

Access can be one of the single most significant challenges for towns looking to promote recreation and use in town forests. The following is a summary of strategies that may be employed by towns to enhance access to their municipal lands, create new trail connections, or improve recreational access across private lands. When looking to improve or create access to a town forest, the town should start by reaching out to all adjacent property owners for access opportunities, preferably before the acquisition. The town should also research potential historical and legal access that may not currently be in use. The town or past owners may not be aware of existing access rights.

For broader trail connections across private lands, land access conversations should be open, light, positive, and informal at the beginning. Still, it is good to be prepared and informed, and be able to answer questions and address concerns the private landowner may have. As the Vermont Trails and Greenways Council Trails Manual (2005) explains,

“It is only through the willingness or generosity of landowners that a trail idea can become a reality. Many landowners may be apprehensive about the idea of a trail or recreation paths on their property, and how it might impact their property value, liability, safety, and privacy. They may be concerned about how enforcement or maintenance will be accomplished. These are all valid concerns, and you will need to eventually address them satisfactorily. However, it is not necessary to have answers to all of these concerns right at the beginning. Use your discussions with landowners and the public to solicit ideas, or come up with alternatives as the trail project moves forward.”

As you engage landowners in access conversations, it is helpful to understand the many different pathways to allow access (easements, land acquisition, etc. – see full list below), to find a suitable option for the landowner. It may be helpful to have handouts or electronic resources that you can give to or send landowners should they seem interested. This gives landowners a reference for when you are not present and is a good opportunity to stay in contact with landowners.

Access or Trail Easement

Where trails and potential access points cross privately owned lands, an access or trail easement may establish public ingress and egress to the town forest or the ability to cross the land with a public trail. As described by the VT Trails and Greenways Council, an access easement is a “permanent right-of-way, usually a long, narrow strip of land through which a trail is maintained, and the public may pass” through to get to a destination. Like other easements, the land ownership would not change, however the right to access the land, possibly along with other rights, would be conveyed to the town or a qualified entity such as a trail group or land trust. Depending on the

structure of the agreement, the parties involved, and the situation, it is often useful to define the specific rights granted through an access or trail easement. Rights such as maintenance, allowed uses and closures are often important to consider and include. The specific location and configuration of the easement should also be carefully described or depicted. The easement deed itself should be recorded in the town's land records once executed. This agreement can occur via gift or purchase and could convey the landowner certain tax benefits.

Land Acquisition via Donation or Purchase

Acquiring access across private land may necessitate the outright purchase of the entire or a portion of the property in fee. This can be a costly alternative; however, it would provide a permanent means of access to the lands to be utilized as the town desires. This option would require the town to work with a willing landowner who is open to, or considering the sale of his or her property, in whole or in part. Securing the right of first refusal on a particular property is one suitable strategy to hold an interest in private property if a privately owned parcel has been identified as a priority for acquisition, but the town or the landowner is not ready to initiate the transfer, as the landowner is then required to offer the sale to the town first if he or she decides to sell the property. A right of first refusal can also be tied to specific stipulations and requirements, such as an appraised value if the town and landowner are interested in doing so. In pure happenstance, a landowner may put a property up for sale that meets the access needs. In these instances, towns should be prepared to move quickly and organize the necessary funds or resources to acquire the land before it is sold to other entities. In this situation, it is often advisable to engage the landowner or realtor, and pursue the execution of a Purchase and Sale Agreement, which commits the sale of the land to the town and give the town time to raise the necessary funds. Working with the Vermont Agency of Natural Resources, Vermont Housing and Conservation Board, The Trust for Public Land, the Vermont Land Trust, and other local land trusts has been a successful way to raise funds quickly in the past.

In addition, Vermont municipalities can create a conservation fund, under 10 VSA Chapter 155. The purpose of a conservation fund is to conserve land and waters for agricultural, forest, wildlife, scenic, recreational, or natural area use. Uses of the fund may include but are not limited to purchase or assistance in the purchase of rights of first refusal, options to purchase, long term leases, conservation restrictions and land in fee. Keeping a well-financed town conservation fund can be incredibly helpful in these circumstances.

Private landowners gift land to towns on occasion. Many of these land grants are the origin of town forests throughout the state. For this reason, towns should keep access points to their town forests and other desired properties in mind and maintain an open line of communication with private

landowners who may be able to contribute to town land use planning goals. Private land may consider placing a conservation easement on the property. The donation of the full or partial value of land in fee or of a conservation easement can qualify as a tax-deductible gift. When conservation easements are considered, donated, or pursued, towns should work with a qualified land trust to conserve the land and draft easement language that meets the access needs of the town, as specific access or public access can often be secured through the easement process. See the Land Conservation Guidance for more information on conservation easements.

Informal “Handshake” Access Agreements

This form of access agreement is suitable when a more formal legal agreement, such as an easement or purchase in fee, is not feasible or is not supported by the town or the property owner. Working with the property owner whose land must be crossed, the municipality, trail group or land trust could enter a verbal agreement as to the terms of public access across the property. This agreement could also take the form of a simple letter or memorandum of understanding from the landowner or between the landowner and the town, agreeing to terms for the public to cross their private land. This is the least permanent form of access agreements, would not be recorded in the town’s land records, and would likely not be legally binding, which means that the property owner likely reserves the right to deny trail access at any point and for any reason. Handshake deals can often be easier for landowners to agree to, especially at first, and can often lead to more formalized access agreements after trail use and management is satisfactory to the landowner. In addition to and as a result of the lack of permanence in the agreement, trails whose access depends on “handshake” deals are often not eligible for many grant programs and may be lost if a landowner changes his or her mind or sells the land. Towns should try to formalize handshake agreements whenever possible

Boundary Line Adjustment or Agreement

A Boundary Line Adjustment (BLA) is the process used to change property lines of existing parcels, altering their shape or size, but not creating a new number of parcels. Requirements for BLAs vary from town to town; town requirements should be researched and confirmed. Generally, a BLA requires a property to be surveyed by a Vermont licensed land surveyor. Copies of the survey would then be submitted to a specified reviewer or the Development Review Board with an attached application to adjust the parcel’s boundary line. The resulting lots would need to satisfy the districts’ zoning laws where evident and conform with other state and municipal land use requirements. Upon the completion of the boundary line adjustment, the survey and executed boundary line adjustment deed generally are recorded in the townland records. While adjustments may require a permit and an application to complete the process, some projects can apply for an

exception by submitting a boundary line exemption form. This access strategy is useful for towns who need only to extend their ownership slightly, to allow a corridor for public access to town forest lands, or to resolve disputes about land ownership and historical access patterns. Surveys and BLAs are generally costly and timely, however, they have proven successful in Vermont.

Leases and Licenses

For accesses that require crossing private property, a lease or license may be a suitable strategy. Necessary land for trail access can be leased from the property owner for a specified period. This strategy should be offered to landowners who are not interested in selling the land, or entering a permanent agreement, but maybe open to trying something out temporarily, having an option to terminate the agreement, or receiving some monetary compensation in exchange. This agreement would be documented in a contract lease agreement, providing the general public to use said parcel. This option can be limiting in many ways such as conducting trail maintenance or infrastructure upgrades, or these can be agreed to through the contract. If the town intended to do so, it would need to include that in the lease agreement. License agreements have been utilized by Vermont Association of Snow Travelers (VAST) by organizing agreements with landowners and documenting their use rights. A license is similar to an easement; however it is considered a terminable right, i.e. the access agreement is temporary. As described by the VT Trails and Greenways Council, license agreements usually “include the location of the trail, types of use, hours of use, or other conditions that the landowner would like to see.”

For More Information

VT Department of Forests, Parks and Recreation

Lands Administration and Recreation

1 National Life Dr, Davis 2

Montpelier, VT 05620

(802) 793-3432

https://fpr.vermont.gov/state_lands/acquisition

Vermont Land Trust

8 Bailey Avenue

Montpelier, VT 05602

(802) 223-5234

www.vlt.org

Vermont Housing and Conservation Board

58 East State Street

Montpelier, VT 05602

www.vhcb.org/our-programs/conservation

Trust for Public Land- Vermont

3 Shipman Place

Montpelier, Vermont 05602

Phone:

(802) 223-1373

www.tpl.org/our-work/vermont