

May 9, 2003

Vermont Housing and Conservation Board
GUIDELINES

WIRELESS TELECOMMUNICATIONS FACILITIES ON FARM STRUCTURES

Statement of Policy

Since the inception of Vermont's Farmland Conservation Program in 1987, farmland conserved by the Vermont Housing and Conservation Board ("VHCB"), Vermont Department of Agriculture, Food and Markets ("Department"), and partner farmland conservation organizations (collectively referred to as the "Holders") has been located on whole farms that include the agricultural soils, farm and forest land and sufficient infrastructure, with most structures located in a designated farmstead complex. In 2001, Owners and Vermont utilities sought Holders' permission to lease portions of farms protected by a Grant of Development Rights and Conservation Restrictions and Right of First Refusal ("Easement") in order to install wireless telecommunications facilities on farm structures and construct accessory buildings nearby. Since Holders have concluded that the installation of wireless telecommunications facilities on farm structures may be permitted under the "right of way" and/or "future technology" paragraphs of the Easement (II(3) and II(8) respectively), VHCB has adopted these Guidelines to evaluate the impact caused thereby and condition approval.

The standard Easement used for conserved farms contains paragraphs under the section entitled "Restricted Uses of Protected Property" which generally prohibit commercial activities, which do not qualify as "farming" under Vermont law. However, paragraphs II(3) and II(8) permit Holders to give their prior written approval for "utility lines and other easements" and "future technologies", provided that they are consistent with the purposes of the Easement. The Easement also permits home occupations and accessory uses on conserved farms, usually located in the farmstead complex. These activities are permitted in Section III of the Easement "Permitted Uses of the Protected Property." So long as an Owner meets the criteria contained in these Guidelines, Holders believe that the installation of wireless telecommunications facilities on structures located in the farmstead complex may be consistent with the purposes of the Easement,

1. Consistent with the goals set forth in 10 V.S.A. §6301, the primary purpose of this Grant is to conserve productive agricultural and forestry lands in order to facilitate active and economically viable farm use of the Protected Property now and in the future.
2. The secondary purposes are to encourage sustainable management of soil resources, to conserve scenic and natural resources associated with the Protected Property, to improve the quality of life for Vermonters, and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside.

Permitting wireless telecommunications facilities on existing farm structures also furthers the State of Vermont, Division for Historic Preservation policy of encouraging the collocation of wireless antennas where technically and economically feasible in order to reduce the need for new tower construction. Collocation means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. This policy is consistent with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, Vermont Historic Preservation Act, 10 V.S.A. 701 and the Vermont Housing and Conservation Trust Fund Act, 10 V.S.A. 301-325a.

Criteria for Approval of Requests to Install Telecommunication Facilities on Farms

Requests for installation of telecommunications facilities – meaning antenna arrays and ancillary equipment and structures - on conserved farms may be approved, at the sole discretion of the Holders, under the ‘Right of Ways’ and/or ‘Future Technologies’ paragraphs of the Easement. Language permitting telecommunications facilities on conserved farms will be developed by the Holders and included in all new farm easements.

Approval may be granted when it is determined that the request meets the following criteria:

1. Review Criteria

Holders will conduct the following case by case review process for siting the first or initial request for installation of antennas on conserved farms. The following criteria must be met to Holders’ satisfaction:

- a. request is provided in writing, accompanied by photo simulations or drawings of the installation with dimensions of all structures, from carrier with either verbal or written request from owner of conserved land;
- b. copies of all required state and local permits are provided from carrier; and
- c. landowner pays staff costs for case by case review.

2. Criteria for Review of Structures

The antenna array shall:

- a. have no significant adverse public scenic impact;
- b. have no significant adverse impact on historic resources, (meaning the Holders can conclude that the installation meets the criteria contained in the State of Vermont, Agency of Commerce and Community Development document entitled “Criteria for Evaluating the Effect of Telecommunications Facilities on Historic Resources,” attached hereto as Exhibit 1);
- c. be isolated from farm operators and does not substantially interfere with farming;
- d. be located only on an existing or permitted farm structure so long as it satisfies all of criteria #1, but not on cosmetic silos or other cosmetic structures; and
- e. be consistent with the Purposes of the Grant in that no interference with farm operations or operators occurs and that new structures may not be built to support an antenna array unless the structures are working farm structures actually needed by the current farm operator.

Appurtenant equipment may be housed in a new structure that has the following characteristics:

- a. conforms to the pattern of the existing agricultural buildings;
- b. causes no damage to an historic building;
- c. is not inconsistent with the Purposes of the Grant;
- d. does not interfere with farm operations or operators;
- e. is located in the farmstead complex in a way that minimizes negative impact on future operations and expansion of agricultural activities; and
- f. does not exceed a footprint of 360 square feet and is no taller than 12 feet from undisturbed ground level to roof peak without additional review and compelling reasons for larger size.

3. **Lease Review Criteria**

The Holders will also review the proposed lease as part of the case by case review to assure that the lease:

- a. is subject to Grant and these Guidelines and so states;
- b. states that operation of antenna array and appurtenant equipment remain consistent with the Grant and if found not to be so, then carrier corrects promptly and if cannot be corrected and is significant, then lease is terminated;
- c. requires continuing compliance with criteria in #2 above;
- d. requires that at termination or expiration of lease, carrier removes all equipment, concealing structures and the equipment structure (if farmer elects not to retain that), and that any site disturbance caused in the removal process to be remedied; and
- e. indemnifies the holders from liability associated with the possible negative effects of the telecommunication facility.

4. **Multiple Arrays Criteria**

The Holders will apply these Guidelines on a case-by-case basis to review *additional* carrier requests to locate antenna array and appurtenant equipment on conserved farms with one or more arrays and equipment already approved or installed, and:

- a. Holders will inform farmers as part of the approval of the first installation that this approval does not cover subsequent installations which must go through a separate review process.
- b. Subsequent review will include an evaluation of continuing consistency with the Purposes of the Grant and the capacity for additional structures in the farmstead complex.

5. **“Private Benefit” and Tax Exempt Status**

The Vermont Land Trust sought a legal opinion whether telecommunication leases on conserved farms would jeopardize VLT’s federal tax exempt status under the “private benefit” principle. The legal question was whether lease payments by telecommunication companies for the installation of antenna arrays to owners of conserved farms would be treated as passing from VLT to the owners in violation of private benefit prohibitions for charitable organizations. In the February 2003 legal opinion, the attorney concluded that, “telecommunications leases do not cause VLT to confer a private benefit upon any third party. Lease payments may be made directly and entirely to the landowners.”

Approvals of concealed telecommunication facilities on conserved farms are also consistent with the public investment VHCB has made to support agriculture and Vermont's working landscape because:

the approvals are conditioned in a way that restricts any negative impact on the farm operation, historic structures, or aesthetic values;

lease payments facilitate active and economically viable farm use of the Protected Property now and in the future, a primary purpose of the conservation easement; and,

cell phone communication is considered a 'utility' by the Vermont Public Service Board and by permitting expanded cell phone coverage, the approvals provide a general benefit for Vermonters.

approved facilities meets the criteria contained in the State of Vermont, Agency of Commerce and Community Development document entitled "Criteria for Evaluating the Effect of Telecommunications Facilities on Historic Resources."

6. New Farm Project Criteria

The Holders will conduct a case by case review of farms or other property where antenna arrays (both concealed and unconcealed) are already installed, or a lease request is under consideration, prior to the closing on an easement purchase. This review will include the process outlined above, and a consideration of what impact, if any, the reservation of antenna array rights has on the appraised value of the conservation easement.