

Vermont Housing and Conservation Board
GUIDELINES
SUBDIVISION OF CONSERVED FARMS

Since the inception of Vermont's Farmland Conservation Program in 1987, farmland conserved by the Vermont Department of Agriculture, Food and Markets, the Vermont Housing and Conservation Board, and partner organizations (collectively referred to as the "Holders") has been conserved in "viable farm units" that include the land area, agricultural soils, and infrastructure sufficient to support an independent agricultural operation standing alone.

POLICY

The standard Grant of Development Rights and Conservation Restrictions (the "Grant") used to conserve farms contains a paragraph under the section entitled "Restricted Uses of Protected Property" which states, that "The protected property shall not be subdivided or conveyed in separate parcels without the prior written permission of the Holders." Requests for subdivision of conserved farms under this paragraph may be approved, at the sole discretion of the Holders, when it is determined that:

- The requested subdivision is consistent with the stated purposes of the conservation restrictions, under the section entitled "Purposes of the Grant";
- The principal farmland, after the subdivision, can stand alone as a viable farm unit or units, or will be conveyed into the ownership of another conserved farm unit or conserved Farmstead Complex;
- The seller will receive no significant private benefit as a result of the subdivision, or any benefit as determined by an appraiser will be paid to the Holders for farmland conservation, with the amount paid to each Holder based on the pro-rata financial contribution to the easement purchase price;*
- The staff costs of reviewing the requested subdivision and preparing legal documents, as well as recording fees and other costs, will be paid by the seller as extraordinary costs under Paragraph 1 of the section of the Grant entitled "Miscellaneous Provisions," unless waived by the Holders;
- The requested subdivision will not significantly increase long-term monitoring and stewardship costs, or a payment to cover those costs will be made to the Stewardship Endowment Fund; and
- The subdivision complies with a Memorandum of Understanding between the United States of America Rural Development and the Holders dated June 4, 1998, and other similar agreements approved by all the Holders.

[*VHCB has a signed "Agreement on Easement Extinguishment Proceeds" with all Holders of conservation easements on farmland which contains the method that we will use to determine the amount actually paid to each Holder.]

The Holders may approve requests for subdivision under one or more of the following categories as applicable:

I. Subdivisions for Transportation Projects and Boundary Adjustments

Requests for subdivisions as necessary for public highway and bridge improvements, boundary adjustments and boundary dispute settlements, and other subdivisions of a similar nature may be permitted under the following conditions:

- A. The subdivided land contains no prime or tillable soils; or
- B. The loss of the subdivided land will not significantly impact or reduce the economic viability of the conserved farm; and (See also Section VII. Requirements)

II. Subdivisions to Use Conserved Land to Bring a Building Lot into Compliance with Local or State Regulations

Requests for subdivisions to add land to a lot that is not in compliance with local ordinances or state subdivision rules may be permitted under the following conditions:

- A. Landowner must demonstrate that the new lot is the only feasible alternative; specifically:
 - 1. Landowner must provide proof that the existing lot does not qualify for a homestead exemption under the state subdivision regulations; and
 - 2. Landowner must provide an opinion from a qualified consultant that the soils in the existing lot do not qualify for a subdivision of less than 10 acres. (A letter from a Certified Site Technician or a Registered Professional Engineer will be sufficient.)

AND either B(1) or B(2) must be true:

- B.
 - 1. Prior to closing on the sale of development rights, the lot was owned by the owner who sold development rights; and prior to closing, the Holders agreed to exclude the lot from the easement or to grant the owner a reserved right to subdivide the lot; and the clear intent of the Holders at the time of closing was to allow the lot to be a subdivided, conveyed and separated from the conserved property; or
 - 2. The land to be subdivided from the Protected Property contains no prime or tillable statewide soils; (See also Section VII. Requirements)

The Holders may waive any of the conditions in this Section II in unusual circumstances, including, but not limited to, where the subdivision would further one of VHCB's non-agricultural missions, such as affordable housing or historic preservation; or where subdivision would improve the economic viability of the conserved farm or an adjacent conserved farm.

III . Subdivisions of Individual Structures

Requests for subdivision of an existing individual house or structure, within or outside a Farmstead Complex, may be permitted under the following conditions:

- A. The parcel being created shall be no larger than two (2) acres. If zoning or state subdivision regulations require more than two acres, the two-acre maximum may be waived by the Holders provided that the need for a larger parcel has been demonstrated to the Holders' satisfaction; and
- B. Sufficient infrastructure, including residences or residential rights and farm buildings, and sufficient land, including prime and statewide soils, remain with the conserved farm such that it can stand as a viable farm unit; and
- C. As determined by the Holders, the potential future ownership of the parcel by an individual or entity not associated with the farm operation does not conflict with the continued economic viability of the conserved farm, especially as related to the location of the parcel; and
- D. The restrictions on the subdivided individual house or structure are evaluated to determine whether those restrictions should be retained, or extinguished by one or more Holders. (See also Section VII. Requirements)

III. Subdivisions Separating Farmland from Farm Infrastructure

Requests for subdivisions that involve separating the primary portion of the agricultural soils from the farm infrastructure (the farm infrastructure being the Farmstead Complex or the Farmstead Complex with some additional minor portion of the property) may be permitted under the following conditions:

- A. The farmland which is subdivided from the farm infrastructure will be conveyed into the ownership of another conserved farm unit or conserved Farmstead Complex; and
- B. The restrictions on the subdivided farm infrastructure are evaluated to determine whether those restrictions should be extinguished by all Holders or retained by one or more Holders. (See also Section VII. Requirements)

IV. Subdivisions Separating Non-Farmland from Farmland.

Requests for subdivision that involve separating natural, forested, scenic, recreation and other non-farmland from the farm operation may be permitted under the following conditions:

- A. The subdivided land contains no prime or tillable soils and is not agriculturally or economically contributing to the conserved farm operation; and
- B. The subdivided land would be equally well or better managed if not part of the conserved farm operation, or the viability of the conserved farm would be enhanced without the burden of taxes and maintenance on the subdivided land. (See also Section VII. Requirements)

VI. Subdivisions Separating Farmland from Farmland (Primary Agricultural Soils).
Requests for subdivision that involve separating primary agricultural soils into two or more parcels where each parcel contains significant agricultural soils, may be permitted if the resulting parcels can stand alone as an economically viable farm unit, or will be conveyed into the ownership of another conserved farm unit or conserved Farmstead Complex. (See also Section VII. Requirements)

VII. Miscellaneous - Appraisals, Proceeds of Sale, Transaction Costs and Stewardship.

In all subdivision requests considered under these Guidelines, the Holders:

- A. Will require an appraisal of the property, at the seller's expense and by an appraiser approved by the Holders, to determine the private benefit (if any) that the seller might receive as a result of the subdivision and release of conservation restrictions (if any) and the amount paid to the Holders for farmland conservation. VHCB will likely waive the requirement for appraisal and compensation for subdivisions where:
- The potential for diversified agriculture use of the property is greater or equal to that under the original configuration;
 - Each resulting parcel is of a sufficient size, quality and configuration to support continued agricultural use of the property now and in the future;
 - Each resulting parcel has a reasonable plan for active and viable agricultural use; and
 - No other change to the farm configuration is necessary for the conveyance.
- B. Will be paid a portion of the proceeds from sale of the subdivided land in accordance with the formula contained in the eminent domain paragraph of the Grant. The amount paid to each Holder shall be based on the pro-rata financial contribution to the easement purchase price. The Holders may waive payment where private benefit is minimal, incidental to a public benefit, or not a factor;
- C. May require the landowner to pay extraordinary costs associated with Holder subdivision approvals and easement amendments;
- D. May require the landowner to make a financial contribution to the stewardship endowment fund to cover the increased stewardship expenses from a subdivided lot which remains encumbered by the conservation easement, including an update to the Baseline Documentation Report; and
- E. May require landowners to meet with the primary stewardship partner who is ready, willing and able to educate the parties as to the conservation restrictions on their newly configured property.