



Selling a Farm with a Conservation Easement that Includes an Option to Purchase at Agricultural Value

Many of the Vermont Land Trust's (VLT) farmland conservation easements now include an "Option to Purchase at Agricultural Value" (OPAV). This is a legal tool used to keep land affordable for farmers with commercial agricultural operations and to discourage conversion of good farmland into 'estate'-type properties. The OPAV requires that VLT be notified when the property is under contract to be sold. Further, it gives VLT and/or other easement co-holders (e.g. Agency of Agriculture, Vermont Housing and Conservation Board) the opportunity to purchase the conserved property for its agricultural value and resell it in order to keep it in active production. The OPAV can only be exercised when the farm is under sales contract to a buyer who is not a commercial farmer or family member. In most situations, VLT must waive its OPAV before a sale can occur. The OPAV is perpetual and applies to all future owners of the conserved property.

The OPAV's effect on the value and sale of property may be substantial. Farmland owners who are contemplating a sale and anyone who may assist with that sale (realtors, attorneys, financial advisors) should make sure they review and understand the OPAV and all other legal restrictions in the conservation easement. VLT will make copies of all documents available if requested. Some important issues to consider:

- **A sale to a family member or "qualified farmer" is exempt from the OPAV.** You should be seeking a buyer who is a commercial farmer and who either 1) makes at least 50 percent of his/her gross income from farming or 2) has a business plan *and* the experience to operate a commercial farming operation suitable to the farm property. VLT may be able to help you find such a buyer.
- **If you are planning to contract with a realtor to sell your farmland, the realtor should contact VLT before marketing your property.** You and your realtor should be in agreement about whether a sales commission would be paid if VLT or one of the other co-holders exercises its option and buys the property.
- **Once the property is under contract to be sold, the OPAV requires that the seller submit a copy of the Purchase and Sales Agreement and, if the buyer is not family or a "qualified farmer," the buyer's farm business plan.** VLT or the other co-holders will evaluate the plan, its suitability for the property, and other factors in their decision about whether or not to exercise the option and buy the property.

VLT has previously exercised the OPAV, acquired a conserved farm, and sold it for commercial farming. In this case, by exercising the OPAV, VLT was able to give another farmer an opportunity to acquire a conserved farm at an affordable price — an opportunity we want future owners of the farm to also have. The legal documents clearly outline the process for VLT to provide notice of intent to exercise, determine the purchase price, and close on the purchase.

We strongly encourage you to contact VLT prior to marketing any conserved farm property. For complete information about the OPAV or any other issue regarding VLT's farmland conservation easements, you should contact VLT's stewardship agricultural manager at (802) 533-7705.