

Farmland Protection



HOW TO CONSERVE YOUR FARM

Reasons Why Farmers Conserve Their Farms

- Protect land/farm for future generations
- Transfer the farm to a family member
- Reduce long-term debt
- Expand or modernize farm operation
- Provide for retirement
- Facilitate selling the farm to a non-family member

Funding

Each year since 1987, the Vermont State Legislature has funded farmland conservation and affordable housing through the Vermont Housing and Conservation Board (VHCB). This annual support shows the state's ongoing commitment to ensuring that Vermont will always have land available for agriculture into the future. The Freeman Foundation and other private foundations, individual contributors, town conservation funds and federal programs also generously support farmland conservation.

Overview

This brochure is intended to help landowners understand the process that makes it possible to sell a conservation easement, sometimes called “development rights,” on a farm. This is a simple overview of a competitive process that starts with a phone call to the Vermont Land Trust (VLT) about your specific farm and situation. The role of VLT is to help with the application process, answer questions, facilitate the steps, and help funders identify the best farm conservation candidates.

The Conservation Easement: A Legal Tool

The legal tool that is used to conserve a farm is called a conservation easement. It is recorded in the local land records, just like a deed. The easement permanently protects the land from development and also contains restrictions. The landowner continues to own and manage the land and can pass it along to a family member,

or sell it. The allowed and prohibited uses are clearly spelled out in the easement. Very generally, uses of the land important to farming are encouraged and those that adversely affect the use of the land for agriculture, like subdivisions and mining, are prohibited. Because conservation easements are forever, it is very important that owners understand and agree to the permitted and prohibited uses of the land.¹ Farm easements vary somewhat to accommodate special characteristics of each farm while at the same time carefully protecting the agricultural resource.

¹ For a complete list of permitted and restricted uses in standard easements, see VLT publication, “Operating Farm Easements: Guide to the Legal Document.” Request the publication from VLT or from www.vlt.org/farmease.html



Farm Selection

There are minimum criteria for all applications. The farm must be a viable operation or have a sound plan for getting into operation. Farm parcels that are additions to a conserved farm, as well as high quality bare land parcels, without farm structures, are also eligible. In addition, conservation of the farm must comply with town and regional plans.

If your farm meets these minimum criteria, the first step is to complete a pre-application and/or meet with VLT staff to discuss the process more completely. This pre-application summarizes the land's resources, the farm operation, and includes maps and photographs. VLT staff will assemble all necessary materials.

Usually twice a year, the VHCB Agricultural Advisory Committee, a group that includes farmers and agricultural experts, meet to review the pre-applications. If approved, the farm project moves on to the appraisal stage. Those projects not approved the first time may be resubmitted. However, if the application is denied twice in a row, 12 months must elapse before an application can be resubmitted.

Selection Priorities

All types of farms can receive funding—from small, thriving vegetable operations close to town, to big dairies surrounded by other farms. Regardless of the type of farm, the most important question is, “How likely is this farmland to stay in production into the future?” The answer to this question of long-term viability depends on four criteria listed in priority order:

- 1. Land resource.** Substantial acreage in prime or statewide-significant agricultural soils (using NRCS soil values) along with a farm's topography and field access, are critical to its viability. Strong potential for diversified agricultural uses increases this viability.
- 2. Location.** Farms situated in a farming community are key. If the farm is under significant threat of conversion to non-farm use, and if that conversion would be detrimental to other farms in the area, it is given special consideration.
- 3. Farm infrastructure.** Buildings and equipment that are in good condition and are suitable to the existing or proposed farm operation are valued.
- 4. Management.** Sound resource management practices appropriate to the farm should be in place. These include practices that build the long-term productivity of the farm's natural resources.

Enhancing Applications

The Vermont Land Trust encourages projects that contribute to the diversification of Vermont agriculture, exemplify innovative management, and are owner-operated or plan to be owner-operated. Applications increase in strength when

- there is a significant local financial contribution to the project;
- an owner is willing to sell the easement for less than the appraised value;
- there are simultaneous donations of conservation easements by owners of important nearby lands;
- if the owner offers trail, canoe, swimming hole, and other access for public recreation;
- if the land includes unique wildlife habitat, outstanding historic structures, or archeological sites.

Because every farm and every farm family are different, we encourage you to contact Vermont Land Trust to talk about conserving your farm even if these basic criteria do not fit your farm perfectly.





Fixing the Easement’s Value

Once the pre-application is approved, the next step is to determine, with VLT staff and funders, what will be included or excluded from the proposed easement, along with any special features or conditions. These special features/conditions may include the option to build future farm labor housing, create public access on the property, or protect a unique natural area.

VHCB and other funding sources place per acre and per project limitations on the price they are able to pay for easements regardless of the appraised value. Some high value projects, which have large acreage or are considered “agricultural resources of outstanding statewide significance,” may be funded even

though they exceed the funding limits. Sometimes VLT can find other funding sources to assist in purchasing easements that exceed these limits.

Once the acreage and conditions of the easement are agreed upon, the value of the conservation easement must be determined with an independent, professional appraisal. The landowner pays half the appraisal fee. The appraisal value primarily relies on comparable sales of similar farms to establish two figures: the value of the farm *with no easement* on it (the fair market value), and the farm’s value *with the conservation easement* (restricted value). The difference between these two values is the value of the conservation easement.

Final Application, Funding, and Closing

Upon receipt of the appraisal, the landowner and VLT evaluate the conservation easement value. If the landowner accepts the appraisal and decides to sign a sales contract with VLT to sell a conservation easement, VLT submits the final grant application to a funding organization. The funding organization makes the final selection of farms based primarily on the quality of the agricultural resource, as described, and the amount of money available for farmland conservation that year. Once finally approved, the legal documents are drawn up and the sale of the conservation easement is scheduled for closing.

(over)

Example:

Suppose the Smith Farm has an unrestricted market value of \$500,000. However, with a conservation easement limiting its use to agricultural, forestry, and open space uses, it is independently appraised to be worth \$300,000. The difference, \$200,000, is the value of the conservation easement.

Unrestricted Fair Market Value:	\$500,000
Restricted Farm Value:	<u>\$300,000</u>
Conservation Easement Value:	\$200,000

Conservation Steps and Time Estimate

Projects may take 12 to 18 months to complete, and under special circumstances, can be fast-tracked.

- 1 Talk or visit with VLT staff.
- 2 Submit pre-application.
- 3 Pre-application approval. (4 to 6 months)
- 4 Appraisal. (up to 6 months)
- 5 Sign contract and submit final application.
- 6 Final approval and closing. (up to 6 months)

Consider Carefully

The Vermont Land Trust encourages landowners to take the time to carefully consider this important family and business decision. During the application process and definitely before making a final decision, all landowners should consult with their attorney, tax advisor, and farm lender. The sale of a conservation easement

- often involves income, capital gains and estate tax issues;
- impacts existing or planned farm financing;
- raises farm business planning issues; and/or
- involves substantial legal issues.

Common Misconceptions About Conservation Easements

The Vermont Land Trust owns the land.

No, you continue to own your land.

You will be required to open your land to the public.

False. The standard farm easement does not require public access. Occasionally public access for trails and fishing sites, for example, can be part of a project.

Your farm will be taken off the tax rolls.

No. You will continue to pay property taxes on the restricted (conserved) value of your farm.

The Vermont Land Trust is a Vermont State agency.

No. VLT is a non-profit organization founded in 1977 to conserve productive land for the future of Vermont.



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