What is an OPAV?

Option to Purchase at Agricultural Value

A legal tool used to **keep land affordable to farmers** with commercial agricultural operations and to discourage conversion of good farmland to 'estate'-type properties. (Vermont Land Trust)

Allows OPAV holder to:

- Restrict the sale of land to only "qualified farmers" or to family members
- Restrict sale price to agricultural value (vs. higher fair market value)

History

1977: Massachusetts establishes first state agricultural conservation easement program in the nation.

1992: Massachusetts requires OPAV in state-funded Ag Preservation Easements

2004: VT starts using OPAV in state-funded CEs

2021: OPAV used in VT, ME, MA, NY, exploring using in CT.



Why an OPAV?

- "An Option to
 Purchase at
 Agricultural Value
 (OPAV) is the
 strongest protection
 that a land trust can
 add to a traditional
 conservation easement
 to keep land in
 production and
 affordable to working
 farmers."
 - National Young Farmers
 Coalition

- Increasing estate / 2nd home market in formerly rural areas (traditional CEs don't prevent non-farmers from converting farms to estate properties)
- Conservation easements weren't sufficiently suppressing land value
- Results 1) protected farmland taken out of active production; 2) farmland is no longer affordable to farmers



Key Elements of an OPAV



- Typically, OPAV is a component of / integrated into the CE
- Typically, CE includes affirmative farming covenant (acres in production vs. product sales)
- Farmer owns land, buildings, business
- OPAV provides CE-holder the right (not requirement) to acquire the conserved land at agricultural value and to re-sell it to another farmer to keep it in active production.
- CE/OPAV-holder can waive its option to purchase.
- Sale / transfer to a family member or to a Qualified Farmer* is exempt from OPAV
- Some OPAVs require owner-occupancy, ag income, or limits farmhouse size

^{*} **Qualified Farmer**: One who makes at least 50% of AGI from farming, or who has business plan and experience to operate a commercial farming operation suitable to the property (as determined by CE/OPAV holder).



Legal Considerations

- MA: OPAVs only permitted in APRs, not in EEA CRs (APR can be privately-held by land trust w/o state co-hold)
- Templates: Vermont Land Trust, Maine Farmland Trust, Equity Trust,
 Massachusetts Agricultural Preservation Restriction
- OPAV only triggered if there is a sale above agricultural value or to a non-farmer
- Requires partnership with qualified organization (land trust, state agency)
- OPAV is tied to the land permanent, non-revocable/amendable.
- OPAV can be added on after CE
- One of the best ways a farmer can ensure their farm remains affordable to future farmers, and in active production

Financial Considerations

OPAVs reduce pool of possible buyers (farmers-only)

Property Valuation

- OPAVs usually further reduce value of land more than CE (income for original landowner, less \$ when go to sell farm)
- Extent OPAV further reduces land value is it enough?
- Finding qualified ag-land appraisers

OPAVs and Lenders

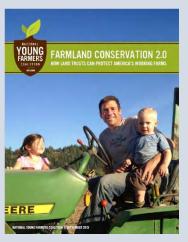
 Lenders need to be engaged when a farmer is buying a property with an OPAV.

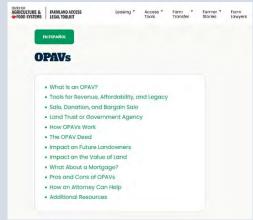
 VLT has found that owners can have a harder time financing construction of a <u>new</u> home on an OPAV CE than buying an existing home: *lenders* – *including ag lenders* - *devalue future value of homes built on an OPAV CE*

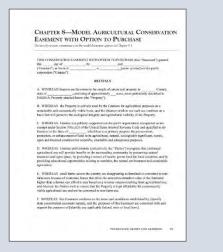
Possible solution: Keep home on separate lot not subject to CE or OPAV

OPAVs do not appear to impact valuation of non-residential farm

structures by lenders.







OPAV RESOURCES

National Young Farmers Coalition www.youngfarmers.org/reports/conservation2.0.pdf

Vermont Law School Center for Agricultural & Food Systems

farmlandaccess.org/opavs/

Equity Trust

www.equitytrust.org/publications/farm-resources