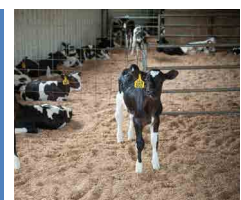


► SUSTAINING AGRICULTURE

Agricultural Land Conservation



▶ SUSTAINING AGRICULTURE

The Agriculture Land Use Planning Task Force of the Farm to Plate Network has developed a series of planning guidance modules that build off the work of **Sustaining Agriculture**, an agriculture planning guide from the 1990s developed by the Agency of Agriculture.

1. Agriculture and Food Systems Planning
- 2. Agricultural Land Conservation**
3. Farmland and Property Taxes
4. Local Regulatory Context
5. State Regulations

farm to plate



STRENGTHENING VERMONT'S FOOD SYSTEM

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On the cover: Vermont chevron: Vermont Chevron; sunflowers: VSJF; Radical Roots Farm tractor, ribbon-cutting at Vermont Smoke and Cure opening, Green Mountain Girls Farm store, Richmond field: Rachel Carter; cow: Gervais Family Farm; Billings Farm; Dennis Curran; stirring sauce at Vermont Food Venture Center: Vermont Food Venture Center.

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AGRICULTURAL LAND CONSERVATION

I. Overview

Keeping farmland in farming is a critical goal of various local, state, regional and national programs and organizations. Once good agricultural land is developed, it's forever lost to farming and the production of food, forage, and fiber.

Over the past three decades Vermont, on average, has lost nearly 8,000 acres farmland each year—including 1,100 acres of prime crop and pastureland; while the amount of developed land has increased by nearly 4,700 acres annually (USDA 2013). Much of the poorest farmland has simply been abandoned, with the loss of dairy farms and a shift to confined feeding operations; but some of the state's best farmland has been developed for other uses, including housing and commercial development. Vermont's current efforts to protect its most productive farmland, dating from the 1970s, arose in response to this ongoing loss of prime agricultural land to development.

As the importance of eating locally produced food has gained traction across Vermont, so too has the need to protect the agricultural land base, to support a strong and vibrant farm economy. The rise of the local food movement—and a recent increase in the number of small farms in the state—has generated growing demand for good agricultural land. As reported in the 2012 Census of Agriculture, more than 350 new farms were established in Vermont between 2007 and 2012 (a 5% increase)—contributing to a net increase of 18,400 acres of land in farms (a 1.5% increase) in just five years (USDA 2014).

As of 2012, a reported 1.25 million acres, representing 21 percent of Vermont's land base, was in agriculture—up from 1.23 million acres

in 2007. Farm numbers and land in farms increased over this period in ten of the state's fourteen counties, but continued to decline in more populated regions, including Chittenden and Rutland Counties. Ongoing efforts to conserve Vermont's most productive agricultural land remain essential to the future viability of farming in the state.

Figure 1: Number of Farms in Vermont, 1997-2012

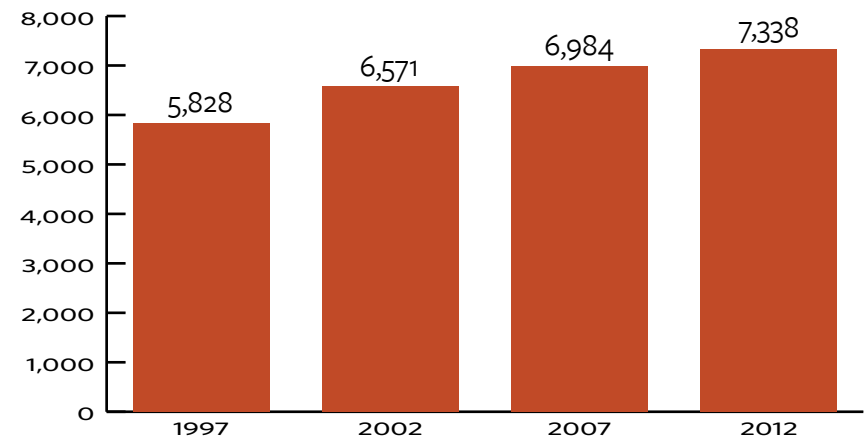
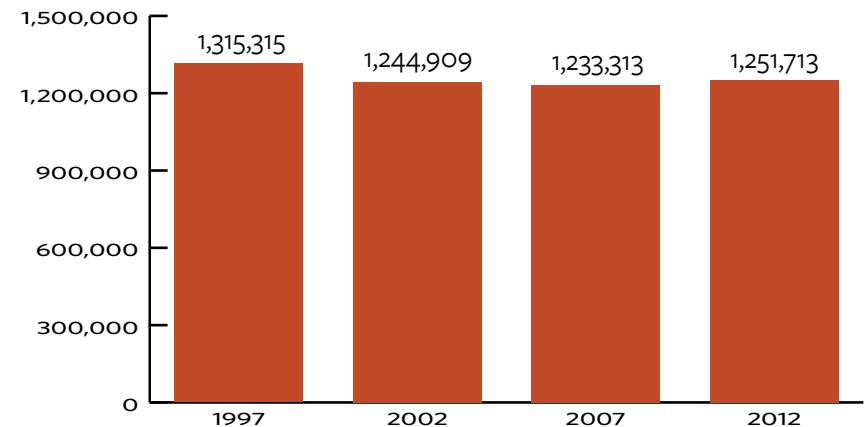


Figure 2: Land in Agriculture in Vermont, 1997-2012



Source: Census of Agriculture, multiple years.

SUSTAINING AGRICULTURE: 2. Agricultural Land Conservation

Farmland preservation typically relies on a mix of programs that provide incentives for landowners to keep their land in farming, and regulations that limit the impacts of subdivision and development on farmland and farming operations. Non-regulatory programs rely on the participation of individual landowners who are willing to forego development—for example by enrolling agricultural land in state or local tax abatement programs, or by more permanently protecting the land through the donation or sale of “development rights” to a third party such as a land trust, secured through a conservation easement. Regulatory options require community support for adoption—including the support of the local farming community (see Section 4: Local Regulatory Context in this guide for more information).

One of the most common land preservation techniques used at the state level is the *purchase of agricultural conservation easements* (PACE). The Vermont Housing Conservation Board (VHCB), established in 1987 to help preserve the state’s agricultural land base, by 2013 had permanently protected nearly 143,000 acres of farmland, under 593 separate easements, at a total cost of \$65.6 million in program funds (American Farmland Trust 2013). Vermont’s most well-known regulatory tool, used to protect the state’s best agricultural soils, is Act 250. Primary agricultural soils are protected from development in Act 250 through onsite mitigation (e.g., by clustering development) or through the payment of mitigation fees used to conserve farmland offsite.

The most effective preservation programs typically employ a combination of techniques that will necessarily vary by community—and from farm to farm—depending on the needs of local farmers, the level of community interest and support, and the resources available for program administration and management.

All municipal and state farmland preservation programs are grounded in long-established public policies to preserve farmland and support

VHCB Goal Statement, “Policy: Funding Conservation of Agricultural Land” (2011)

It is the intent of the State of Vermont to perpetually protect and preserve agricultural lands, encourage sound soil and 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 protects in strong farming communities, support agricultural innovation and diversification, and encourage projects that facilitate intergenerational transfers.

the farming economy – as required for consideration under state planning goals, in municipal and regional plans, and under policies adopted by the Vermont Housing and Conservation Board to guide state farmland preservation efforts.

At the local level, farmland preservation policies should be included in a community’s comprehensive plan, which provides the basis for preservation programs sponsored or supported by local government – including the use of local conservation funds or regulations to conserve farmland. Farmland preservation may also be addressed in supporting conservation or “open space” plans that are more specifically intended “to guide public and private conservation strategies” (24 V.S.A. § 4423(3)). To be most effective for use in a variety of contexts, an open space plan should be incorporated by reference within or appended to the municipal plan.

Planning for Farmland Preservation

State planning goals under the Vermont Planning and Development Act (24 VSA § 4302) to “encourage and strengthen agricultural and forest industries” include the following:

- 👉 Strategies to protect the long-term viability of agricultural and forest lands should be encouraged and should include maintaining low overall density.
- 👉 The manufacture and marketing of value-added agricultural and forest products should be encouraged.
- 👉 The use of locally-grown food products should be encouraged.
- 👉 Sound forest and agricultural management practices should be encouraged.
- 👉 Public investment should be planned so as to minimize development pressure on agricultural and forest land.

Municipal and regional plans are required to include land use elements, consisting of “a map and statement of present and prospective land uses” that “indicate those areas proposed for ... agriculture, using the agricultural lands identification process established by the Agency of Agriculture, Food and Markets (24 VSA §4348a and § 4382). Regional plans are also required to more specifically:

- 👉 Indicate those areas that have the potential to sustain agriculture and recommendations for maintaining them, which may include the transfer of development rights, acquisition of development rights or farmer assistance programs.

II. Partners in Conservation

Farmland preservation efforts are often initiated locally—by interested farmers, landowners and community groups—but to be successful generally involve many partnering organizations. The local planning commission, either appointed by the legislative body or elected by voters, has the statutory responsibility to plan for farmland preservation – as one of the many areas it’s required to address in a community’s comprehensive plan. To do this effectively, the commission needs the support of other groups—and the participation of local farmers—to identify significant farmland and locally acceptable methods for its conservation. In many communities, the local conservation commission or land trust may serve this role well. If the community is concerned about the larger food system, including sustaining local agriculture and access to locally produced food, the creation of a separate, more focused group—such as a local agricultural committee or local food council—may be appropriate.

Regardless of its form, commission, committee or council membership should support diverse partnerships, in which farmers are well represented. Other partners may include local and state agricultural organizations, the regional planning commission, the Vermont Agency of Agriculture, Food and Markets (VAAF) and UVM’s Center for Sustainable Agriculture. The Vermont Housing and Conservation Board, as the primary funder of land conservation projects in the state, may also play a critical role in local farmland preservation efforts.

Conservation Commissions

Many Vermont municipalities have conservation commissions—volunteer boards appointed by the legislative body—to inventory, study and conserve a community’s natural resources, including its

SUSTAINING AGRICULTURE: 2. Agricultural Land Conservation

“prime agricultural land, and other open lands” (24 V.S.A. Chapter 118). Commissions appointed per statute may also have a number of other powers and duties including, with legislative or voter consent:

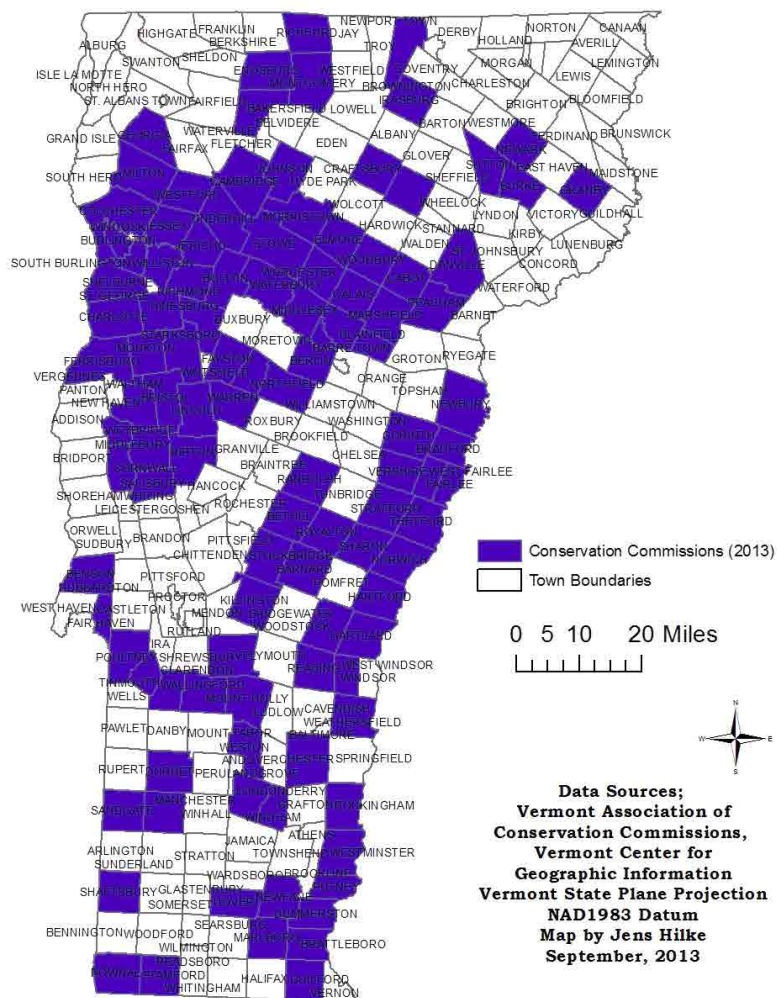
- the oversight of local conservation funds, public land and easements—including the ability to receive money, grants and gifts of land or easements;
- the ability to recommend to the legislative body the purchase of land or easements;
- the ability to serve in advisory capacity to the local planning commission and the zoning or development review board for resource planning and the review of the development impacts on land and resources identified for conservation; and perhaps most importantly
- public outreach and education to “encourage understanding of local natural resources and conservation needs.”

Some communities have conservation or natural resource committees that have a more limited role defined by the legislative body, but generally with the same basic purpose—to identify, inventory, map and help conserve a community’s most important resources. There are now more than 100 conservation commissions and committees around the state, organized and supported through the [Association of Vermont Conservation Commissions \(AVCC\)](#), an affiliate of the [Vermont Natural Resources Council \(VNRC\)](#).

A conservation commission can assist the planning commission by working with interested landowners and other groups to identify priority farmland for protection, by helping to establish a local conservation fund, and by recommending land for purchase or easement acquisition. Even when a commission is not directly

focused on farmland preservation, its efforts in related areas such as water quality or open space protection may support farmland conservation. Common conservation projects such stream buffer plantings and invasive plant removal can and should be conducted in partnership with affected landowners – many of whom may be local farmers. The conservation commission can also work directly with property owners interested in conserving their land.

Figure 3: Vermont Conservation Commissions, 2013



Agriculture Commissions and Food Councils

As planning for agriculture has become more complex, local agricultural commissions and food councils with the interest and expertise to focus on agriculture—or more comprehensively on the local food system, from “farm to plate”—are growing in popularity. Agricultural commissions in New England first took root in Massachusetts, and have since been established in New Hampshire under legislation passed in 2007 (RSA 674:44-e). In Vermont, an agricultural commission or committee can be appointed as a type of advisory committee to assist the legislative body and planning commission (24 V.S.A. § 4433). An agricultural commission functions much the same as a municipal conservation commission, but focuses only on farming and farmland preservation.

Agricultural Commissions

The purpose of an agricultural commission is to protect agricultural lands, preserve rural character, provide a voice for farmers, and encourage agriculture-based businesses. ...

An agricultural commission focuses primarily on agriculture. It will typically work cooperatively with other town or city governing and land use boards and commissions to make sure the concerns and interests of farmers are better understood and considered in their decision-making processes.

Source: *Creating an Agricultural Commission in Your Hometown* (Merrill 2007, p.2)

Food councils more commonly form and operate outside of local government, with a focus on the larger local or regional food system, including but not limited to local food production and farmland preservation. There are now several food councils in

Vermont involved in food system planning and development. The [Burlington Food Council](#), established in 2003, describes itself as “an open community group dedicated to creating and nurturing a healthy, equitable and sustainable food system for all members of the Burlington community”. The council has worked closely with Burlington’s Urban Agriculture Task Force and planning commission to develop zoning regulations that promote food production in an urban setting. The work of local and regional food councils is covered in more detail in Section 1: Agriculture and Food Systems Planning in this guide.

Land Trusts

A land trust, unlike a conservation or agricultural commission, is a nonprofit organization that functions independently from, but often with the support of local or state government. Land trusts conserve farmland by acquiring land, or more often interests in land secured through conservation easements, which are then held in trust. Land trusts help interested landowners and communities conserve farmland, and may also provide long-term stewardship and monitoring of land that has been permanently conserved.

As reported by the Land Trust Alliance (2011), there are now more than 30 local, regional and national land trusts operating in Vermont. National land trusts active in the state include the American Farmland Trust and the Trust for Public Land.

Over the years a number of Vermont-based community and regional land trusts have also been established. The most active is the Vermont Land Trust (VLT), originally formed in 1977 to preserve open space in the Woodstock area. VLT, accredited through the Land Trust Alliance, has since expanded its programs to conserve farms around the state, giving highest priority to farms located in farming communities, with high quality soils that are under threat of conversion to other uses.

Conservation Commissions

Conservation commissions can serve the same functions as a land trust, but may not have the time or expertise to undertake and manage long-term projects; in some cases, a local land trust has been organized at the recommendation of the conservation commission. A land trust, as a private nonprofit entity not appointed by the select board or city council, may not need to be as concerned with the political ramifications of its actions relative to those leaders. It does not, however, have the same role as the conservation commission in influencing public policy or participating in local planning and development review. Local conservation efforts are best served when conservation commissions and land trusts work closely together.

Source: Vermont Land Use and Training Collaborative, “Open Space & Resource Protection Programs,” Vermont Land Use Planning Implementation Manual (Topic Paper 18, p.18-4), 2007.

The Vermont Land Trust also recently initiated its [Farmland Access Program](#) to address one of the most difficult obstacles facing new farmers—gaining access to high quality, affordable farmland. This program employs a number of approaches to connect farmers with farmland that comes on the market, including purchasing, reselling and leasing farms and farmland; exercising rights of first refusal under held easements to ensure that transferred land remains in farming; and soliciting proposals from qualified farmers who are interested in leasing or purchasing land.

The time, effort and financial resources it takes to put together larger land conservation projects can be daunting, often exceeding the capacity of a local conservation commission or land trust. Many

small land trusts work in partnership with larger organizations such as the Vermont Land Trust. The involvement of the local trust is critical to work with landowners, build community support, and help raise funds. Smaller trusts often rely on a larger organization with the expertise to help secure financing, manage the acquisition process, and monitor and enforce easements as the land is transferred from one owner to the next. Enforcing easements “in perpetuity” can be a monumental task for a local group with limited resources.

Vermont Land Trust’s Farmland Access Program

Since its inception, VLT has made the conservation of farmland a priority. Quite often, farmland conservation helps make farms more affordable to new owners or facilitates the transfer from one generation to the next.

According to Jon Ramsay, the Farmland Access Program has become more formalized in the last five years, and VLT sees these projects as increasingly important to its core mission. Conservation isn’t just about keeping land undeveloped; it’s about helping talented, entrepreneurial farmers gain access to productive land, preserving Vermont’s heritage as a rural and agricultural state.

Source: Mark Aiken, “Farmland Access Program Works to Preserve Agricultural Heritage” Vermont Land Trust Membership Newsletter, Fall 2010.

III. Conservation Tools and Techniques

Conservation groups have access to a number of non-regulatory tools to assist in farmland conservation—a few of the most common are covered below. For information on complementary regulatory tools see Section 4: Local Regulatory Context in this guide.

Land Evaluation and Site Assessments

Conservation projects typically emerge when a farm or farm parcel important to the community is threatened by development, or the owner comes forward with an interest in conserving the land. A more proactive and systematic approach to farmland preservation—one that can be used to allocate limited resources—identifies, evaluates and ranks all farm parcels in the community using a set of objective criteria. One model that can be adapted for local use is the Land Evaluation and Site Assessment (LESA) system, first developed by the USDA’s Natural Resource Conservation Service to evaluate the economic viability of agricultural land under federal farmland protection programs.

There are two parts to a LESA: a “land evaluation” section that rates the productivity of a parcel based on its physical soil characteristics (one-third of the score); and a “site assessment” that evaluates a farm parcel in relation to other, locally defined and weighted site criteria – e.g., parcel size, location in relation to other farmland and agricultural support services, proximity to developed areas, conservation or tax status, and applicable land use regulations (two-thirds of the score).

LESAs have been used by federal and state agencies, local government and land trusts—including in Vermont the Vermont Housing and Conservation Board, the Vermont Land Trust and district environmental commissions—to identify local farmland conservation priorities. A well-developed LESA, used in these contexts, can present

a clear statement of local public policy with regard to farmland protection. Locally, a LESA can be used to:

- 👉 Delineate agricultural zoning districts.
- 👉 Define priority parcels for the purchase of development rights.
- 👉 Identify “sending areas” under programs to transfer development rights (TDR programs).
- 👉 Determine land eligible for local tax stabilization programs.
- 👉 Identify areas where mandatory clustering, planned unit development or conservation subdivisions may be required to conserve the best farmland for agricultural use.

The development and application of a LESA or other land assessment system should involve local landowners and an inclusionary public process to be truly representative of community interests, and broadly accepted for use by the municipality and partnering organizations. As with any assessment of private land, it’s important to avoid suspicion and misunderstanding by clearly defining its intended purpose and use, and by contacting and working directly with affected landowners. As a result LESAs and similar rating systems sometimes involve a significant amount of time and effort. Many LESAs developed in Vermont in the 1980s and 1990s were never updated, given the amount of initial work required. Now that much of the information needed is available in digital format—through regional planning commissions and the [Vermont Center for Geographic Information](#)—LESAs should be easier to adapt and update for local use.

State Agricultural Lands Planning Criteria

LESAs of some form are specifically recognized in statute for use in developing local and regional plans. Regional commissions, in preparing regional plans and amendments, are required to “use a land evaluation and site assessment system, that shall at minimum use the criteria established by the Secretary of Agriculture, Food and Markets under 6 V.S.A. §8” (24 V.S.A. § 4345a(5) (E)). Land use elements in both local and regional plans are to include maps indicating areas proposed for agriculture “using the agricultural lands identification process established in 6 V.S.A. § 8” (§§4348a, 4382).

These sections of the planning statute refer to the responsibility of VAAFM to establish criteria for use by municipal and regional planning commissions in identifying viable agricultural land, including guidelines that must include but may not be limited to:

- (1) soil characteristics appropriate to agricultural land;
- (2) appropriate size of the parcel and use of adjacent land;
- (3) the importance of agriculture to the region or locality;
- (4) the availability and capacity of agricultural services and labor to support farming in the region; and
- (5) the importance of the land, as agricultural land, to the character of the locality.

General guidance under this section was released by the agency in a 2007 memorandum which includes a description of considerations under each of the above areas, rather than specific (e.g., numeric) assessment criteria, noting that:

“Land use planning is never easy and long-standing support of property rights needs to be considered as we plan for Vermont’s future. Land conservation, as an arms length transaction of development rights, is a land tool widely used in Vermont. Farmland conservation should focus on the best soils as well as working farms and farmland and be flexible to address existing and future agricultural needs...We do not advocate trying to protect or preserve every acre that is currently in farm use. Population growth, economic growth, and real estate development will continue to consume farmland, and balanced growth is desirable. We do encourage creative, cooperative, and strategic efforts to slow down the rate of farmland conversion. Farmland protection efforts should attempt to protect the best quality farmland that has the greatest chance of staying in farm use.”

There may be some interest in developing a more simplified LESA that includes only those factors necessary to evaluate land for future agricultural use and conservation – for example to exclude other open space, recreation or scenic resource values that were often included in previous versions. But, as noted by former VAAFM Secretary Roger Albee “Each town should decide whether and how to conserve the best available agricultural soils for both today and for future residents”.

Conservation Funds

Municipalities may acquire real property or rights or interests in property for conservation purposes through purchase, donation, transfer, or other accepted methods (10 V.S.A. Chapter 155). The acquisition of land or interests in land, however, can be quite costly. As a result, conservation projects are typically financed through a variety of funding sources. One of the most important is the Vermont Housing and Conservation Trust Fund—the state conservation fund, established in 1987 to create affordable housing and “to conserve and protect Vermont’s farm and forest land, historic properties, important natural areas, and recreational lands” (10 V.S.A. Chapter 15). The state fund is administered by the Vermont Housing and Conservation Board.

A municipality can proactively establish its own conservation fund to help finance local projects—as a dedicated reserve fund created by local voters (under 24 V.S.A. §2804), or as a fund established by a conservation commission under its authority to “receive money, grants or private gifts from any source” (24 V.S.A. § 4505). Local conservation funds are most commonly used to purchase land or easements, but can also be used for options on land and rights of first refusal, long-term leases and to cover acquisition costs such as appraisals, surveys and legal work. A few funds have been set up to support local grant and loan programs—which could be very helpful

in promoting agricultural enterprises. Local conservation funds are especially important in matching or leveraging funds from other sources. For example, under the VHCB’s Local Conservation Grant Program, one-third of the total project cost must come from other sources. Having a local conservation fund in place is a start, and helps access state dollars.

Table 1: Municipal Conservation Funds that Support Farmland Preservation

Town	County	Description
Thetford	Orange	Funds used to purchase land in fee, development rights, options to purchase, rights of first refusal, and long-term leases. Also provides technical assistance. Land is conserved for agricultural, forest, wildlife, recreational, or natural area use. www.thetfordvermont.us/departments/conservation-commission
Warren	Washington	Funds used to purchase land in fee, options to purchase, and conservation easements. Can only purchase land, unless buildings or structures are integral to the conserved land. Protects critical agricultural, forest, and open lands. www.warrenvt.org/depts/conservationcomm.htm
Westford	Chittenden	Funds used to purchase development rights to agricultural and forestry land; stewardship of protected property. Uses limited to agriculture, forest, or low-impact recreation. www.westfordvt.us/conservation.php

Source: Community-Resilience.org, 2013.

In the absence of a conservation commission many towns, such as Dummerston, have established fund oversight committees that are advisory to the legislative body. Once established, conservation funds may be sustained through occasional or annual appropriations, under separately warned articles or as a line item in the budget, or by dedicating a portion of the property tax rate, such as “a penny for

conservation.” Other sources of municipal revenue may include lease payments for farmland, grants, and tax-deductible gifts or donations. Local fund-raising efforts are often undertaken to supplement municipal appropriations.

Local Conservation Funds: Dummerston’s Farmland Protection Fund

The first local conservation fund in the state, the Norwich Conservation Trust Fund, was established in 1974. Since then, many Vermont municipalities have created conservation funds – typically sustained through annual budget appropriations (e.g., a penny on the tax rate). In a community with a large tax base, such as Charlotte, Shelburne or South Burlington, this has generated significant amounts of money for land conservation. But even small funds can make a big difference in the success of a project.

Dummerston established its “Farmland Protection Fund” to protect the town’s farmland for agricultural use, and to help leverage funding from other sources. Since the fund’s inception, town voters have generally supported annual appropriations ranging from \$2,500 to \$5,000. The fund is overseen by the town’s Farmland Protection Committee, which developed criteria for its use, along with a simple application form. According to adopted fund guidelines:

“The Fund will be used to help protect and help maintain the Town’s farmland for present and future agricultural use and from residential and commercial development. Especially important are high quality agricultural soils, actively farmed land, and land that has additional natural resource, recreational, scenic or other values that benefit the town in addition to agricultural production. Where feasible the Fund should leverage other public and/or private funds.”

The Farmland Protection Committee reviews applications to the fund and makes recommendations to the Selectboard, which has the final say in project funding decisions. In 2013, the Selectboard approved an \$18,000 contribution toward a VLT Farmland Access Project in Dummerston, leveraging an additional \$557,000 in public and private funds – including a \$396,000 grant from VHCB and the USDA Natural Resource Conservation Service, and \$110,000 in private donations. Town funds such as this contribute to much needed project funding and, just as importantly, clearly demonstrate community support for local farmland preservation.

Source: Nancy Everhart and Vern Grubinger, December 2013.

It is important to also have locally adopted policies that govern the use of the fund. Clear application requirements, procedures and project evaluation criteria should guide how decisions are to be made and how the money will be spent. Conservation funds are often tapped as opportunities arise, but for planned projects should also be identified as a source of project funding in a municipality's adopted capital budget and program.

More information about establishing a local conservation fund is available through the Vermont League of Cities and Towns, the Vermont Housing and Conservation Board and the Association of Vermont Conservation Commissions.

Estate Planning

The long-term viability of a farm often depends on future generations of the family that owns it. In many cases, farms in Vermont that have stayed in business are those that are inherited. At the same time, the only “retirement fund” that many farmers have is wrapped up in value of their land. Recognizing this, at least one town—Calais—has used municipal planning grant funds to offer estate planning services to large landowners through private, individualized consultations services. UVM Extension also offers estate planning services specific to intergenerational farm transfers.

Fee Simple Acquisition

Fee simple acquisition is the purchase of full title to land with all its rights – buying the land. This tool may be the simplest to understand, but in reality, its use is very limited. Its advantage is that both the management and development of the land is permanently controlled. From the landowner's point of view, fee simple acquisition may meet two goals: gaining a fair price for the farm and keeping it from being developed into a less desirable use. There are also three major disadvantages to this approach: it's more expensive than

other options, it requires assuming the responsibility for ongoing agricultural management and, if bought by the town or another public entity, the land is permanently removed from the tax rolls (Brighton and Northrup 1994).

Municipalities have the statutory authority to purchase farmland or rights and interests in farmland (10 V.S.A. § 6303(a)(7))—but only if and when the owner is ready to sell it. The use of eminent domain for purposes of land conservation is not included. Fee simple acquisition is more often employed by land trusts or other nonprofit organizations that step in to buy a farm—particularly one in imminent danger of being sold for development—and then resell it to a farmer subject to conservation restrictions, thereby recovering the cost of the purchase less the value of the development rights. The Vermont Land Trust's Farmland Access Program now buys two to three farms each year for resale to farmers, at their more affordable, conserved value, through a competitive bidding process.

Conservation Easements

The enormous success of the land conservation movement has relied heavily on the willingness of interested landowners to sell or to voluntarily give away their right to develop their land, most often under a conservation easement that permanently restricts future use of the property. A conservation easement is a recorded legal agreement between the landowner and another party—for example the municipality, a state agency or a land trust—which governs use of the land to protect its value for agriculture and resource conservation. The easement may be created in association with the sale of land that has been purchased outright, in fee simple—thereby recouping some of the cost of conserving it; or through the purchase or donation of development rights. Generally the landowner continues to own the property and pay taxes on it.

The conservation easement has been such a useful tool in part because of its flexibility—the terms of an easement can be tailored to protect key attributes of a particular site, and adapted to meet the needs of an individual landowner—for example to exclude certain areas, and to include suitable sites for new farm buildings and farmworker housing. Easements may also accommodate public access and use—but only as specified under the terms of the easement.

Large Lot Zoning

Local zoning requirements, including minimum lot size requirements, are generally followed in setting aside future house sites under conservation easements. An issue that continues to crop up is specific to large lot zoning, which, though often intended to preserve large tracts of land, requires house sites that are much larger than necessary. This in effect reduces the amount of land that can be conserved for agricultural use. Local regulations should be reviewed to ensure that house sites for farmworker housing, as accessory to a conserved farming operation, are not needlessly excessive e.g., no more than one or two acres.

Conservation easements, once in place, typically run with the land in perpetuity, and are binding on future landowners—though recently there’s been some discussion regarding the need for an easement amendment process to respond to changing conditions as needed, over long periods of time. Monitoring and enforcing easements also requires a long-term commitment on the part of the easement holder, representing a real challenge for many organizations.

One of the most active and successful municipal land trusts, the [Stowe Land Trust](#), has twenty-nine conserved properties totaling over 3,500 acres, which includes three large farms under conservation easement. However, due to the need for ongoing stewardship and potential legal

defense of easements, partnerships with a larger land trust or a state agency have been critical.

For these reasons, conservation easements are often acquired and held jointly; for example, a local land trust may initiate a farmland conservation project, and work with the Vermont Land Trust to obtain needed funding through the Vermont Housing Conservation Board. In Vermont, farm easements that include public funding are generally held by three co-holders: a land trust (often the Vermont Land Trust), the Vermont Housing and Conservation Board, and the Vermont Agency of Agriculture, Food, and Markets. The [USDA Natural Resources Conservation Service](#) (NRCS) is also critical partner in statewide farmland conservation, contributing a federal match to most VHCB-funded projects.

Vermont’s Housing and Conservation Board has adopted a number of policies and guidelines regarding the use of land conserved under easement—for agricultural structures, rural enterprises, renewable energy, farmworker housing, and other practices that may support, or hinder, agricultural use of the land. Since 2004, most farmland easements purchased through the Housing and Conservation Trust Fund include an “Option to Purchase at Agricultural Value” (OPAV) as a part of the easement. The OPAV gives the easement holders the right to buy the farm at its appraised agricultural value if it is offered for sale to a nonfarmer or nonfamily member. The OPAV was adopted by the Vermont Housing and Conservation Board as an additional

Limits of Easements

Conservation easements are not the be-all, end-all solution. As Tom Jackman, Stowe’s planning director states: “Even in towns like Stowe that have an active and successful local land trust with several farms under conservation easements, other local farmers have not been interested in permanently conserving their land.”

SUSTAINING AGRICULTURE: 2. Agricultural Land Conservation

tool to keep conserved farmland in active use and affordable to future generations of farmers. The option appears to be working as intended, encouraging owners of conserved farmland to sell their farms to other farmers. When the time comes to transfer a conserved farm, most owners sell to another farmer or convey it to the next generation. If the proposed sale is to someone who does not qualify as a farmer but plans to use the land for agricultural purposes, the easement holder can waive the option to purchase.

More information about the use of easements in Vermont to conserve farmland is available from the Vermont Housing and Conservation Board, the Agency of Agriculture, Food, and Markets, the Vermont Land Trust and local land trusts.

Paying Farmers for Public Benefits

The public benefits of farmland conservation by private landowners—including the preservation of open space, scenic resources, floodplain capacity and wildlife habitat—are increasingly recognized and valued. Programs that in effect pay farmers to maintain one or more public benefits, often according to a tiered schedule, exist in other states, most notably in Washington, where they are recognized in state statute. In Vermont, the public benefit of farmland conservation is more generally addressed under the state’s Use Value Appraisal or “Current Use” Program—a state tax abatement program in which farmland is taxed at its use value, rather than its development value. The primary objectives of this program are to keep Vermont’s agricultural and forest land in production, help slow the development of these lands, and achieve greater equity in property taxation on undeveloped land (see Section 3: Farmland and Property Taxes of this guide).

First enacted in 1978, the state program has since been amended to also cover conserved land owned by qualified organizations certified

by the Internal Revenue Service. For federal tax purposes, the IRS has defined categories of conserved land or easements eligible for tax deductions – to include the donation of open space (including farmland) that will yield “significant public benefits” as defined in the federal code (IRC Section 170(h)). The state has also considered, but not yet adopted a tiered benefit rating system such as those enacted in Washington, in which taxes are reduced according to an adopted schedule of public benefits—the greater the public benefit provided, the greater the reduction in the tax bill.



The Tunbridge Recreation Committee grooms cross-country trails on this private farmland. Photo credit: Peg Elmer

There are also provisions in Vermont statutes for communities to provide tax stabilization for land in agriculture, recognizing the public benefits. Some towns have continued to compensate landowners by reducing their local property tax bills, even after the state program was established. The concept of entering into separate contracts to directly pay for public benefits provided by the landowner—for example for flood storage and hazard mitigation, public recreational use, or its scenic value—is gaining traction as a conservation strategy.

A town could, for example, lease the development rights of a parcel for a certain number of years, or pay the owner an annual rental fee to allow public access to a pond for skating in the winter.

The federal government and some conservation organizations now pay landowners to protect certain ecosystem functions on agricultural land. One of the most recent examples, the [Bobolink Project](#) managed locally through the University of Vermont, uses community contributions to pay farmers to provide environmental services, including grassland bird habitat. The bobolink—a migratory, ground-nesting songbird—serves as the program’s flagship, a symbol of the benefits that come from pairing community members with farmers to sustain wildlife, the environment and the state’s rural heritage.

This idea has also been implemented locally through an “environmental services auction” conducted by [White River Partnership](#) (WRP) in 2010. This is believed to be the first such auction held in the United States, though similar auctions have been conducted successfully in Europe for many years. The White River Partnership identified a number of environmental services offered by landowners for public auction, and advertised the auction as a fun, celebratory event open to the public. Successful bids were used to pay for services or improvements that also had public benefits.

Towns can access available funding to adopt similar strategies. Tropical Storm Irene illustrated all too well the storage benefits of agricultural land within river corridors, the protection offered by vegetated stream buffers, and the financial risk to farmers who depend on such land for their operations. After Irene, the town of Bristol accessed state and federal funds to pay for riparian buffers to protect land in agricultural use—land that will likely remain in agricultural use with the buffers in place.

Farmers’ items sold at WRP’s 2010 auction included:

- 🍷 Restoring native pollinators at Sunshine Valley Berry Farm – the proceeds purchased native bumble bees to pollinate blueberries.
- 🍷 Making maple syrup at Thunder Mountain Farm – the proceeds purchased sugar maple stand improvement.
- 🍷 Enjoying a farm-fresh picnic at Howvale Farm – the proceeds purchased alternative watering supply equipment for cows.
- 🍷 Enhancing wildlife habitat at Heart of Vermont Alpaca – the proceeds purchased apple tree release.
- 🍷 Restoring a riparian buffer at Fat Rooster Farm – the proceeds purchased native trees and shrubs to plant along the White River.

Source: Mary Russ, White River Partnership

Unlike a tax stabilization program, the amount the landowner is paid directly reflects the agreed upon value of the public benefit provided, so the program and associated costs can be more closely tailored to meet community and landowner needs. Funding for this can come from town appropriations, grants, and private donations to the town’s conservation fund. Lease agreements might also be structured to include a purchase option at the end of the contract period (e.g., a “rent to buy” provision) as necessary to secure recognized public benefits.

Leasing to Farmers

As noted in relation to the Vermont Land Trust’s Farm Access Program, the availability of affordable land is often a barrier to new farmers—and to existing farmers who need to expand their

SUSTAINING AGRICULTURE: 2. Agricultural Land Conservation

operations. Leasing land may be an option, especially for new farmers, to access needed land. The first step a municipality can take is to inventory its conserved lands—both public and private—including agricultural land that may be underused. Such inventories are required for land that has been conserved through the transfer of development rights—but should also be considered for land that has been set aside as open space in subdivision and development review, for example in association with a conservation subdivision or planned unit development. Surveying local farmers can also help provide community information on land access and tenure issues. Information regarding land that is available for lease, or sale, can then be forwarded by the municipality or interested landowners to organizations that link farmers with land.

[*Vermont Land Link*](#), a free website and land access database managed through the Vermont Farmland Access Network, provides a clearinghouse for both farmland owners and farm seekers. [*Land for Good*](#), a larger New England nonprofit, is also a member of the Vermont network and offers more extensive programs for both landowners and farm seekers. For more details on leasing land to farmers, also see [*Cultivating Maine's Agricultural Future: A Guide for Towns, Land Trusts, and Farm Supporters*](#), pages 51 to 53.

IV. Resources

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