

**Bristol Town Administrator**

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**From:** Michelle S. Perlee <MPerlee@langrock.com>  
**Sent:** Wednesday, November 28, 2018 7:50 AM  
**To:** Bristol Town Administrator; Kevin E. Brown  
**Subject:** RE: Bristol: Stanley Livingston Property [DRM-ID.FID967671]

Valerie – Not sure if Kevin responded to you, but basically, we should not be executing the Quit-Claim Deeds for these leased lands but putting it on our agenda to vote to release the Town's interests in all perpetual lease lands pursuant to 24 V.S.A. §2409(b)(2).

The other e-mail he sent you was the process in which we should have been handling these types of requests instead of the way we did handle them. However, as of 2020, that will not matter and if we vote to release the Town's interest, that will clear up any screw-ups the Town did by executing the Quit-Claim Deeds.

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**From:** Bristol Town Administrator [mailto:townadmin@bristolvt.org]  
**Sent:** Tuesday, November 27, 2018 2:38 PM  
**To:** Kevin E. Brown  
**Cc:** Michelle S. Perlee  
**Subject:** RE: Bristol: Stanley Livingston Property [DRM-ID.FID967671]

Thank you, Kevin! So ... am I interpreting this correctly that the Town should receive some form of payment?

--Valerie

Valerie Capels, Town Administrator  
 Town of Bristol  
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 Bristol, VT 05443  
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**From:** Kevin E. Brown <KBrown@langrock.com>  
**Sent:** Tuesday, November 27, 2018 2:33 PM  
**To:** Bristol Town Administrator <townadmin@bristolvt.org>  
**Cc:** Michelle S. Perlee <MPerlee@langrock.com>  
**Subject:** RE: Bristol: Stanley Livingston Property [DRM-ID.FID967671]

Valerie,

Given that many believe incorrectly that the Town can simply quitclaim its lease lands away, here is a paste from an opinion letter I wrote to explain why the practice is illegal:

**Municipal Power to Convey Reserved Public Lands:** Beginning in 1935, the legislature "undertook to remove any absolute prohibition against conveying these charter grant trust lands." Mikell, 129 Vt. at 590. By 1967, conveyance rights were extended to of "[e]ducational, ecclesiastical, and municipal corporations" which

hold title "under a state or colonial grant." 24 V.S.A. §2406. This statute, therefore, authorizes a town to convey public lands by "fee simple" subject to two important restrictions. First, if the land is subject to a lease, the town must first offer its rights and interests in the land to "the owner and holder of leasehold rights." 24 V.S.A. §2406. If the leaseholder does not want to acquire the Town's interests in the land, the Town may convey the same to anyone else, but that person would take the property subject to the lease. Therefore, the practical reality is that, no one other than the leaseholder would want to acquire the town's rights as landlord of a perpetual lease.

Secondly, and most importantly, if the town conveys its interest in the public land to the tenant or someone else, the proceeds must be placed into "trust" as "endowment funds." 24 V.S.A. §2406. Section 2406 states that the town must use the income for "the purposes for which such lands were originally granted." 24 V.S.A. §2406. As a result, the proceeds received by the Town must be held in trust to generate income perpetually; only the income may be spent. For a town, spending the income generated from the investment of sale proceeds for the support of town schools would satisfy the statute's directive.

As the Vermont Supreme Court explained "[t]wo conditions were attached" to the municipality's power to convey public lands: "one, that the holder of leasehold rights was to have a preference as a grantee, and second, that the funds received were to be kept as endowment funds, with only the income going for trust purposes." Mikell, 129 Vt. at 590.

As a result, the expedient conveyance of reserved public land by a quitclaim deed for no consideration would be inconsistent with public trust doctrine and §2406. If the legislature had intended a town to be able to terminate its interests in lands reserved for the public and get little or nothing in return, the legislature would have said so. Therefore, a town which quitclaims away its rights in the land to the leasehold is vulnerable to a taxpayer lawsuit alleging that the town has used public assets to benefit a private party, rather than the public good.

**Kevin E. Brown, Esq.**

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**From:** Bristol Town Administrator [<mailto:townadmin@bristolvt.org>]

**Sent:** Tuesday, November 27, 2018 12:17 PM

**To:** Kevin E. Brown

**Cc:** Michelle S. Perlee

**Subject:** FW: Bristol: Stanley Livingston Property [DRM-ID.FID967671]

Hi Kevin,

I've been playing phone tag with K. Brennan about this. And I've asked Peter Coffey, Lister Craig Scribner, and others about how this kind of thing has been handled in the past. Peter recalled that the Selectboard had approved prior ones. Thoughts?

--Valerie

Valerie Capels, Town Administrator  
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**From:** Kevin Brennan <[kevin@bpd.legal](mailto:kevin@bpd.legal)>  
**Sent:** Tuesday, November 20, 2018 8:50 AM  
**To:** Bristol Town Administrator <[townadmin@bristolvt.org](mailto:townadmin@bristolvt.org)>; [kevin@bpd.legal](mailto:kevin@bpd.legal)  
**Subject:** RE: Bristol: Stanley Livingston Property [DRM-ID.FID967671]

In the past, the Town has agreed to execute quit claim deeds to release any so-called "lease lands" going back to the original first or second division of the Town. So Attorney Dodge is inquiring to see if the Town is still agreeable to doing so.

Kevin

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**From:** Bristol Town Administrator <[townadmin@bristolvt.org](mailto:townadmin@bristolvt.org)>  
**Sent:** Monday, November 19, 2018 4:20 PM  
**To:** [kevin@bpd.legal](mailto:kevin@bpd.legal)  
**Subject:** RE: Bristol: Stanley Livingston Property [DRM-ID.FID967671]

Hi Kevin,

Belated thanks. Can you tell me what this is for? I cannot quite tell from the thread of things.

--Valerie

Valerie Capels, Town Administrator  
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**From:** [kevin@bpd.legal](mailto:kevin@bpd.legal) <[kevin@bpd.legal](mailto:kevin@bpd.legal)>  
**Sent:** Monday, November 12, 2018 7:29 AM  
**To:** Bristol Town Administrator <[townadmin@bristolvt.org](mailto:townadmin@bristolvt.org)>  
**Subject:** FW: Bristol: Stanley Livingston Property [DRM-ID.FID967671]

Hi Valerie,

Attached and below is an email I received from Attorney Dodge requesting the Town to release any lease land interest it may have.

I let Attorney Dodge know that I would forward the email to you for your consideration and that would likely hear back directly from you or Kevin Brown.

Please do not hesitate to call or email if you have any questions.

Take care,

Kevin

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**From:** Will Dodge <[wdodge@drm.com](mailto:wdodge@drm.com)>  
**Sent:** Monday, October 29, 2018 3:39 PM  
**To:** 'kevin@bpd.legal' <[kevin@bpd.legal](mailto:kevin@bpd.legal)>  
**Cc:** Alexis L. Peters <[APeters@drm.com](mailto:APeters@drm.com)>  
**Subject:** Bristol: Stanley Livingston Property [DRM-ID.FID967671]

Hi Kevin:

Thanks again for the discussion last week regarding glebe lands in Bristol, VT, and the possibility of securing a release from the Town. As I mentioned, our client, Marina Energy, LLC, has a solar facility at the Livingston property off 1541 Hardscrabble Road pursuant to a lease agreement, and we're trying to clean up the title in connection with a pending transaction.

I've attached the following for your review and for discussion with the Town Manager:

- Draft Quitclaim Deed from the Town to Stanley S. Livingston
- DRM Title Memorandum concerning the Property (which includes the various warranty and QC deeds mentioning perpetual leases; and
- Copy (from a text message) of a deed granted by the Town to one of Stanley Livingston's successors in interest (Tonya Lawyer) ironically for glebe lands, but only on Ms. Lawyer's property.

Let me know if you need any additional information or if there's an alternate process we should pursue for making the request. Thanks in advance. I'm copying my associate, Alexis Peters, on the transmittal as she would likely attend any Selectboard meeting to authorize the transaction.

**[William J. Dodge](#)** | Director | Energy, Environment and Telecommunications Group  
**Downs Rachlin Martin PLLC** | **Business Sense · Legal Ingenuity**  
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Admitted in VT, NH.

Downs Rachlin Martin PLLC is the exclusive member firm for Vermont of [Lex Mundi](#), the world's leading association of independent law firms with in-depth experience in 100+ countries worldwide.

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# The Vermont Statutes Online

## Title 24 : Municipal And County Government

### Chapter 065 : Public Lands And Funds

#### Subchapter 001 : Public Lands

(Cite as: 24 V.S.A. § 2409)

#### § 2409. Retention of municipal ownership of lease lands

(a) As used in this section:

(1) "Legislative body" means the officer or officers of a municipal corporation who are charged with the care of the municipal corporation's lease lands.

(2) "Lessee" means the person entitled to possess, enjoy, and use land subject to a perpetual lease and shall include the person's heirs, executors, administrators, and assigns.

(3) "Municipal corporation" shall have the same meaning as "municipality" in 1 V.S.A. § 126 and shall also include every municipal corporation identified in subdivision 1751(1) of this title, county grammar schools, any unorganized towns and gores in the State, and any of the unified towns and gores of Essex County. "Municipal corporation" shall not include the University of Vermont and State Agricultural College.

(4) "Perpetual lease" means any leasehold interest in Vermont land, and every estate in Vermont land other than fee simple absolute, the title to which is held by a municipal corporation according to section 2401 of this title, arising out of or created by an instrument of lease that conveys to a person designated as lessee the right to possess, enjoy, and use the land in perpetuity or substantially in perpetuity. "Perpetual lease" shall include leasehold interests that are subject to restrictions on the lessee's use of the land and shall include lands that the municipal corporation may repossess for nonpayment of rent or other default under the terms of the lease.

(5) "Perpetual lease land" means all land described in a perpetual lease that is owned by or vested in a municipal corporation. "Perpetual lease land" does not include land described in a perpetual lease that is held in title by any person other than a municipal corporation, or any land described in a perpetual lease over which the municipal corporation acts exclusively as trustee.

(b)(1) On January 1, 2020, fee simple title to perpetual lease lands shall vest in the current lessee of record, free and clear of the interest of a municipal corporation in the perpetual lease lands held in accordance with section 2401 of this title, unless prior to that date the legislative body of the municipal corporation votes in the affirmative to retain ownership of some or all of the perpetual lease lands within that municipal corporation.

(2) At any time, the legislative body of a municipal corporation may vote to relinquish its interest in some or all of the perpetual lease lands within that municipal corporation held in accordance with section 2401 of this title. Upon such a vote, fee simple title to perpetual lease lands shall vest in the current lessee of record.

(3) When fee simple title to perpetual lease land vests in the current lessee of record pursuant to this subsection, the land shall remain subject to any other encumbrances of record, including municipal encumbrances and easements.

(c) Nothing in this section shall prevent a municipal corporation that has retained its interest in perpetual lease land held in accordance with section 2401 of this title from later conveying the land in accordance with section 2406 of this title. (Added 2017, No. 152 (Adj. Sess.), § 1.)