

Beyond the Easement: New Techniques in Farmland Conservation



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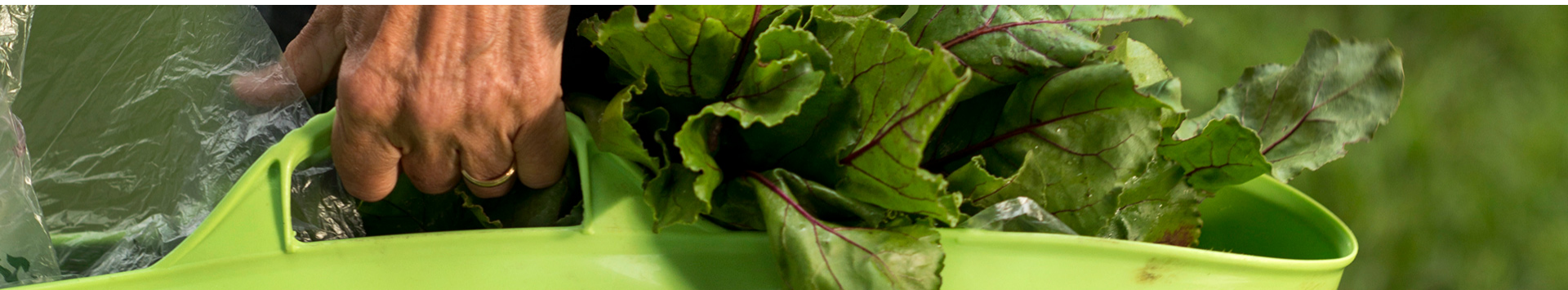
Vermont Land Trust Option to Purchase at Agricultural Value (OPAV)



1977
2300 Conservation Easements
580,000 acres
54 Staff

History of Farmland Affordability

- 1988 State Source for purchasing farmland easements created
 - > 1988-2004 Farmland Conservation Easement included Right of First Refusal (ROFR)
 - > VLT conserved lands portfolio includes **549 ROFR-restricted farms**
 - > Unable to match price with ROFR – ineffective tool to keep farms affordable to farmers and conserved farms in farmer ownership
- 2004 add Option to Purchase at Agricultural Value (OPAV) to Conservation Easement
 - > 2004 – date all purchased Farmland Conservation Easements include OPAV
 - > VLT conserved lands portfolio includes **422 OPAV-restricted farms**
 - > Provides incentive to sell to farmer and better tool for repurchase of conserved farms when necessary



AFFORDABILITY GOAL:

Keep conserved farmland in ownership of farmers

“Make reasonable efforts to assure that conserved farmland is accessible and affordable to future generations of farmers.”

The purpose of ensuring that working and productive agricultural lands remain available for production agriculture, affordable and owned by individuals actively engaged in farming will be further advanced by the Option to Purchase at Agricultural Value, as incorporated below.



CONSERVED ADDISON DAIRY FARM WITH ROFR

2004 – sold to non-farmer

\$515,000

2006 – sold to non-farmer

\$850,000

- 290 acres
- No agricultural infrastructure driving price



One tool to protect affordability:

The “OPAV” replaced the “Right-of-First-Refusal.”

Part of the easement NOT a separate document

Farmers paid more for easements with the OPAV.



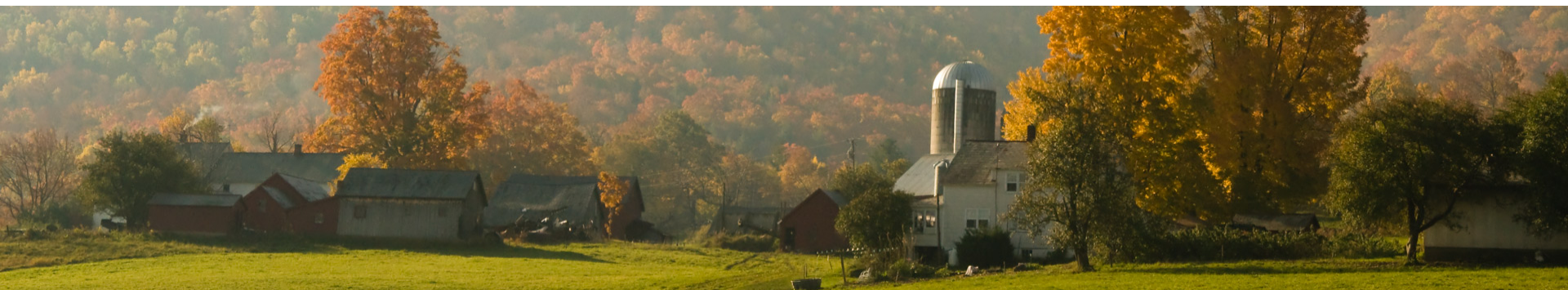
Before the OPAV was used.....

1. Discussion with partners. VHCB & VAAFM
2. Discussion with farmers. Regional public meetings.
3. Discussion with allied professionals. Attorneys & appraisers.
4. Discussion with farm lenders. FSA, Farm Credit, VACC.



What we heard....

1. **Don't interfere with farmer to farmer sales**
2. **Don't interfere with family to family sales**
3. **Agreement on what happens in worst case scenario with farm lenders**
4. **Provide education, outreach and information**
5. **Expect to waive OPAV**



How does the OPAV work?

1. OPAV part of conservation easement.
2. OPAV not triggered by a sale to a family member or farmer.
3. OPAV triggered by proposed sale to non-farmer
4. Holders can assign OPAV to farm buyer
5. Holders can waive or exercise OPAV.
6. Perpetual



OPAV Exercise Steps

1. Notice of intent to exercise given within 30 days
 - Copy of PSA and Farm Plan evaluated
2. Purchase price agreement – no timeframe
 - Land (original value plus CPI or new appraisal)
 - Infrastructure (negotiated or new appraisal)
3. Notice of intent to purchase given – 30 days to close



OPAV Variations

1. Definition of a farmer (VLT definition is 50% gross income)
2. Family exemption (some states eliminate)
3. Timeframe to provide notices & complete purchases
4. OPAV does not require farm purchase – can be assigned
5. VLT OPAV the owner does not have to farm



Bragg Farm



Bragg Farm

- VLT acquired farm for \$760,000
- Sale to farmer: \$165,000
- Conservation Easement Value: \$595,000
- Farm value without OPAV \$381,000



OPAV is great tool but has limitations & challenges

OPAV Issues

- **Project configuration can be an obstacle to exercise OPAV**
- **Reactive nature of OPAV**
- **OPAV doesn't ensure affordability for beginning farmers**



Our Solutions

- **Size cap or exclude housing**
- **Address permitting issues (Exclusions)**
- **Flexible CE terms (Pre-approved subdivision)**
- **Provide technical assistance to farmers and realtors**
- **Be a matchmaker to help ensure farm buyer outcome**
- **Active stewardship engagement**
- **Farmland Access Program strategies**

Maine Farmland Trust

Buy/Protect/Sell Program



**42 Properties Acquired
10,2311 acres Protected**





- Purchase Farmland at “Development Value”
- Protect with Conservation Easement
- Sell to Farmer at “Farmland Value”
- Must “Fill Gap”



Purchased for \$291,500

No Allowance for Residence in CE

Resold to Farmer for \$35,000



Reconfiguration is Fun!

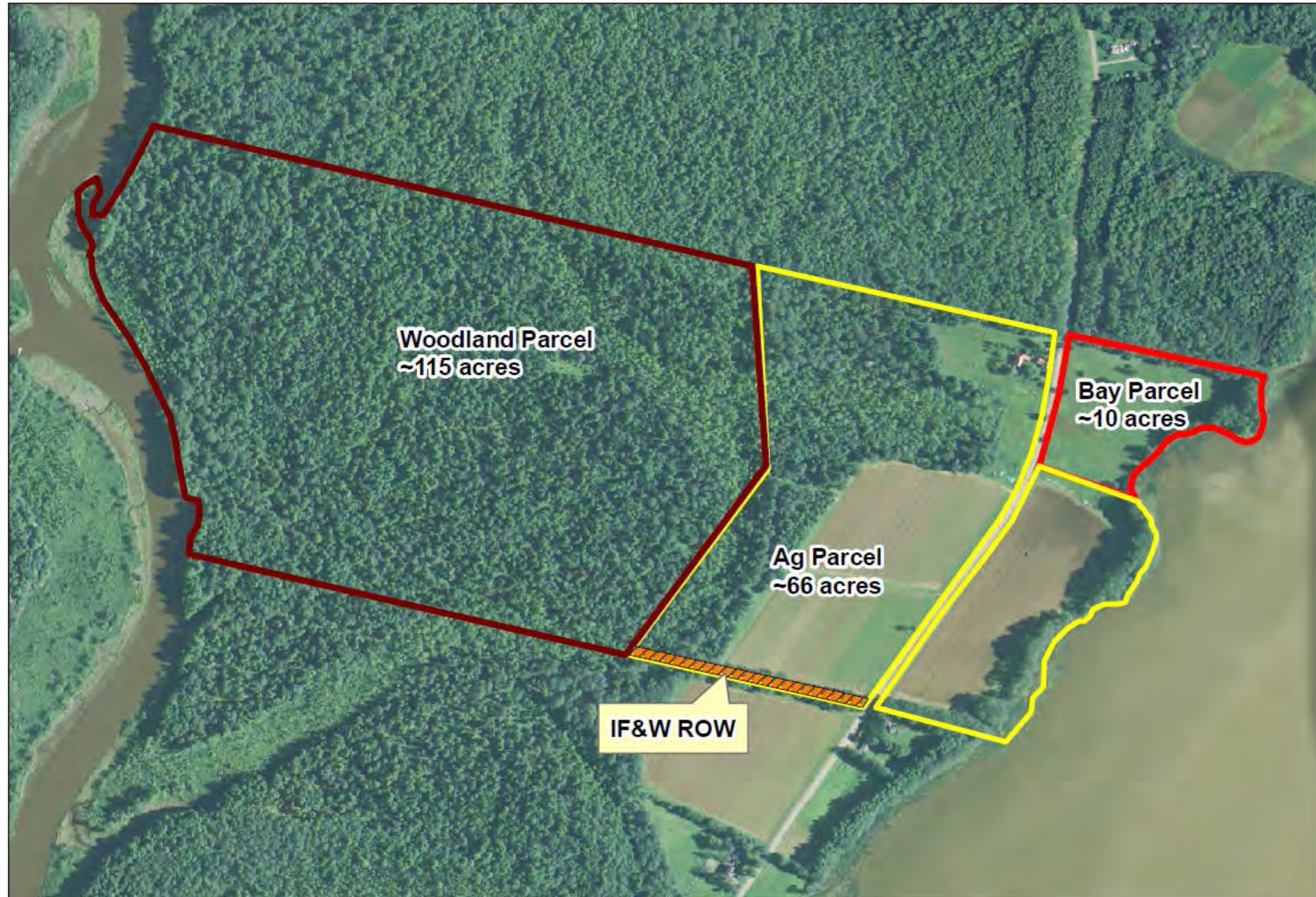


304 Pork Point Road

Bowdoinham, Maine

Reconfiguration Map

Schedule A



- **MFT Acquired Property for \$980,000**
- **Sold Backland to State for \$150,000**
- **Sold Parcel to local land trust for \$245,000**
- **Sold Farm for \$290,000**
- **Easement worth \$290,000**
- **50% of Easement Money from NRCS-ALE**



Reconfiguration is Fun!

Sometimes....





~130 acres purchased for
\$355,000

Farmland (~26 acres) sold
for \$140,000

CE on farmland was worth
\$140,000 (half came from
NRCS)

2 limited development lots
sold for \$280,000

Small piece sold to abutter

Small lot given to local land
trust

Auto shop purchased, lot
reconfigured, and sold



Purchased for \$650,000

Sold to Farmers for \$295,000





Lessons Learned

- Delay whenever possible
- Less Holding Time is Better
- Only Buy Marketable Farms
- Infrastructure Makes it Harder....
- Option can be better
- Leasing is Tricky

Farm Disaster Relief Program



Stacy Cibula
conservation project manager
Monadnock Conservancy



Background

- Established fund in Dec. 2016
- Summer 2016 – severe drought
- Dairy farms hit hard
- Why us?





About the Fund

- \$100,000, 10 farmers
- Most dairy or livestock producers
- Funds used for many purposes





But wait...is this legal?!

YES!

Must have...

- Charitable class of sufficient size and scale
- Indirect benefits to public





Eligibility

- Conservancy service area
- At least 25% income from farm
- At least \$5000 in losses from disaster





Of the 10 awardees...

- 5 had already conserved land or in process
- 4 were interested (2 now active projects)
- 1 unsure





Evaluation Criteria

- Conserved? (or in process or considering)
- Commercial viable?
- Overall statement of need



Photo by Bill Sumner



Lessons Learned – The Good

- Keeping farms in business - de facto form of conservation
- Led to future conservation projects
- Gained respect in farming community





Lessons Learned – Do Differently?

- Better promotion of farms
- Special fundraising appeal
- Logistics – set deadline vs rolling





Getting Your Board “On Board”

- This is where land conservation is heading....
No longer just in “easement business”
- Generates community goodwill > more conservation projects.
- Passes legal straight-face test (see IRS bulletin 3833)

Want to learn more?

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“You cannot save the land apart from the people or the people apart from the land.”

- Wendell Berry

