

## 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 / 2<sup>nd</sup> 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 new 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](http://www.youngfarmers.org/reports/conservation2.0.pdf)

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Leasing | Access | Farm Transfer | Farmer Stories | Farm Lawyers

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## OPAVs

- What is an OPAV?
- Tools for Revenue, Affordability, and Legacy
- Sale, Donation, and Bargain Sale
- Land Trust or Government Agency
- How OPAVs Work
- The OPAV Deed
- Impact on Future Landowners
- Impact on the Value of Land
- What About a Mortgage?
- Pros and Cons of OPAVs
- How an Attorney Can Help
- Additional Resources

Vermont Law School Center for Agricultural & Food Systems

[farmlandaccess.org/opavs/](http://farmlandaccess.org/opavs/)

Equity Trust

[www.equitytrust.org/publications/farm-resources](http://www.equitytrust.org/publications/farm-resources)

