to the point where future obligations of the town for remediation represent 100's of thousands of dollars, and they increase daily.

The Fairlee selectboard had all of the technical data necessary in the Fall of 2020 to obtain solid estimates for remediation costs, recognize the magnitude of the problem, and begin planning for repairs. As of this writing (February 2023) they have failed to inform the public and failed even to begin planning.

[13 V.S.A. § 3006](#): Neglect of duty Public Officers

Mitigation:

A party suffering damages has the right to attempt to mitigate those damages. For town officials, their voters' *right* to mitigate becomes the *duty* of those officials do so, if they have the means.

Fairlee's officials have repeatedly failed to disclose the extent of the forest damages for which they are responsible, and for which our voters are responsible to pay for. They have refused even to attempt to plan for repairs. Making matters even worse, they have blocked multiple attempts by voters to seek funding to make those repairs.

[13 V.S.A. § 3007](#): Neglect of duty boards and commissions

Mitigation:

Vermont law places the same responsibility of duty upon all boards and commissions, elected or appointed.

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[13 V.S.A. § 3008](#): Application of two preceding sections

If appropriate, a prosecutor should be able to construct this complaint properly. My guess is that the “Neglect of duty” violation is in addition to—not instead of—any other violations?

[13 V.S.A. § 3015](#): Obstruction of Justice

Fraud is a crime. Environmental damages, especially the miles of severely eroding trails, and the costs to repair them, are accruing daily. Throughout the nearly 3 years we’ve been exercising our right to mitigate them, several Board members, the Town T-A, and the Town Attorney (Paul Gillies) have engaged in a series of public spoken and written attempts, including in official Town Reports, correspondence and discussions with state officials and in 2 statewide newspapers, to discourage, intimidate, and disparage our efforts.

Attorney Gillies’ has been aware of these Timber Sales contracts. His opinion, frequently cited by the T-A and the Selectboard, apparently has been that the selectboard does have the sole authority to conduct these timber sales and to spend the proceeds as they alone see fit. However, following repeated requests for a copy of a “legally defensible opinion” to that effect, that opinion was never rendered.

Regardless of what our Town Officials may have told Attorney Gillies (true, false, or ambiguous), all Gillies had to do was to check the deed to our forest land, on which encumbrances are clearly and explicitly recorded. I believe Attorney Gillies’ apparent failure properly to advise the selectboard and to report this potential fraud to authorities was and is a serious breach of the requirements he must satisfy to practice law in any state.

I’m sure Attorney Gillies will recall my comprehensive explanation, “So we are all on the same page...”, sent to him on July 31, 2022.

In addition to Attorney Gillies apparent negligence, it is illegal for a town official to seek his endorsement of their violations:

[Furtherance of crime or fraud](#). Vermont Rules of Evidence 502(d)(1): “If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;...”

Vermont Statutes: Accounting and Reporting for Timber Sales

The execution of a timber sales contract inherently requires spending money. All the many costs involved with forestry, building truck and skid roads, trucking, log landings, and landing access development, insurance, and other logging expenses, etc. must ultimately be borne by the town as landowner. They are often paid directly to outside entities (aka “enterprise” entities, as defined

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in GASB's accounting standards). Those standards dictate a reporting method to inform the reader of an audit. They have not been followed.

Without authorization, town money has been paid directly to outside entities during the course of logging.

[24 V.S.A. § 2804](#): Reserve funds; use

Without authorization, Town money has been paid out of bogus reserve funds.

In Fairlee's financial reports, each of the three segments comprising our Town Forest is assigned a "fund" account. For years, both our selectboard and our forest board have spent freely from these funds, without voter approval. The funds are enriched from whatever proceeds are left over from the unauthorized sale of town property, aka logging. Then, randomly, they are spent outside of normal budget procedures for whatever the individual board members feel they need—not necessarily what the public wishes or what following the rules requires. I think the appropriate legal term here is embezzlement.

One example of an abuse of authority, is an [unwarned and unreported meeting of the full forest board September 29, 2020](#). The forest board meeting, attended by all 5 members, was called by T-A Nunez to find money to pay for losses from logging and mandated repairs to a forest trail which was eroding directly into a brook a quarter mile from Lake Morey. This meeting never was warned, no minutes exist and there is no way in our town reports to know how much money was involved or to whom it was paid.

24 V.S.A. § 2804 See VLCT's Model Reserve Fund Policy with Guidance, ([attached below](#))

As with the sale of town property, the Vermont League of Cities and Towns provides clear guidance for establishing and using funds. Our selectboard, our Forest Board and our Town Attorney and CPAs have all chosen to ignore this clear, definitive, and unambiguous guidance.

Examples of Violations: Pairing Documented Facts with Vermont Statutes, Rules and Regulations

Re: [Timber Sales contract, \(9/11/2018\)](#) on behalf of the Town

- It violates 24 V.S.A. § 1061
- The Town fails to notify the Logger of encumbrances on the land to be logged
- The Town Forester fails to Notify the Logger of the encumbrances on the land to be logged

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- Limlaw Chipping and Land Clearing, Inc. was not in good standing at VT SoS at the time
- There is no indication that Bruce Limlaw was an authorized agent of Limlaw Chipping and Landclearing, Inc.
- Forest Board Chair David Matthews was not legally authorized to sell town real property
- There is no evidence Redstart Forestry was ever legally authorized to act as Agent for the Town of Fairlee
- Page 1, Term #1 calls for the expenditure of building a haul road for biomass trucks.

It likely violates 13 V.S.A § 2501 in that town monies from the sale of forest products are being diverted for this road building without voter approval. From a Forestry best practices perspective, whole-tree logging had been objected to and complained about repeatedly by our County Forester, [since at least 2012](#). He was dismissed by the Forest Board for those recommendations and warnings. This is well-documented. The contract for the Lange grant requires approval by the County Forester and Vermont Fish and Wildlife for all logging and for trail and road building and maintenance.

- Page 1, Term #3 is a fraudulent statement:

“The Landowner warrants that there are no mortgages or encumbrances affecting the sale of timber covered by this contract.”

- Page 3, Term #16: Title to cut timber shall pass to the Logger at the time the wood leaves the landing.

This Term places an unnecessary risk for collections action against a Logger, if they should be needed. Many knowledgeable land owners will not give up title until they are paid in full.

Wood products from our town were exported across state lines into New York, Maine and New Hampshire and Canada.

Our best saw logs were exported across the [International Border into Canada](#), to a mill over 130 road miles away, and sold for 33 cents on the dollar. Even more insulting was that all of the revenue, and more, from selling our biggest and best hardwood trees, was spent toward building a haul road for biomass vans.

For just this 1 contract, those biomass vans required 58 trips and 3,100 road miles to and from the Ryegate Power Station where we were paid approximately \$15/load for a grand total of \$841.16 for the entire logging operation.

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An accurate report within the Timber Sales contract is not available from our Treasurer's reports. The costs (several thousand dollars) for building the haul road for the biomass vans are buried in unknown accounts and in the paltry 33 cents on the dollar paid to us by the logger.

- Page 3, Term #19: The logger agrees to observe all town state and federal laws

Scales slips show many loads out of our forest exceeded 99,000#, thus violating state laws, our town permits and risking damage to our town roads. Furthermore, during this period the [Logger was defrauding at least 30 chip customers](#) by falsifying load weights, tare weights and Special Excess Weight ("SEW") permits. Since the already-chipped loads leaving our landing were not being measured, and since the Logger maintained his own scales, we have no idea what was taking place at Limlaw's yard during the weighing process. We simply paid what Limlaw declared we owed him. This was a logging firm [who ultimately admitted to cheating his customers](#), some of whom may have been purchasing wood chips from our own Town Forest.

- Referring to 13 V.S.A § 2501, isn't each load of forest products (chips, biomass, and logs) taken off encumbered town property a separate and distinct transaction and therefore a separate and distinct violation of 13 V.S.A § 2501?

- Same for 24 V.S.A. § 1061?

- Same for 13 V.S.A. § 2015?

- Page 4, Term #29

Same as Page 1, Term #1. Not only is this another unauthorized expense, but it is also handled, as were many other instances, as an offset to reduce revenue, even further hiding the costs we were paying. In other words, *revenue checks to the town are reduced by logging expenses before they become Logging Income or Timber Sales in the Treasurer's reports. The resulting reported "net" figures for revenue and for expenses are fraudulent.*

Sources:

Redstart's [Logging Summary dated 11/7/2019](#) and the Treasurer's Report for 2020.

Hint:

A portion of the chip truck road development costs is hidden in the Forest Management account, not reported in the existing Road Improvements account.

Re: [Timber Sales contract, \(7/8/2020\)](#) on behalf of the Town

- This Timber Sales Contract was conducted under all the VSA violations cited above regarding the 9/11/2018 contract.

- Logging began without any contract.

- Logging commenced, literally, secretly, and with no voter approval.

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- Drafted on June 24, 2020, it was signed on July 3, 2020, by the logger. It was signed by David Matthews (as Landowner and without Town authorization) on July 8, 2020. Logging had begun more than a week before the Timber Sales Contract was signed.
- Logging began “early” because the Forest Board Chair Matthews stated to the effect that, “...he did not want to notify the locals and upset them before logging started...”

Explanation in detail...

Matthews expressed that statement at a selectboard meeting at which I had raised concerns about logging without a contract in place. At that meeting the town T-A Nunez claimed that he had received the signed contract from Matthews. Nunez displayed his laptop showing what he claimed was the signature page of the contract.

Observation of Nunez’ laptop revealed the email Matthews apparently had sent him to attach the “contract.” The “signature page” Nunez was displaying was an entire 8” x 11” blank piece of paper with only Matthews’ signature taking up most of the page. Observable on Nunez’ screen under that was that logging had begun “early” because Matthews had written to the effect that, “...he did not want to notify the locals and upset them before logging started...”

(According to T-A Nunez, during logging the previous year, a Fairlee resident had been injured by logging debris left on Knox Road, while she was checking her mail.)

I then asked to see the whole contract. Nunez fumbled around a bit until we finally realized that he had shown us a fake signature page. There was no contract, signed or otherwise. This took place in the presence of all three selectboard members. There was an audible gasp from selectboard member McGrath when she realized what she had seen. Nunez is still, unbelievably, the Town T-A.

I believe the meeting described above took place on July 6, 2020. Logging had started more than week earlier. It was captured on Zoom and should be easily available for corroboration.

- Because of all the irregularities in the logging contract dated 7/8/2020, logging was halted. Apparently another Timber Sales contract was negotiated. At the time there was compelling evidence to halt the project altogether, because the claim was made that Limlaw (yes, *that* Limlaw) had contractual obligations to fill his customer orders for wood chips and that canceling the contract could bring liability to the town. Ignored was the fact that Limlaw had started with no contract to begin with.

And ignored again were the voters rights to authorize another timber sales contract. Consistent with the past 43 years, we were once again left completely in the dark.

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/s/ William W. Weale
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See [VLCT Model Reserve Fund Guidance](#) next page below

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VLCT Model Reserve Fund Policy Guidance

A reserve fund is a separate, dedicated financial account that is created to fund a specific municipal purpose whose balance is carried over from year to year. Reserve funds are created by approval from a majority of voters at an annual or special town meeting. 24 V.S.A. § 2804. A reserve fund can be created for any legitimate municipal purpose. Once created, it falls under the control and direction of the selectboard.

Approval of this fund requires a majority vote regarding the purpose and amount of money to be set aside to create this fund. Once created, the selectboard has the authority to spend the money only

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for the special purpose for which the fund was created. The money set aside for this fund and any monies accruing from investing it are used for the original purpose of the reserve fund. If it is determined that the money allocated to a reserve fund would best serve an alternative purpose, this money can be so designated at an annual or special town meeting where the majority of voters approve of this reallocation.

The reason for creating a reserve fund is twofold. First, it ensures that money appropriated by the voters will only be used for the stated purpose of the reserve fund. Once created, the funds can be disbursed by the selectboard without further voter approval. Second, a reserve fund allows the selectboard to roll over money that is placed in the fund and not spent from year to year. This is contrary to the general rule of budgeting under Vermont law, which is that money not spent in a budget year must be re-allocated the following year as part of the budget approval process at town meeting.

The bottom line is that a reserve fund does not exist unless the voters have approved it at an annual or special town meeting. In fact, under Vermont law reserve funds only cease to exist if the voters vote to rescind the fund. Accordingly, if you are not sure if you have a bona fide reserve fund, check the town or special meeting minutes to see if a record of the voters creating the fund exists. If no such record exists, neither does the fund.

Reserve Funds. Twenty-four V.S.A. § 2804 allows municipalities to establish a reserve fund under the control and direction of the selectboard. Money in the reserve fund can be expended by the

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