

Vermont Housing & Conservation Board

**POLICY
FUNDING CONSERVATION OF AGRICULTURAL LAND**

VHCB STATUTORY MISSION (excerpted from 10 VSA Chapter 15, boldface added):

- (a) *The dual goals of creating affordable housing for Vermonters, and **conserving and protecting Vermont's agricultural land**, forestland, historic properties, important natural areas, and recreational lands are of primary importance to the economic vitality and quality of life of the State.*
- (b) *In the best interests of all its citizens and in order to improve the quality of life for Vermonters and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside, and to support farm, forest, and related enterprises, Vermont should encourage and assist in creating affordable housing and in **preserving the State's agricultural land**, forestland, historic properties, important natural areas and recreational lands, and in **keeping conserved agricultural land in production and affordable for future generations of farmers.***

Eligible activities include:

The retention of agricultural land for agricultural use, and of forestland for forestry use...the protection of lands for multiple conservation purposes, including the protection of surface waters and associated natural resources.

GOALS OF THE VHCB AGRICULTURAL PROGRAM

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 these goals, 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 transfers to both new and established farmers.

VHCB FARMLAND CONSERVATION ACTIVITIES

The Vermont Housing and Conservation Board preserves farmland by:

1. Awarding grants to eligible applicants (nonprofit conservation organizations, municipalities, and qualified state agencies) for the purchase of development rights;
2. Building the capacity of eligible applicants to undertake 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 nonprofit ownership with a lease, or resale, to 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. VHCB typically uses a combination of state and federal funds (through the USDA Natural Resources Conservation Service (NRCS) to fund the purchase of development rights. Therefore, to be eligible for funding, most projects will need to meet both VHCB and NRCS criteria.

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. Soil quality is the most important VHCB criterion. The farm or farmland must have soils that facilitate economically viable agricultural production. In general this means a predominance of prime and/or statewide soils. If the farm or farmland contains woodland, the majority of the woodland soils and topography should be well suited to economically viable timber or maple sugar production. VHCB may consider projects with poorly rated soils only if they meet an additional funding priority as described on page 5 of this policy.

Because, in addition to state funds, VHCB also often uses federal funding to protect farmland, most projects must also meet NRCS criteria regarding minimum percentages of prime and statewide soils.

2. The farm or farmland must be actively farmed for income-producing purposes, or have a sound plan for getting into operation. Besides meeting the minimum eligibility criteria projects must also be consistent with other elements of this policy, and with VHCB's Process and Configuration Guidelines for Farm Projects, and VHCB's Water Quality Protection & Flood Resilience Guidelines.
3. If NRCS funds are to be used for the project, the farmland and farm owner must be able to meet the federal requirements for NRCS funding.
4. Prior to closing, the farm or farmland owner must be in good standing with the Vermont Agency of Agriculture, Food and Markets and with the Vermont Department of Environmental Conservation with respect to state regulations, including the state's Required Agricultural Practices, or have a plan approved by VAAF and DEC to come into good standing.¹

¹ "Good standing" means the applicant:

(A) is not a named party in any administrative order, consent decree, assurance of discontinuance, or judicial order relating to Vermont water quality standards issued by the State or any of its agencies or departments; and
(B) is in compliance with all federal and State water quality laws and regulations.

5. The project must be consistent with adopted regional and/or municipal plans.
6. The sale price of the development rights must not exceed the value as determined by an appraisal acceptable to VHCB staff.
7. 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, merely caps for the Board's contribution. (See Appendix I on VHCB per acre and per project caps for more information.)

These minimum eligibility criteria apply to all statewide and local farm projects, except that the per project cap in criteria #7 above does not apply to local farm projects. Locally important farms must also comply with the VHCB policy on Local Conservation Projects.

Sugarbush, working forest projects, and retroactive OPAV projects are not subject to these criteria; they have their own selection criteria and caps that are described in other VHCB policy documents.

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

The following characteristics will be given priority in selecting farm projects for conservation.

1. Land Resource:

- a. Soils: Generally, all farm conservation projects will include at least 50 percent prime and/or statewide soils, or qualify under the Additional Funding Priorities.
- b. Farmability: The configuration and ease of farming the land, and likelihood that it will stay in active agricultural production, including access, drainage, topography, location of excluded parcels, etc.
- c. Suitability for multiple/diversified/value-added agricultural uses: as evidenced by soils that can sustain a variety of crops and agricultural enterprises, the presence of a plentiful water supply, accessibility to markets, etc.

2. Location:

- a. Conserved blocks: Farms and farmland that adjoin or are in close proximity to other conserved farmland.
- b. Farm community: Farms in places where there are many working farms, and where agricultural services are available. Local planning and other municipal programs will also be assessed as a measure of the community's support for farming.
- c. Development threat: Farmland that is threatened with conversion to nonfarm use as evidenced by local market pressure, amount of accessible road frontage, topography, septic capacity, views, proximity to public utilities, and absence of floodplain.

- d. Community interaction: Farm operations that have positive relations with their communities through direct marketing, by demonstrating sound environmental stewardship, and/or by offering other community benefits.

3. **Resource Management:**

- a. Productivity: Farmland with a history of successful crop yields, with nutrient management practices that maximize soil tilth, retention, and fertility without contributing to nutrient runoff.
- b. Soil health, water quality and flood resilience: Farmland that is managed to maintain and enhance soil health—the capacity of soils to function as a vital living ecosystem to sustain plants, animals and humans—and to minimize erosion, to minimize sediment and phosphorous loading to waterways, and to protect surface waters, as evidenced by, but not limited to:
 - compliance with Vermont’s Required Agricultural Practices,
 - crop rotations,
 - cover cropping,
 - environmentally sound manure and barnyard management,
 - effective pasture management,
 - riparian and floodplain protection,
 - streambank management,
 - fencing livestock out of streams,
 - wetland protection.
- c. Additional environmental stewardship: Woodland managed according to a forest management plan, particularly one that addresses important wildlife habitat, riparian protection, and other possible resource management concerns. Management practices designed to enhance wildlife habitat without unduly harming agricultural viability. Compliance with Vermont law on solid waste disposal (farm dumps).
- d. Farms with resource management challenges: These may receive priority for funding if there is a clear plan and the resources to address the issues as part of the process of conserving the land. If approved for funding, the Board may choose to condition disbursements on progress toward addressing resource issues.

4. **Farm Infrastructure:**

- a. Buildings: Condition and suitability of buildings for current or proposed farm operation. Even when the buildings are to be excluded from an easement, they may play an important role in the viability of the farm operation. If housing for year-round employees is provided, it should meet the Vermont Department of Health’s Rental Housing Health Code.
- b. Other farm improvements: Condition and suitability of manure and crop storage facilities, drainage systems, fencing and livestock lanes, farm ponds and watering systems, etc.

5. **Geographical Distribution:**

- a. As required by statute (10 VSA Chapter 15), the Board will consider geographic distribution when making funding decisions about farm projects.

ADDITIONAL FUNDING PRIORITIES

1. **Dual Goal projects:** 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.
2. **Projects that achieve other conservation goals:** Farmland conservation projects that achieve one or more of VHCB's other goals of preserving natural areas, working forestland, historic and/or archeological sites, protecting surface waters, and providing or maintaining recreational opportunities may attain a higher relative ranking for funding. (See VHCB Process Guidelines for Applying To Sell Development Rights on Farmland.)
3. **Projects that facilitate transfers to new farm owner/operators:**
VHCB seeks to support existing and emerging farm businesses, and to strengthen farm viability, by facilitating the planned transfer of an operation from one generation or owner to the next, and/or by facilitating the purchase of farmland by a new farmer. The Board will give priority to projects that facilitate simultaneous transfers to new owners, including considering farm projects with less than 50% rated agricultural soils. Prospective new owners without an existing operation must have a business plan acceptable to VHCB staff and at least three years of relevant experience.

If the farmland to be acquired does not meet NRCS criteria under the soils category, VHCB may seek federal funding under the provision in the federal statute that the project will further a state or local goal consistent with the federal Agricultural Conservation Easement Program. The state goal, as articulated in VHCB's enabling statute, is to support farm, forest, and related enterprises and keep conserved farmland in production and affordable to future generations of farmers (by facilitating a transfer through the sale of development rights) (10 VSA Chapter 15).

4. Projects that protect maple sugarbushes

The Board may choose to allocate resources to protect maple sugarbushes, in accordance with VHCB's Guidelines for Funding the Conservation of Private Working Forestlands and Sugarbushes. VHCB may seek federal funding for such projects under the state goal that the project would support a farm enterprise of importance to Vermont's agricultural economy, when those projects do not meet NRCS' required soils criteria, but otherwise do meet federal requirements.

PROJECT CONFIGURATION AND FUTURE AFFORDABILITY

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, enhance water quality protection and flood resilience, and include mechanisms that address and mitigate concerns over the affordability of the property to farmers in the future.

(See VHCB Process and Configuration Guidelines for Selling Development Rights on Farmland for more specifics on project configuration.)

Affordability Tools:

- ***Option to Purchase at Agricultural Value:*** This tool gives VHCB and other easement holders the right to purchase the farmland at its agricultural value if offered for sale to a non-farmer, helping to keep the land in the ownership of a farmer. VHCB expects the OPAV to be included in farm projects.
- ***Exclusion of High Value Infrastructure:*** Structural improvements on farm properties, especially high value residences, may contribute disproportionately to the market value of the farm, and therefore may be excluded from the easement and made severable from the conserved land in the interest of preserving the future affordability of the protected property.
- ***Design Controls on Residences:*** 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:*** 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.

The OPAV is VHCB's standard tool to promote the goal of maintaining farmer ownership and active agricultural use of conserved farmland, and keeping conserved farmland at agricultural values. Grantees are also encouraged to work with VHCB staff to develop new mechanisms that can address farm affordability effectively.

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.

APPENDIX I: VHCB FUNDING CAPS

These caps apply to the Board's commitment of funding only.

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 agricultural 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 Selection Criteria.
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 riparian protection easement provision 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 project development and funding in staged increments.

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 either 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 an “exceptional resource” 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 riparian protection easement provision 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.]

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