

Vermont Housing and Conservation Board
**OPTION TO PURCHASE AT AGRICULTURAL
VALUE ACQUISITION PROGRAM POLICY**

The Vermont Housing and Conservation Board (“VHCB”) makes grants to nonprofit conservation organizations, municipalities and certain state agencies for the purpose of conserving important agricultural lands, forestland, historic properties, outdoor recreation opportunities and natural areas. A goal of VHCB’s agricultural land conservation program is to “make reasonable efforts to assure that conserved farmland is accessible and affordable to future generations of farmers.” This goal is most often met by acquiring the Option to Purchase at Agricultural Value (“OPAV”) on important farmland during the initial acquisition and configuration of development rights. However, VHCB conserved more than 300 farms before the OPAV emerged as a common conservation tool. This policy provides VHCB with the opportunity to purchase, through a designated state agency or nonprofit partner, an OPAV on previously conserved farms, to ensure their future affordability. This is accomplished by amending the existing easement to add the OPAV. In addition, water quality protections, or other new restrictions may be added when the easement is amended. This brings older easements up to date with current practices.

Rarely, VHCB is asked to fund acquisition of an OPAV on a farm previously conserved without VHCB funding. In these instances VHCB has no existing legal interest. A decision must therefore be made as to whether: (1) VHCB will be added as a co-holder of the entire easement; or (2) the easement will be amended such that VHCB only has a legal interest in the amendments; or (3) VHCB will acquire some other legal interest, such as an executory interest in enforcing the easement, in addition to co-holding the amendment. Factors influencing this decision are described in Section I of this Policy.

Due to the limited funding available for this program, this policy focuses public resources on farms in transition, with the goal of keeping good farmland in the hands of commercial farmers. By purchasing OPAVs on transitioning farms, VHCB achieves the dual outcomes of acquiring perpetual affordability controls on already conserved farms and of assisting farmers with access to high quality farmland at an affordable price—facilitating affordable conveyances of conserved farms to the next generation of farmers now and in the future.

I. Minimum Eligibility Criteria

- A. **VHCB Conserved Farm:** The farmland in question is currently conserved with a perpetual conservation easement and VHCB is an existing co-holder.
- B. **Other Conserved Farm:** If VHCB does not already co-hold the easement on the conserved farm, VHCB reserves the right to require that VHCB become a full co-holder of that easement as a condition of funding, if:

- The existing easement language closely aligns with VHCB's typical farm easements; or
- The existing language somewhat aligns but contains permitted uses that point to the likelihood that co-holder approvals and other stewardship decisions could impact the purposes of the OPAV.

Rather than co-holding the entire easement, VHCB may choose to acquire a legal interest only in the OPAV section and with respect to any other added protections if:

- The existing easement language achieves perpetual conservation of the farm but does not closely align with VHCB's typical farm easements;
- The current holder of the easement makes a strong case as to why adding a co-holder of the entire easement is problematic for stewardship or other reasons.

In rare instances, VHCB, in consultation with the existing easement holder, may acquire only an executory interest in the conservation easement, in addition to co-holding the easement amendment adding the OPAV.

- C. **Facilitates a Transfer:** Currently, funds are only available for the purchase of an OPAV that facilitates the transfer of a conserved farm to a farmer who has a minimum of 3 years experience managing or working on a farm and who has a reasonable plan for the operation and profitability of the farm being purchased.

This goal is most immediately met by funding contemporaneous transfers of conserved farms to farmer-buyers (including transfers completed no more than 12 months prior to the submission of an application for funding). Since the opportunity to purchase a farm may arise unexpectedly and require immediate action, requests for funding that facilitate direct, contemporaneous transfers may be considered at any of the Board's regularly scheduled meetings.

- D. **Appraisal:** Any farm participating in this program must have an acceptable appraisal that values the presently conserved farm as well as the new 'after' value of the conserved farm subject to the OPAV and any other added protections. Farms that have easement areas encumbering buildings and other infrastructure must be appraised with a contributory value given for the land only, as subject to an easement that contains the OPAV.

II. Selection Criteria

A. Need

1. Contemporaneous transfers: Priority will be given first to contemporaneous farm transfers that may not be able to occur without the financial assistance of this program.
2. Deferred transfers: Second priority will be given to time-deferred or gradual transfers between farmers where public funds are needed to bridge the period of transition from one owner to the next.

B. Impact:

1. Risk: Priority will be given to OPAV purchases that will preserve the affordability of high quality farms with high or imminent estate conversion potential.

2. **Leverage:** Priority will be given to OPAV purchases leveraged by non-VHCB funds, bargain sales, or other donations of conservation restrictions, which increase the impact of the VHCB award by accomplishing additional conservation gain with limited funding.

C. Quality:

1. **Resource:** Priority will be given to projects involving one or more of the following: (a) farms with agricultural soils that meet VHCB's priorities (prime and statewide); (b) farms located within an existing block of conserved farmland and/or located in a strong farming community; or (c) farms that are a keystone farm in their region and/or significant to their community.

D. Business Plan (Viability):

1. Priority will be given to projects in each of the following scenarios: (a) Farms transferring to managers with a proven track record of farm management and an acceptable plan for operation, especially managers who have been farming, for at least one year, the land they intend to purchase with the VHCB award; (b) Farms transferring directly to new managers with a well-documented business plan (generally developed by or to the minimum standards of the Vermont Farm Viability Enhancement Program) that indicates positive economic growth.
2. VHCB will generally expect new managers to have some farm experience, preferably two years of relevant management experience. Special attention shall be paid to plans that focus specifically on a farm transfer. In some cases a farm plan will be required as a condition of disbursement. Business plans will be reviewed by VHCB staff and/or qualified consultants. Plans are not a priority for farmers with more than 8 years experience successfully managing a farm, who at the time of application already own the equipment and livestock (if applicable) necessary for their proposed operation.

III. Application and Funding Process

A. Applications The application process involves a pre-application phase followed by an appraisal, and then a formal request for funding:

1. Pre-applications for all projects may be submitted to VHCB staff at any point during the calendar year. Pre-applications should include as much detail about the transaction as is available by the date of submission, such as tentative purchase price, purchase and sales contract, lease agreement, etc.
2. Once VHCB staff have reviewed and approved a pre-application, VHCB will cost-share an appraisal of the OPAV. After the appraisal is complete, an applicant may submit a formal request for funding.
3. Requests for funding that facilitate contemporaneous transfers may be considered at any of the Board's regularly scheduled meetings (including transfers completed no more than 12 months prior to the submission of an application for funding. If lack of funding has precluded submission of an application within 12 months of the transfer, staff may waive this requirement).

- B. **Caps** Awards for OPAV purchase will be capped at \$130,000, of which up to \$125,000 shall fund the acquisition of the OPAV and up to \$5,000 shall cover Grantee's associated costs.
- C. **Grantees** Applicants may be a designated state agency, municipality or qualified nonprofit; however, all applications must include an existing VHCB stewardship partner who will co-hold and steward the OPAV.
- D. **OPAV Details** The base value for the property subject to the OPAV will be set by appraisal. Any other easement revisions or changes from standard OPAV language shall also be appraised. Easement and OPAV revisions shall be considered and approved at the sole discretion of VHCB.

IV. Guidelines for Transactions

A. Contemporaneous Transactions

1. Full Disclosure: VHCB shall receive and review the complete terms of the sale and determine if they are fair and consistent with the market.
2. Purchase Price: The purchase price to the farmer shall not exceed the appraised fair market value of the farm subject to the OPAV.
3. Timing of Disbursement: If awarded, VHCB funds shall be disbursed simultaneously with the signing of an OPAV and the transfer of the farm to the farmer buyer. If the transfer of the farm has occurred prior to the award, but not greater than 12 months prior to the submission of an application for funding or a granted extension, disbursement shall occur simultaneously with the conveyance of the OPAV.