



A New Technique to Keep Farmland in Farming:
Option to Purchase at Agricultural Value (OPAV)

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As interest in local agriculture develops, organizations involved in agriculture and land conservation increasingly focus their efforts on preserving farmland. The question arises: How to assure that preserved farmland remains actively farmed?

Programs in neighboring states, particularly Vermont and Massachusetts, have been developed to promote continuation of farming on lands particularly suited for agriculture. Most commonly, a conservation easement is acquired, held by a local land trust or government agency. The easement document may include an Option to Purchase at Agricultural Value (OPAV) so that when farm property is conveyed, the new owner will be an active farmer.

An OPAV can decrease the value of the underlying fee interest even more than a conservation easement without an OPAV. So, OPAVs offer a significant and novel mechanism to make farmland more affordable for new farmers or farmers looking to scale up.

Here, briefly, is how it works. A land trust, or organization that holds conservation easements, acquires an easement on land that is actively farmed. Negotiations with the farmer/landowner include an agreement that the land trust will have the option to purchase the property at its value for agriculture at such time as the owner decides to sell the property. The option is included in the conservation easement deed and is recorded.

Conveyance to a family member or to another farmer who plans to continue the farming operation will not trigger the option. Only if the owner contracts to sell the land to a non-farmer, can the land trust decide to exercise the option and purchase the property at its appraised value for agriculture. The land trust will then market the property only to a buyer who plans to continue to use the land for agriculture.

The experience in Vermont and Massachusetts indicates that most conveyances of farm property have in fact been to active farmers and/or family members; the OPAV has only occasionally been exercised by the easement holder.

As with most new techniques, legal and administrative questions arise, and any organization holding easements would need to consider the additional administrative, legal and financial burden assumed by adding OPAV to easements involving farmland. But, the Option to Purchase for Agricultural Value seems like a worthwhile new technique, one that could be a beneficial game change akin to the development of conservation easements a few decades ago.

For more information about OPAVs or other issues pertaining to land access and conservation, contact your attorney or any attorney at [BCM Environmental & Land Law, PLLC](#).