

Vermont Housing and Conservation Board
IMPLEMENTATION GUIDELINES
SOLE DISCRETION FARM LABOR HOUSING CLAUSE

Farm businesses sometimes require additional on-farm labor housing to expand, change or diversify in operation or transition ownership. VHCB and its farm easement co-holders have developed a sole discretion farm labor housing clause, which establishes a process for adding housing rights to conserved farms in the future. This clause may be included in easements for new projects and in some cases added by amendment to existing easements. The intent of the clause is to permit additional residences on conserved properties when vitally important to the farm business, but in such a way that protects the soil resources, economic viability and affordability of the protected property in the future. The holders may approve or deny requests at their sole discretion; however, the following guidelines provide an indication of what conditions are generally necessary to obtain approval when the clause is already part of the easement and/or for VHCB to consider amending an easement to add this right.

THRESHOLD REQUIREMENTS:

VHCB will approve requests only if:

- A. The proposed residence will be occupied by a person employed in agriculture on the protected property (may also include the immediate family of said employee); and
- B. No rent is charged for the proposed residence; housing is provided to the employee for no consideration other than the employee's labor; and
- C. All permitted housing (reserved or exercised) on the protected property is already occupied by the owner and/or persons working on the farm (i.e. homes occupied by renters not working on the farm or members of the Grantor's family who are not meaningfully employed on the farm would be considered potentially available for farm labor purposes); unless landowner's business plan demonstrates that both new and currently unutilized reserved residential rights will be necessary in the near future.

I. APPROVAL CRITERIA:

- A. **NEED:** The primary criterion for approving the construction of a new FLH on the protected property is 'need'. The clause requires that the proposed FLH be *"necessary to the current and reasonably foreseeable farm business on the Protected Property in order to facilitate the active and economically viable agricultural use of the Protected Property."* In order for the Holders to ascertain need, they landowner shall:
 1. Submit a written **Business Plan** that details the business's plan for growth or expansion and the resulting need for additional farm labor housing.
 2. Catalog all **other owned land and/or housing** adjacent to or in close proximity to the protected property and explain why the needed FLH cannot be accommodated therein.
 3. Report on **available rental stock** in close proximity to the protected property and explain why the needed FLH cannot be accommodated therein.

- B. LOCATION:** The proposed FLH should be located within an existing building complex. If the FLH cannot be located within an existing complex, all efforts should be made to locate the residence:
1. to avoid interruption of and minimize impact on farm fields, especially those with prime and/or statewide soils, and to avoid interference with agricultural operations; and
 2. to maximize the agricultural potential and scenic and/or historic features of the protected property; and
 3. in a cluster, rather than in a linear pattern along a roadway; and
 4. close to or utilizing existing roads, drives, services and utilities; and
 5. in a manner that minimizes the impact of the residence on the future affordability of the protected property.
- C. HOUSING TYPE:** Because of the potential impact on affordability of new, single family residences, the Holders are more inclined to approve:
1. Housing co-located in an existing or new agricultural building, or
 2. Residences that house groups of laborers in a dormitory setting, or
 3. Mobile homes that may be easily removed from the protected property if unneeded for labor housing in the future.
- D. HOUSING SIZE:** The clause directs Grantors to design the proposed FLH to a size *“no larger than is necessary to meet the needs of the current and reasonably foreseeable farm business”*.. If approved by the Holders, single family, freestanding residences shall not in most cases exceed 1,500 square feet of living space. However, the holders may approve a larger footprint for the first house on a bareland parcel.

Notwithstanding the above, Holders, in their sole discretion, may condition approval of any new FLH by limiting the size of the structure or require it be co-located in a new or existing agricultural building

- E. AFFORDABILITY:** Long-term affordability and availability of conserved agricultural land for farmers is a goal of VHCB’s Farmland Conservation Program. To meet this goal, the Holders may require that an Option to Purchase at Agricultural Value (“OPAV”) encumber the protected property, if one is not already included in the existing easement. The Holders are likely to require an OPAV in the following situations:
1. Requests for a new FLH on a protected property where no residence currently exist (bareland parcels).
 2. Requests for a new FLH located outside of an existing complex, away from existing residences, and/or in a location that may impact the future affordability of the protected property to a qualified farmer.

II. AMENDMENTS:

When amending an easement to add the sole discretion FLH right, the Holders may require an appraisal or some other analysis to determine the value of the right and, if substantial, require that value be offset through additional conservation, further restrictions, or other forms of mitigation.

The analysis/mitigation process will likely be required for amendment proposals that:

- A. Establish the first and only residential right on the protected property (bareland).
- B. Involve a residence located outside of an existing building complex or in a location inconsistent with criterion I.B above.
- C. May have significant impacts on the future affordability of the protected property to a qualified farmer.
- D. Reduce the availability of prime and statewide soils for agriculture.

January 24, 2013