

Vermont Housing and Conservation Board
GUIDELINES for RURAL ENTERPRISES on CONSERVED FARMLAND

I. INTRODUCTION

Rural Enterprises are a traditional way of life in Vermont and an element of the working landscape that VHCB and its conservation partners support. With the changing farm economy and technology new uses are appearing. Many of these uses have no effect on the agricultural, forestry or scenic resources conserved. Allowing these other uses helps extended families remain together on the farm and contributes to the overall success of agriculture even though the other uses are unrelated to farming.

Rural enterprises take many forms. There are three general categories of rural enterprises that are not considered to be agriculture and silviculture. Agricultural and silvicultural uses and structures are permitted under the conservation easement. Examples are mills, kilns, slaughterhouses and yogurt processing.

The three categories of rural enterprises that are *not* agriculture or silviculture are

- (1) Uses and structures related to agriculture, silviculture or open spaces such as agri-tourism, sales of forestry equipment or cross-country ski touring.
- (2) Processing or sales facilities that fall beneath the 51% threshold to be within the definition of agriculture or silviculture, for example a yogurt processing facility where originally 51% of what was processed came from the conserved farm now serves as the county yogurt processing facility and only 32% of what is processed comes from the conserved farm.
- (3) All other commercial activities unrelated to agriculture or silviculture.

While all 3 of these categories fall within these guidelines, we will be applying the guidelines lighter or heavier depending on how removed the activity is from agriculture and silviculture and depending on the scale of the activity. For uses related to agriculture, silviculture or open spaces, the guidelines will be applied lightly. For uses that could be considered agriculture or silviculture the guidelines will be applied moderately, requiring primarily that the facility is located in a designated complex. The full extent of the guidelines will be applied to all other commercial uses.

The values we use to determine consistency with the purposes for which the farm was conserved and the effect of the proposed rural enterprise on these purposes are as follows:

- (a) We want to preserve the agricultural and forestry use of conserved farms and buildings.
- (b) If farmers need non-farming income to supplement the primary farming enterprise, then we want to allow that to happen within some reasonable limits.
- (c) We support a diversity of agricultural enterprises, including value-added processing.
- (d) If additional on-farm income through the use of vacant farm buildings for rural enterprises helps support the farm activity, then we want to allow that to happen within some reasonable limits.
- (e) Rural enterprises must be conducted within limits and at a scale that preserves the land and buildings for future agricultural and forestry uses. The core enterprise on the conserved farm

must be an agricultural or forestry enterprise. The agricultural or forestry enterprise cannot be secondary or incidental to the rural enterprises. We expect, therefore, that all rural enterprises will be subordinate to agricultural and forestry activities, in direct proportion to the extent of the agricultural or forestry activity.

The reasons for allowing rural enterprises on conserved farms are to:

- (a) Enhance economically viable agricultural, forestry and resource-neutral commercial uses of the conserved farm in ways and at a scale that does not detract from the purposes for which the farm was conserved and which enable the owner or operator of a conserved farm to supplement their agricultural or forestry income; and
- (b) Support educational, recreational, and open space uses of the conserved farm that are not inconsistent with the purposes for which the farm was conserved.

Using the guidelines below, decisions may vary from farm to farm based upon the nature of the resource conserved, the purposes of the Grant and the potential impact of the proposed enterprise.

II. RURAL ENTERPRISES

As used below, Holders means VHCB and its conservation partners co-holding any particular Grant of Development Rights, Conservation Restrictions, Right of First Refusal and Contingent Right of the United States (as the Grant is titled as of the date of this policy) and is referred to in these Guidelines as the Grant. This policy applies to all co-held conservation easements regardless of whether the new clause is present in the legal document. This policy would not be applied to natural areas for example where commercial uses are not appropriate for the resource conserved.

- A. Holders are more likely to approve a rural enterprise if it is¹:
- (1) Confined within the farmstead or other designated complex if the rural enterprise requires a structure;
 - (2) Related to agriculture, forestry or open spaces or is located entirely within a residence also occupied by the farm owners, family, employees or tenants;
 - (3) Consistent with the NRCS Progressive Conservation Plan and does not significantly impact primary agricultural soils;
 - (4) Conducted primarily by persons who reside on the farm or members of the farm family or farm employees; and
 - (5) Not inconsistent with the Purposes of the Grant as stated in Section I of that Grant and is subordinate to the farm operation. Subordination is based on the proportion of land and structures employed by the rural enterprise to those employed directly in the agricultural or forestry enterprise as well as the amount of time and resources the farmer diverts from the agricultural or forestry operation to the rural enterprise. No decline in farming or forestry should result from the conduct of a rural enterprise.

Holders may approve other rural enterprises unrelated to agriculture, forestry or open spaces provided that the rural enterprise is confined within the farmstead or other designated complex

¹ The purpose of this clause is to provide appropriate limits to expansion of commercial activities so that they do not overwhelm the agricultural or forestry activities.

and is not inconsistent with the Purposes of the Grant. The farm owner may permit someone other than the farm owner, farm residents or farm family to conduct a rural enterprise on the conserved farm provided that the lease is reviewed and approved by Holders and that the use and any structures comply with these guidelines and are also approved by Holders.

Rural enterprises conducted by third party lessees will be scrutinized more closely and may be conditioned more stringently than those operated by the farm owner, employees or family for several reasons. These include the high value placed by the holders on owner-operated farm enterprises, that the holders do not have an existing relationship with the lessee, that a lessee may not be as familiar with the Grant and its restrictions as the landowner, and that a lessee's motivations and goals with respect the enterprise may differ from that of an owner-operator.

B. Holders may condition the approval of any rural enterprise so that it is consistent with the Purposes of the Grant. Typical conditions are the following but others may be imposed as necessary:

- (1) Owners shall comply with all applicable local, state and federal ordinances, statutes and regulations and provide copies of all necessary permits to holders.
- (2) The approval may (a) be granted for a limited time; and (b) automatically terminate upon the sale of the conserved farm unless renewed in writing by the Holders.
- (3) If the use becomes inconsistent with the Grant or in the event of non-compliance with any applicable laws or regulations or non-compliance with any conditions of the approval, then Holders may decide it is necessary to withdraw their approval of the use in order to preserve the Purposes of the Grant. In that event, the rural enterprise shall cease to be operated on the farm after a reasonable period of notice not to exceed six months.²

C. Holders may approve a new structure for an approved rural enterprise if an existing structure is not suitable and the new structure is:

- (1) located within the Farmstead Complex.
- (2) fewer than 1500 square feet as an exterior measure of the footprint and no more than 25 feet from the lowest undisturbed ground level to the roof peak.
- (3) inclusive of all storage space so that no part of the business is conducted outside of the structure.
- (4) of a nature, intensity, scope, size, appearance; type and quantity conforming to the existing agricultural structures.
- (5) located in a way that minimizes negative impact on future operations and expansion of agricultural uses, does not interfere with current agricultural operations and does not displace farm or forestry storage, use, or functions.
- (6) not excessively more valuable than existing structures, that would make the subsequent sale of the farm to a bona fide farmer unlikely.
- (7) not interfering with future agricultural activities by consuming all remaining space within the Farmstead Complex or requiring that an agricultural structure be located outside the Farmstead Complex;
- (8) accompanied by a written narrative detailing the use and the new structure;

² A few staff have expressed concern that there is not enough protection for farmers investing in rural enterprises so they can rely on an approval and not worry that the holder will revoke it. We have struck a balance between security for the farmer and preserving the purposes of the conservation easement. In the event that the co-holders do terminate the approval, there is a notice period to allow the farmer time to make other arrangements.

- (9) consistent with the NRCS Progressive Conservation Plan and does not significantly impact primary agricultural soils;

D. Rural Enterprises may be permitted in vacant farm structures. Rural Enterprises that require the use and/or renovation of existing structures may be approved by Holders and the change to the existing structure approved if both the use and the structure are:

- (1) limited to structures, or sections of structures, not currently used as a component of the principal agricultural or forestry operation. Farm or forestry storage, use, or functions cannot be displaced to make room for rural enterprises. The proposed use must be accompanied by a plan for operating the business without interfering with agriculture or any other of the Purposes of the Grant,
- (2) not valued so greatly that the renovated structure would make the subsequent sale of the farm to a bona fide farmer unlikely;
- (3) not interfering with the farm operation or operators and must be located and managed in a way that minimizes negative impact on future operations and expansion of agricultural uses and remains subordinate to the core agricultural enterprise;
- (4) upon completion of rehabilitation or restoration, are not causing substantial, negative impact on a building or farmstead complex of outstanding historic significance;
- (5) accompanied by a written narrative detailing the use and the new structure and on how both the use and structure comply with these guidelines.

E. Holders may permit parking for rural enterprises. Holders may review, in their sole discretion, the size, nature and location of parking areas, drives, and utilities, associated with the any structure for rural enterprises. Parking may be approved at a scale consistent with the use.

F. Holders are unlikely to approve structures inconsistent with the Purposes of the Grant such as:

- (1) Any permanent residential structure that is not otherwise permitted in the Grant; and
- (2) Any structure, which by its number, nature, intensity, scope, size or appearance; type or quantity of vehicular traffic, noise or pollution generated; or other related factors would be inconsistent with the Purposes of the Grant.
- (3) Any structure that would displace or be likely to displace an agricultural or forestry structure.

G. Consistent with VHCB's guidelines regarding the size of Farmstead Complexes, where any farmstead or other complex has fewer acres than the guideline of 6% of the tillable and pasture land (in the aggregate for that particular farm), then that complex may be expanded to allow for additional agricultural or forestry structures.

III. AGRICULTURAL AND FORESTRY USES NOT REQUIRING APPROVAL

The on-site storage, preparation and sale of agricultural or forestry products principally produced on the conserved farm (that is, 51 percent or more of the agricultural or forestry product being processed is produced on the conserved farm) will be considered a permitted agricultural use under the Grant which does not require the written approval of the Holders. Normally, the determination of what is 51% is based on a visual inspection appropriate to the activity undertaken together with verbal confirmation with the farmer that the activity is within the definition of agriculture and need not be specifically quantified. The holders use the current State of Vermont definition of agriculture³ and holders' internal guidelines; however, future changes to the State of Vermont definition of agriculture are subject to review by the holders. If 51 percent or more of the agricultural or forestry product being processed is brought to the conserved farm from elsewhere, then those activities can be approved as rural enterprises. This requires the written approval of the holders.

IV. RECREATIONAL USES NOT REQUIRING APPROVAL

The standard Grant provides that conserved farms “shall be used for agricultural, forestry, educational, non-commercial recreation, and open space purposes only” and include the right “to clear, construct, and maintain trails for non-commercial walking, horseback riding, and other non-motorized, non-commercial recreational uses” with snowmobiling an exception that may be permitted at the discretion of the owner. Improvements directly associated with the construction of trails such as steps, waterbars, puncheon, bridges and signs will be considered a permitted use under the Grant, which does not require the written approval of the holders. Recreational uses that involve the charging of a fee are permissible only as rural enterprises and require approval of Holders.

V. EDUCATIONAL USES NOT REQUIRING APPROVAL

Educational uses of existing trails and structures for the purpose of explaining and interpreting the agricultural, forestry, natural, cultural, and historical environment of the conserved farm and surrounding area, but which are non-commercial and non-residential in nature, will be considered a permitted use under the Grant which does not require the written approval of Holders. Educational uses that involve the charging of a fee for the use are permissible only as rural enterprises and require approval of Holders.

³ Under 10 VSA §6001, “farming” means:

- (A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or
- (B) the raising, feeding or management of livestock, poultry, equines, fish or bees; or
- (C) the operation of greenhouses; or
- (D) the production of maple syrup; or
- (E) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or
- (F) the on-site production of fuel or power from agricultural products or wastes produced on the farm.

See also Vermont Agency of Agriculture, Food and Markets, ACCEPTED AGRICULTURAL PRACTICE REGULATIONS (June 29, 1995), Section 2.06, Definitions.

VI. MINOR STRUCTURES

Commercial or recreational structures anywhere on the conserved farm of fewer than 400 square feet and without any plumbing or utilities may be permitted with the approval of the Holders, but without the submission of plans or narratives if waived by the Holders. No such structure shall be located or constructed in a manner so as to be inconsistent with the Purposes of the Grant. Examples of minor structures are tent platforms, adirondack shelters, warming huts, gazeboes, boardwalks and hunting stands.

VII CONCLUSION

These Guidelines shall be effective immediately, provided that the USDA Natural Resources Conservation Service and the Office of General Counsel approve a new paragraph that the Holders have developed for farmland conservation easements regarding rural enterprises on conserved farms.