

Vermont Housing and Conservation Board
POLICY
FUNDING CONSERVATION OF AGRICULTURAL LAND

Goal

It is the intent of the State of Vermont to perpetually protect and preserve agricultural lands, encourage sound soil management practices in accordance with generally accepted agricultural practices, preserve natural resources, maintain land in active agricultural use and make reasonable efforts to assure that conserved farmland is accessible and affordable to future generations of farmers. To accomplish this goal, and to promote a strong agricultural economy, VHCB will give priority to farmland conservation projects in strong farming communities, support agricultural innovation and diversification, and encourage projects that facilitate intergenerational transfers.

VHCB FARMLAND CONSERVATION ACTIVITIES

The Vermont Housing and Conservation Board preserves farmland by:

1. Awarding grants to eligible applicants (non-profit conservation organizations, municipalities, and qualified state agencies) for the purchase of development rights;
2. Building the capacity of eligible applicants to do farmland conservation projects through capacity grants, and payment of costs associated with projects;
3. Providing loans to eligible applicants for farmland acquisition or protection.

The Board will fund a variety of preservation methods including, but not limited to, conservation easements, purchases, direct non-profit ownership with a lease, or resale, to the farmers, and land swaps, as long as the result is the perpetual conservation and protection of agricultural land.

The primary farmland preservation activity of the Board is funding the purchase of development rights and placement of conservation restrictions on farmland. The conservation easement ensures that the land will not be developed, while providing for uses compatible with farming.

PROJECT SELECTION AND CONFIGURATION

Minimum eligibility criteria for statewide farm projects:

In order to qualify for VHCB agricultural funds, the land to be conserved must meet the following criteria:

1. The farm or farmland must generally contain at least 50% prime and/or statewide soils, and be actively farmed for income-producing purposes, or have a sound plan for getting into operation. The property:
 - a. must be a viable farm unit, or
 - b. must be an addition to a conserved farm which adjoins, or is in close proximity to, the property, or,
 - c. if farmland without associated infrastructure, must rank high enough in terms of soil resource, location, and management, as to indicate long-term, continued, active agricultural use.
2. The project must conform to adopted regional and/or municipal plans.
3. The sale price of the development rights must not exceed the value as determined by an appraisal acceptable to VHCB staff.
4. The request to the Board shall not exceed Three Thousand Five Hundred Dollars (\$3,500) per acre for the development rights value on farmland unless there is substantial leverage or the project qualifies as an exceptional resource, as defined below, and Five Hundred Thousand Dollars (\$500,000) per project unless the farm is an Outstanding Statewide Agricultural Resource as defined below. The VHCB limits are not financial caps for the project (See Appendix II on VHCB per acre and per project caps for more information.)

The per acre funding caps also apply to Locally Important farms. Except for the per project cap criteria in #4 above, this policy applies to all statewide and local farm projects. Locally Important farms must meet minimum eligibility criteria 1–3 above and comply with VHCB policy on Local Conservation Projects and per acre caps.

Projects meeting these minimum criteria will be reviewed by a Board Committee advised by an Agricultural Advisory Committee based on the priorities listed below.

SELECTION CRITERIA FOR STATEWIDE AND LOCALLY IMPORTANT FARM PROJECTS (listed in order of importance)

Primary Considerations:

1. Land Resource:

- a. Soils: Generally, all farm conservation projects will have at least 50% prime and/or statewide soils.
- b. Farmability: consideration will be given to the configuration and ease of farming the land, including access, drainage, topography, location of excluded parcels, etc
- c. Potential for diversification: a higher priority will be given to land that has a greater potential for diversified agricultural use, such as: ability of the soil to sustain a variety of agricultural uses, presence of a plentiful water supply, drainage, accessibility relative to direct marketing and transportation of products, and evidence of existing diversified uses.

2. Location: (this criteria is not emphasized for Locally Important Farm projects)

- a. Adds to block of conserved land: higher priority will be given to farms and farmland that adjoin or are in close proximity to other conserved farmland.
- b. Strong farming community: factors such as the number of working farms, availability of agricultural support services, and the extent to which local planning or other municipal programs support farming will help to assess this factor.
- c. Development threat: the program will assess the degree of threat of the conversion of the farmland to non-farm use. Factors include: development opportunity (amount of road frontage and access, soil drainage, topography, and flood hazard, views, and proximity to utilities, and municipal water and sewer), and current market pressure.
- d. Suitability of the type of farming to the surrounding community will be assessed (e.g. a market garden in a niche market area or a Community-Supported Agriculture (CSA) operation in a suburban area.)

Secondary Considerations:

3. **Resource management:** Sound resource management practices that maximize the long-term productivity of farmland will be assessed, including: drainage, erosion control, manure handling, crop rotation, stream bank improvement, wetlands protection, and woodland management.
4. **Farm Infrastructure:** Condition and suitability of buildings for current or proposed farm operation: even when farm buildings are to be excluded from an easement, the buildings may play an important role in the viability of the farm operation, and will be evaluated in that context.

PROJECT CONFIGURATION

Goal: The configuration of agricultural conservation projects shall maximize the protection of important agricultural soils, promote the long term, economically viable use of the land for agriculture, and include mechanisms that address and mitigate concerns over the affordability of the property to farmers in the future. (Tools to address future affordability are discussed below.)

For farms that have buildings associated with them, particularly residences, VHCB will fund either the “Farmland” configuration (i.e., excluding the infrastructure), or the “Whole Farm” configuration when the project includes an appropriate affordability mechanism. For projects without an affordability control, VHCB will typically only fund a configuration that excludes existing residences.

General Categories:

- **Whole farms** – projects that include existing residences and farm infrastructure or reserved residential rights. Whole farms generally include at least 50% prime and/or statewide agricultural soils. Projects may likely be configured as Whole Farms when:
 - Allowing separate conveyance of the farmland and farmstead will make it unlikely that the farm will be owned and operated by a farmer in the future, (such as a farm that is not located in a strong farming community) or
 - The farmstead is in the middle of a tract of farmland, and excluding it would invite possible right-to-farm issues in the future, or
 - The farmstead includes historic or cultural resources important to the community.
 - The farmstead is uniquely related to the agricultural operation, such as a winery on a vineyard.
- **Add-ons to conserved farmland** – projects that add parcels of farmland to previously conserved farms or farmland. These projects will generally include at least 50% prime and/or statewide agricultural soils, and must be in close proximity to the previously conserved farmland.
- **Farmland** – projects that either exclude an existing farmstead (house and farm buildings) from the easement, or have no existing residential rights and little or no infrastructure associated with the property. Farmland projects do not include any residential rights in the easement. Farmland projects generally include at least 50% prime or statewide agricultural soils and a high level of farmability, which increase the likelihood of the land being farmed well into the future, even without any associated residential rights or infrastructure. Farmland projects are also typically located in strong farming communities, where the long term need for productive land is more certain. Farmland parcels without nearby access to infrastructure will generally have a higher percentage of prime and/or statewide soils.

FUTURE AFFORDABILITY OF CONSERVED FARMLAND

Goal: The Board has adopted a policy goal, which includes making reasonable efforts to assure that conserved farmland is accessible and affordable to future generations of farmers. In addition, the Board’s goal includes encouraging intergenerational transfers that support owner/operated farm projects. This goal will be furthered through the appropriate application of the following tools during the configuration stage of each project.

Affordability Tools:

- **Option to Purchase at Agricultural Value** VHCBC will prioritize projects with the OPAV, and expects it to be included in most farm projects. All farm projects will be appraised both with and without the OPAV, unless the landowner and Grantee agree ahead of time to include the OPAV in the project, in which case only one after value, with the OPAV, is required. If the landowner declines to accept the OPAV, VHCBC

expects the applicant (the Grantee) to clearly explain why the project does not include it and articulate why the project merits funding and how it meets VHCB's goals despite this. The Board will weigh factors including, but not limited to, degree of estate risk and potential loss of the resource for commercial agriculture, proximity to other conserved lands (particularly filling in gaps in blocks of protected farmland), and other important resource values, in evaluating the funding of farm projects without the OPAV.

- ***Exclusion of Infrastructure*** Structural improvements on farm properties, especially residences, may contribute disproportionately to the market value of the farm, and therefore maybe excluded from the easement and made severable from the conserved land in the interest of preserving the future affordability of the protected property. (The Board may choose, however to deny the request to exclude all residences or to require that reserved residential rights be included in the easement area if in its discretion the project functions better as a Whole Farm.) See Configuration Guidelines below for specific guidance on establishing farmstead exclusions.

Design Controls For some projects, the Board may choose to include houses or rights for house sites, but condition the improvements (by limiting size, scale and location) to make the protected property more affordable for future farmers.

- ***Shared Appreciation Agreement*** Similar to the model developed by community land trusts, the farmer and the Holders agree that, upon resale of the protected property, the farmer and the Holders would share any appreciation in the farm's value, according to an agreed-upon formula. The Holders would then "reinvest" their share of the proceeds to reduce the sale price to the next buyer.
- ***Nonprofit ownership of conserved farm with CLT approach to house*** In some cases nonprofit conservation organizations may decide to purchase whole farms or farmland, convey a conservation easement to a qualified holder and lease the land and buildings to a farmer. In such a case, sustainable farming and affordability mechanisms can be built into the lease to insure affordable farming (perpetual access to the farmland by farmers) and resales of houses, if any, which are affordable to future farm households of moderate incomes.

Grantees are encouraged to consider some or all of these mechanisms, alone or in combination, to further multiple goals and objectives. Grantees are also encouraged to work with VHCB staff to identify variations on these particular tools, or to develop new mechanisms that can address farm affordability effectively.

CONFIGURATION GUIDELINES:

Applicant procedure - Because existing and future housing and other reserved rights in the easement for farmland conservation projects affect easement value, it is the applicant's responsibility to obtain approval from VHCB staff for all exclusions, reserved house sites, and farm labor housing prior to the time that an appraiser is engaged. The size and location of all proposed excluded and reserved subdividable parcels and the location of all proposed

farm labor house sites shall be clearly marked on an ortho-based 1:5000 scale map that is subject to VHCB staff review and approval prior to contracting with an appraiser. Once an appraisal map has been approved, no change of configuration shall be permitted without the consent of VHCB staff or Board.

The applicant shall furnish a copy of the approved map to the appraiser, who shall include it in the appraisal report. The applicant shall also attach a copy of the map to the application form, and if the project is funded by the Board, the map shall become the basis of the farm plan approved by VHCB staff prior to disbursement of VHCB funds. Approval of an appraisal map by the staff should not be regarded by the applicant as pre-approval by the Board of any specific project configuration. If the Board asks for a reconfiguration as a condition of funding, additional appraisal work may be necessary.

A. Exclusions:

1. **Excluding farmstead complexes:**

In determining the size of an excluded farmstead complex, consideration will be given to:

- a. Town zoning
- b. Future plans of the farmer (including farm labor housing needs)
- c. Soil quality (located to minimize impact on prime and statewide soils)
- d. Road frontage and access (may not include excessive road frontage, and may not prevent access to the conserved farmland).
- e. Ease of conducting a legal survey in the future
- f. Factors relating to the landscape and its use.

2. **Non-subdividable Farmstead Exclusions:**

In rare cases, the Board may want to focus conservation restrictions on the farmland, but restrict the separate conveyance of the farmstead. This configuration will only be chosen when it appears to be the best option for conserving the farmland while meeting VHCB's goals of maximizing protection of agricultural lands and addressing future affordability concerns. (For example, a good farm resource in a community with few remaining farms, where the future use of the land by a farmer without an associated house site and farm buildings may be unlikely.)

2. **Exclusions/reservations other than farmsteads:**

- a. **Future and existing house site exclusions:** are excluded entirely from the easement, and subdividable from the protected property. These sites are generally no larger than 2 acres, or the minimum allowed by zoning, and are located:
 1. to avoid interruption of and minimize impact on farm fields, especially those with prime and/or statewide soils, and to avoid interference with agricultural operations; and
 2. to maximize the agricultural potential and scenic and/or historic features of the protected property; and
 3. in a cluster, rather than in a linear pattern along a roadway; and
 4. close to or utilizing existing roads, drives, services and utilities.

- b. **Future House site reserved exclusions:** A designated future building area is identified ahead of time on the Farm Plan, and valued as such in the appraisal. When the landowner wants to exercise his/her right to build, the area is surveyed and released from the easement. (See above, 3. (a) 1–4 for location criteria.)
- c. **House Site Buy-Back:** This agreement would allow a farmer to buy-back the right to build one, single-family house of a limited size in the future, if the conserved property did not include any housing, and the farmer could demonstrate that a house was necessary to operate a “stand alone” farm enterprise on the land. This right would be appraised at the time of the sale of development rights, and the appraisal would establish the value of the right, with a cost-of-living index adjustment. The future house, if built, would be non-subdividable, and would trigger an Option to Purchase at Agricultural Value on the whole farm, if one was not already in place. (See above, 3. (a) 1–4 for location criteria.)
- d. **Non-Agricultural land:** Lands without prime and/or statewide soils, that do not contribute to the economic viability of the farm operation and do not contain significant other values, may be excluded, provided that:
 - 1. potential development of land excluded from the easement will have little or no negative impact on the conserved farming operation; and
 - 2. the excluded portion is clearly depicted on the farm plan and reviewed and approved by VHCB staff.
- e. **Land in close proximity to a town or village center:** Land that is near a village center and existing municipal services, may be excluded from an easement to accommodate future growth needs of the municipality.

4. **Linkage/Pre-approval of Subdivision**

Physically discrete parcels of land, that either already have unique tax identification codes, or are geographically separated by a road, river, or other permanent boundary, that could be equally efficiently used independent of each other in the future, may be conserved under one easement that includes the future right to subdivide and convey the conserved parcels separately (with approval from the Holders) if:

- a. the parcels are located a distance from each other, and neither is dependent on the other for access, infrastructure, resource management, or other reasons; or
- b. either parcel qualifies as “bareland”, representing a valuable soils resource; or
- c. there is intention of future separation, at the time of conservation (such as to facilitate a planned inter-generational transfer).

In such cases, the appraisal will include the valuation of the likely future subdivision.

FUNDING PRIORITY

The best projects recommended will be eligible for full review by the Board based on the above mentioned priorities.

In addition, because the Board is charged with achieving the dual goals of creating affordable housing and preserving the state's agricultural land, funding priority will be given to projects that combine the conservation of farmland with the development of affordable housing. These dual goals do not necessarily have to be on the same site. Also, farmland conservation projects which achieve VHCB's other goals of preserving natural areas and historic sites and providing or maintaining recreational opportunities may attain a higher relative ranking for funding.

LEVERAGE FOR FARMLAND CONSERVATION PROJECTS

The Board will seek to maximize the use of its limited funds by leveraging other resources for a project. The Board recommends that applicants attempt to secure leverage with all VHCB farm projects. Once a farm project has been analyzed and ranked under the four Farmland Conservation Priorities (Land Resource, Location, Farm Infrastructure, Management) as determined by the Agricultural Advisory Committee and the Board Agricultural Committee, the amount and type of leverage may affect the relative ranking of the project. However, the Board may consider quality farm applications which were ranked highly by the Agricultural Advisory Committee but do not contain leverage. (See Appendix II for leverage criteria and definitions.)

APPENDIX 1:

SUMMARY OF APPLICATION PROCEDURES

VHCB's Purchase of Development Rights on Farmland program involves a two-step application process: a pre-application and a full application. The Board accepts pre-applications twice a year, and full applications several times a year, according to a schedule established each spring. Application deadline dates may be obtained by contacting VHCB staff.

Pre-application forms are to be completed primarily by the landowner, with assistance from an "eligible applicant" (see below). The pre-application assesses the farm resource, farm community and threat of development. It also asks for preliminary information on the other goals of the Board such as natural habitat protection, public outdoor recreation, historic preservation and affordable housing.

The eligible applicant must also submit a cover letter with the pre-application that highlights notable facts about the property or further details other VHCB goals which may be included in the project. Since the Board will seek to maximize the use of its limited funds by leveraging other resources for a project, preliminary information on leveraging, if available, may also be included in the letter.

Pre-Applications must be sponsored and submitted to the VHCB by an eligible applicant. An eligible applicant is a municipality, qualified department of state government, or non-profit conservation organization with an IRS 501(c)(3) status. Eligible applicants for farm projects include the Vermont Agency of Agriculture (828-2500), non-profit conservation

organizations such as the Vermont Land Trust (1-800-639-1709) and the Upper Valley Land Trust (603-643-6626), and towns. Other eligible applicants include local or regional land trusts, such as the Hinesburg Land Trust or the Middlebury Area Land Trust.

Eligible applicants may submit to the VHCB all pre-applications that meet the Board's Minimum Criteria and that are consistent with the Board's Farmland Conservation Priorities.

The VHCB has established an Agricultural Advisory Committee (the "Advisory Committee") to assist the Board in choosing farms for conservation at the pre-application stage. The Advisory Committee consists of two farmers, one of whom has sold development rights, and one representative each from the UVM Extension Service, Natural Resources Conservation Service, Farm Service Agency, and one representative of a farm lending organization. Advisory Committee members are appointed by the Secretary of Agriculture with VHCB approval and subject to term limits set by the Board.

The Advisory Committee makes recommendations to the VHCB Agricultural Committee (the "Board Committee"), prioritizing the farm pre-applications for funding. The Board Committee decides which projects advance to full applications and which do not.

The Board Committee may choose to consider preapplications in between the semiannual full Agricultural Advisory Committee meetings when the project has the following attributes:

- the project ranks high on the Board's policy criteria regarding soils, location, resource and infrastructure, or ranks high on at least two of these criteria and has other conservation attributes (natural area protection, public access, and/or historic or archeological protection);
- the applicant expects to bring the project to the Board with substantial leverage (e.g., requesting primarily federal funds);
- the project has a degree of urgency requiring action in between the regularly scheduled meetings (i.e. the project will facilitate a transfer to a new farm buyer, and/or the opportunity to conserve the parcel may be lost if action cannot be taken quickly)

If an eligible applicant has a project that meets the above criteria, they may submit a preapplication to VHCB, after discussion with VHCB staff. Staff will convene a meeting of the Board Committee, in person or by phone, to review the preapplication, and will invite the full Agricultural Advisory Committee to attend in person or by phone as well.

Projects which receive an affirmative vote of the Board Committee are also eligible for a VHCB grant to share in the cost of an appraisal of a conservation easement on the property. Applicants will utilize an appraiser whose work conforms to the Board's adopted appraisal standards to determine the fair market value of the development rights. Applicants will negotiate a price acceptable to the landowner, and the Board's contribution will not exceed the appraised value or the Board cap (see last section, below).

Applicants will also work with landowners to explore the other goals of the Board that may exist on the farm, and the potential for leverage.

Farm pre-applications that are not approved by the Board Committee are eligible to return as pre-applications and may be considered by the Advisory Committee in the next pre-application round. However, a pre-application that returns in this manner and is not approved a second time is not eligible to return again in the next pre-application round. A pre-application in this category may return after waiting out one round of the Advisory Committee.

To be considered by the full Board, approved pre-applications must be submitted as full applications by the date set by VHCB staff. If an approved pre-application is not submitted as a full application within two years of being approved as a pre-application, the project must return to the pre-application process and be reviewed by the Advisory Committee. If staff determines that extenuating circumstances prevented the timely submission of a full application, VHCB staff may grant an exception to this procedure. To receive such an extension, the applicant organization must have received written approval from VHCB staff prior to the last application deadline for which the project would have been submitted if an extension had not been granted.

Full applications will be reviewed by the full Board with a final decision made based upon the recommendations of the Board Committee, price/acre, leverage and the multiple benefits of the project.

A full application that the Board has voted not to fund is eligible to return as a full application at the next Board meeting. If the application is not submitted in time for consideration at that meeting or if the Board again votes not to fund the full application, the project must return to the normal pre-application process.

APPENDIX II: VHCB FUNDING CAPS

VHCB PER PROJECT CAP

VHCB will not pay more than \$500,000 for the development rights on farmland, (including the Option to Purchase at Agricultural Value, or other affordability mechanism), unless the farm is an outstanding statewide resource.

To be eligible for consideration as an “Outstanding Statewide Agricultural Resource” a farm must fulfill the following requirements:

1. As compared to other farms in the same funding round and farms previously conserved by VHCB, the farm ranks high under the “Land Resource”, “Farm Infrastructure” and “Management” criteria of the Farmland Conservation Priorities.

2. Conservation of the farm would make a significant contribution to the local and/or regional farm community.
3. Conservation of the farm would serve multiple goals because the project includes one or more substantial enhancements within the following categories:
 - a. an outstanding historical or archeological resource
 - b. public access meaningful to the community
 - c. significant natural habitats or ecological resources
 - d. donation of conservation easements or lands into public ownership with significant non-agricultural natural resource, public recreation, or historic values
 - e. the farm adjoins and/or would significantly enhance an existing public investment in other non-agricultural natural resource lands owned or conserved by a public or non-profit entity
 - f. a buffer provision that complies with VHCB Buffer Policy in the easement would conserve the quality of significant state surface waters.
 - g. inter-generational transfer of the farm
 - h. a dual goal element that includes a perpetually affordable housing component, consistent with VHCB's Guidelines for New Construction Housing Projects.

VHCB staff and Board may use the above criteria to determine if a farm is eligible for funding moderately beyond the stated cap. However, large projects which exceed the cap substantially will continue to need to be conceived of and funded in stages.

VHCB PER ACRE CAP

The Board will not pay more than \$3,500/acre for development rights on farmland (including the Option to Purchase at Agricultural Value, or other affordability mechanism) unless the project qualifies as an exceptional resource and includes leverage, or if there is substantial leverage.

To be considered an "exceptional resource" the project:

- must include at least 75% prime and/or statewide soils (preferably with a majority of prime soils).
- should be located in a strong agricultural community, or be of particular importance to the community (or the viability of a specific operation).
- is very likely to stay in agricultural operation for the foreseeable future, and
- will make a significant contribution to farming in the local or regional area.

In cases where the project qualifies as an exceptional resource, the Board still generally expects that the project will include a reasonable amount of leverage: 20%, and/or other resource values as listed below.

Projects that do not qualify as exceptional resources may still exceed the per-acre cap if the project includes substantial leverage. Substantial leverage is defined as 40%, and may include in part other resource values as listed below.

Other Resource Values:

To be considered as leverage, the project includes the **donation** of one or more substantial enhancements within the following categories:

- a. an outstanding historical or archeological resource
- b. public access meaningful to the community
- c. significant natural habitats or ecological resources
- d. donation of conservation easements or lands into public ownership with significant non-agricultural natural resource, public recreation, or historic values
- e. the farm adjoins and/or would significantly enhance an existing public investment in other non-agricultural natural resource lands owned or conserved by a public or non-profit entity
- f. a buffer provision that complies with VHCB Buffer Policy in the easement would conserve the quality of significant state surface waters.
- g. inter-generational transfer of the farm
- h. a dual goal element that includes a perpetually affordable housing component, consistent with VHCB's Guidelines for New Construction Housing Projects.

[In some farmland conservation projects that contain a building on or eligible for the National Register of Historic Places or is considered an outstanding historic resource, the Board may require that an historic preservation notification provision be incorporated into the conservation easement. Such a provision will require that the landowner notify the Grantees 30 days prior to destroying or altering the exterior of the building. In determining whether a building is an outstanding resource, the Board shall give serious consideration to the recommendation of the Division for Historic Preservation.]