

Vermont Housing & Conservation Board
PROCESS AND CONFIGURATION GUIDELINES FOR
APPLYING TO SELL DEVELOPMENT RIGHTS ON FARMLAND

VHCB's Purchase of Development Rights on Farmland program involves a two-step application process: a preliminary form that will generally be vetted by staff, with advice from a Committee of staff from partner farmland conservation organizations, and a full application including request for funding that will be considered by the entire Board. VHCB accepts preliminary farm projects for consideration quarterly, and full applications at regularly scheduled Board meetings, depending on the availability of funding. Application deadline dates may be obtained by contacting VHCB staff or checking the VHCB website (www.vhcb.org)

Farm projects 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. VHCB asks that eligible applicants work with either the Vermont Land Trust or the Upper Valley Land Trust, as these are the two organizations designated as primary stewards of farm projects by VHCB. Eligible applicants may submit projects that meet the Board's Minimum Eligibility Criteria and that are consistent with the Board's Farmland Selection Priorities, and these guidelines.

Farm projects submitted for preliminary review to a quarterly meeting may be approved by VHCB staff if they are consistent with VHCB policy and guidelines and meet minimum eligibility criteria. In some cases, site visits may be scheduled in coordination with other partners to finalize the project configuration, and/or to identify resource concerns and plans for addressing them. When farm projects are submitted for staff review that do not clearly meet VHCB policy and guidelines, and/or have particular configuration or resource challenges, VHCB staff will refer them to a semi-annual meeting of VHCB's Agriculture Committee for review and approval. VHCB staff will also report to the Agriculture Committee on farm projects approved at quarterly meetings.

Projects approved by VHCB staff and/or by the Board Committee, are eligible for VHCB cost-share for 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 Appendix I of the VHCB Policy on the Conservation of Agricultural Land).

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

Archeological Protection: Immediately after preliminary approval of the project, applicants will send the shapefiles of the project to the NRCS archeologist for screening of recorded archeological sites that may warrant additional easement protection. (See VHCB Policy on the Protection of Archeological Resources.)

Historic Structures: Applicants will consider, in collaboration with VHCB staff, whether an existing house or barn is on or eligible for the National Register of Historic Preservation, and thus warrants a notice provision in the easement. (See VHCB Policy on Historic Preservation.)

Natural Resource Protection: Project developers will assess the presence of rare, threatened or endangered plants, natural communities and/or wildlife and consider whether special easement language is appropriate.

Surface Water Protection/Water Quality Considerations: If the property includes surface waters, applicants will strive to achieve additional protections as a part of the project. These could include riparian/buffer language in the easement, encouraging the landowner to enroll in a state and/or federally-funded buffer or wetlands protection program such as the Conservation Reserve Enhancement Program and Wetlands Reserve Program, or to erect fencing to exclude livestock from surface waters (perhaps using state or federal funding). If the project includes frontage on a river deemed a priority by the Department of Environmental Conservation for a river corridor easement, applicants will work to include such protection as a part of the project. (See VHCB Guidelines on Water Quality and Flood Resilience.)

Public Access: While most farm projects do not include public access, applicants will consider whether there is an opportunity for meaningful public access to or through a part of the resource that will not unduly impact the farm operation. (See VHCB Policy on Public Access on Agricultural Land.)

CONFIGURATION GUIDELINES FOR FARM PROJECTS:

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.

Including or excluding infrastructure: Infrastructure (residential and agricultural buildings) may be included or excluded from the easement. The farmstead complex will generally be included 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 (provided including them does not unduly impact the future affordability of the farm); or
- The farmstead is uniquely related to the agricultural operation, such as a winery on a vineyard.

When it makes sense to exclude a farmstead complex from the easement, consideration will be given to the following, to determine the appropriate size:

- 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. Existing survey(s)
- f. Ease of conducting a legal survey in the future
- g. Factors relating to the landscape and its use
- h. Factors affecting future affordability

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).

Exclusions other than farmsteads: In general, exclusions should be minimized, particularly if they include agricultural soils, land in active farming, and/or other values consistent with VHCB’s mission.

(a) Future and existing house site exclusions are excluded entirely from the easement, and are subdividable from the protected property. To avoid future easement stewardship issues, VHCB encourages (and NRCS may require) landowners to survey excluded lots prior to conservation, and/or to obtain a subdivision permit for the lot. 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) 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 VHCBC staff.

(c) Land in close proximity to a town or village center: Land that is near a village center and existing municipal services, and/or zoned for commercial or industrial use, or designated in a town plan for future growth, may be excluded from an easement to accommodate future growth needs of the municipality. Farm conservation projects must be consistent with adopted town and regional plans, as required by the minimum eligibility criteria in VHCBC's Policy on Conservation of Agricultural Land.

Building complexes (also called farmstead complexes) are areas that may currently contain infrastructure or may contain infrastructure in the future. They should be designed to accommodate the reasonable infrastructure and housing needs of the farm at the time of conservation and into the future, and should be placed around existing dwellings, farm buildings, and farm structures such as manure pits.

Complexes that are vacant at the time of application may be included as follows:

1. in areas that a landowner or the project developer has identified as suitable for farm infrastructure, provided that such sites do not pose an undue risk to water quality; and
2. in an area suitable for future farm labor and/or residential housing (depending on the specific easement provisions). Each farm parcel that the easement identifies as subdividable should include a possible complex for farm labor housing, if that right (including the sole discretion farm labor housing right) is included in the easement.

Vacant complexes should be located:

1. to minimize impact on farm fields, on prime agricultural soils, and to avoid interference with agricultural operations; and
2. to minimize impact on scenic and/or historic features; and
3. close to or in conjunction with existing roads, drives, services, and utilities.

VHCBC's template farm easements (as they have evolved over time) and stewardship policies provide for the approval of ag-related structures outside of building complexes. However, building complexes, which establish a pre-approved area for structures, are an important stewardship tool, and also provide clarity to landowners. VHCBC acknowledges that neither the farm owner, eligible applicant, nor VHCBC staff have the resources to thoroughly analyze the suitability of a designated vacant farmstead complex for future agricultural buildings, and the possible permits or site design requirements that may exist at that time. For this reason, typical farm easements include language allowing the easement co-holders to modify the size and location of farmstead complexes. This allows for efficient administration of farmland easements, for both landowners and easement co-holders, so that buildings consistent with the easement purposes, and intended for location within a farmstead complex, can be located in one.

Reserved residential rights: VHCBC-conserved farmland projects will generally include either an existing and/or reserved residential right in the easement (this could include an existing house and/or farm labor house, a reserved farm labor house right, and/ or the sole discretion farm labor

house clause). Grantees may elect not to include any residential rights when one or more of the following conditions exist:

- the property does not include any suitable building sites
- the property has a high percentage of tillable land and prime/statewide agricultural soils, a high degree of “farmability,” and is located in a strong agricultural community
- The property is located in or near a neighborhood, village or town center with ample available housing.

Pre-approval of subdivision or conserving with separate easements: 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 with two separate easements, or 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; and/or
- b. both parcels are worthy of protection independently; or 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.

Process and timeline for resubmitting preliminary applications and full farm applications:

Preliminary applications will be submitted on a form approved by VHCB staff to a quarterly meeting for review. VHCB staff will be advised by staff representatives from the Natural Resources Conservation Service (NRCS), the Vermont Agency of Agriculture, Food & Markets (VAAF), and land trust staff on the projects submitted for review. Staff from other partner organizations, such as the Department of Environmental Conservation (DEC) and the Department of Forest, Parks & Recreation, may join the Advisory Committee on occasion and as staff capacity permits.

VHCB staff will take minutes of the quarterly meetings, and will document all decisions made regarding which projects are approved for appraisal cost-share, which projects need site visits prior to configuration/other issue approval to proceed, and which projects (if any) have been referred to the Board Agriculture Committee for review. VHCB staff will share the minutes of the quarterly meetings with all meeting participants. VHCB staff will also report to the VHCB Agriculture Committee on the projects approved at quarterly meetings.

Full applications for funding will be reviewed by the Board with a final decision made based upon the quality of the resource to be protected, impact of the project, availability of funding, price per 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 preliminary process. Projects deferred by the Board due to lack of available funding may return to any subsequent Board meeting.

Landowner Grievance Process: If an eligible applicant—land trust or municipality (generally the Vermont Land Trust and Upper Valley Land Trust for farm projects)—is not willing to submit a preliminary application to sell development rights on behalf of a landowner/farmer, and that landowner believes that their project meets VHCB policy and guidelines for conserving agricultural land, the landowner may contact VHCB conservation staff directly. If, after reviewing information regarding the project, VHCB staff agrees that the project meets VHCB policy and guidelines, staff may recommend that the landowner work with another eligible applicant to develop and submit a preliminary application, or that the project come to the Board Agriculture Committee for review.

-##-