

Vermont Housing and Conservation Board
POLICY POSITION
PUBLIC ACCESS ON AGRICULTURAL LAND

The Vermont Housing and Conservation Board supports a vital and sustainable agriculture in Vermont. Vermont's agriculture contributes more than \$500 million in farm receipts a year to the state's economy, and ranks third behind manufacturing and tourism. The importance of agriculture to the State of Vermont goes far beyond the dollars brought into the state from the sale of agricultural products. These dollars further stimulate the economy through the secondary businesses such as feed and equipment dealers and veterinarians which are supported through agriculture. Many of Vermont's rural areas are based on an agricultural economy and therefore the economic and social health of those communities are dependent on a strong agricultural economy.

In addition to the direct economic benefits of Vermont's agriculture there are a variety of secondary economic benefits related to Vermont's agricultural land base. The tourist industry in Vermont provides more than 32,200 jobs and annually brings \$1.3 billion into the state. The scenic beauty of Vermont's landscape, which plays a large role in attracting tourists, is in a large part due to the agricultural use of the land. VHCB preserves farmland by awarding grants to eligible applicants (non-profit conservation organizations, municipalities, and qualified state agencies) for the purchase of development rights. As noted in VHCB policies on Conservation of Agricultural Land (4/96) and Public Outdoor Recreation (7/88), preserved farmland provides an opportunity to protect important trails or areas for recreational activities which are consistent with the commercial use of the farm.

I. Policy

VHCB encourages eligible applicants to obtain from owners of farmland voluntary agreements to include in conservation projects provisions for meaningful public access of perpetual duration. Such public access may include trails for pedestrian access to, on or along rivers or bodies of water, walking, hiking or ski trails and important features of the landscape on or near the farm. Such public access may also include, in appropriate circumstances, other public uses, including, but not limited to, cycling (and other mechanized, non-motorized uses), camping, horseback riding and snowmobiling. Meaningful public access shall, for statewide and local farms, enhance their competitiveness and may, for local farms, demonstrate the multiple conservation purposes required by VHCB policy.

Public access provisions may be included in the farmland conservation easement or in a separate public access easement, provided that access allowed by such provisions does not materially and significantly interfere with reasonable agricultural or forestry practices on the protected property. However, VHCB expects applicants to find creative ways to include meaningful public access without impairing farm or forestry operations or damaging the natural resources.

II. Review of Public Access on Farm Projects

In evaluating public access on statewide and local farms, VHCB will ask whether:

- access is meaningful and provides significant public benefit;
- access is protected by an appropriate legal interest;
- legal interest is included in the farm easement (short form) or separate public access easement, as approved by VHCB;
- easement will be held by VHCB and applicant, access manager or other appropriate public or nonprofit entity;
- applicant specifies the nature, extent and location of access and need for access manager;
- a manager will assume management, maintenance and control of trail or public use;
- applicant shows how potential conflicts between public access and farm use will be avoided or resolved

Applicants should also consult “Guidelines for Project Staff - Public Access on Farmland” to be finalized by VHCB based on a draft developed by the Public Access Work Group. These Guidelines will assist project staff evaluate different types of public access, discuss options with landowners and decide whether to incorporate public access into farm projects.

III. Legal Documents for Public Access on Farm Projects

Where public access is proposed for farm projects, the applicant shall include as part of the VHCB application process proposed language that protects such access in perpetuity. Whether access is included as part of the conservation easement (short form) or included in a separate public access easement, the legal document shall be reviewed and approved by VHCB and based on model documents developed by the Legal Work Group.

Notwithstanding the type of legal document that contains the public access provision, the applicant shall address the following legal issues:

- The location of the access corridor or larger area to which recreational access will be permitted, or a process by which location will be fixed in the future..

- Public recreational uses to be permitted, especially addressing whether mechanized, motorized and equestrian access will be permitted.

- With regard to trails, Holders’ rights to establish and maintain the trail system, and to erect signs, fencing and barriers.

- Uses of the access corridor or area retained by the landowner as a matter of right or subject to conditions.

- The identity of the public access manager or, if not yet identified, the process which such manager will be designated.

- The Holders’ responsibilities with regard to managing public access and the landowner’s right to suspend public access for a failure to so manage.

Liability protection for the landowner.

Non-judicial resolution of public access disputes between Holders and the landowner.

Where public access is proposed for farm projects, the applicant may include as part of the VHCB application process proposed easement language that protects such access in perpetuity. Where public access consists of trails that are, or will be, part of a regional trail system or lead to a popular landmark of regional or statewide significance, applicants shall make every reasonable effort to locate an appropriate access manager (the entity or organization that will be responsible for maintenance, management and liability for the public's use of the footpath), and are encouraged to use a separate public access easement.

Where public access consists of a footpath to a river, swimming hole, cemetery, scenic vista, school or other landmark of local significance and it is unlikely that the parties will improve, construct, manage, and maintain the footpaths for public recreational use or notify the landowner of an access manager applicants may include public access provisions as a section of the farmland conservation easement.

IV. Valuation of Public Access on Farm Projects

In determining the price of purchasing development rights and conservation restrictions on farms, applicants shall not exceed the value determined by an appraisal acceptable to VHCB staff. Where deeded public access is proposed, such appraisal shall take such access into account in setting fair market value in accordance with all VHCB policies and procedures for appraisals of interests in farmland.

V. Mandatory Public Access on Farm Projects

Except in extraordinary situations, VHCB will not require an applicant to include public access provisions in a farm project, but, as with other conservation values, the presence of meaningful public access on the property or on adjacent lands will enhance the competitiveness of the project. For purposes of this policy, “meaningful” relates to both feasibility and level of use. Examples of extraordinary situations where VHCB may condition its grant on the requirement that a landowner agree to perpetual, deed-restricted public access, include the following:

access to a trail system of importance to the State of Vermont or the northeastern U.S.; or

access to archeological sites of multi-state or national significance as defined in the VHCB Interim Archeological Policy; or

access to a natural resource of statewide, regional or national importance; and
access over the farm is the only reasonable choice for the foreseeable future.

However, any public access required as a condition of a VHCB grant shall be limited to pedestrian access and shall, in all other respects, comply with this policy.

VI. Promotion of Public Access on Farm Projects by VHCB

Except for public access where the State of Vermont, a municipality or a public or private entity has agreed to manage and maintain public access on particular properties, VHCB staff shall not promote or publicize in any way public access of farms where VHCB holds or co-holds grants of development rights and conservation restrictions, provided that VHCB will disclose the presence of deeded public access on VHCB-funded projects if requested to do so.

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