



Does the Option at Agricultural Value Protect Farmland for Beginning Farmers?

A Policy Analysis

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Executive Summary

Since the late 1970's, local and state governments have protected nearly 2.7 million acres of farmland with Purchase of Agricultural Conservation Easement programs. Given market trends and program regulations, the threat of these protected farms being taken out of the agricultural marketplace became a concern for farming advocates and lawmakers. The Option to Purchase at Agricultural Value (OPAV) was adopted in two states to address this concern. OPAV requires that affected land is sold at a price that reflects its agricultural value, rather than a price influenced by non-farming market demand. OPAV is heralded by some farming advocates as essential to ensuring the future availability and affordability of protected farmland, and critical to enabling access to protected farmland by new and beginning farmers. But just how successful has OPAV been at keeping protected land in the hands of farmer, particularly new farmers? Land For Good commissioned studies of the experiences to date with OPAV in the Massachusetts and Vermont farmland protection programs. The findings show that OPAV is not necessarily ensuring that protected farmland is affordable to all sectors of farmers interested in purchasing it. This has implications for beginning and scaling-up farmers, as well as for the communities interested in sustaining their farm economy into the future. This paper presents the study findings along with public policy recommendations to make protected land more accessible for beginning farmers.

Background and History: OPAV and Farmland Protection Programs

Since the late 1970's, over 120 local and state governments have protected close to 2.7 million acres of farmland with Purchase of Agricultural Conservation Easement (PACE) programs (American Farmland Trust, 2012). Concerned about the permanent loss of farmland to suburban and urban development, these programs have enabled local and state governments to offer landowners the opportunity to voluntarily sell an agricultural conservation easement that ensures the future use of their land for agricultural purposes. The intent of these programs was and is to create a pool of protected farmland that will be available into the future for agricultural use and production.

At the time the first such state programs were created and funded in Maryland, Massachusetts and Connecticut, there was little if any concern that someday protected farms might be purchased for estate properties or rural retreats, essentially removing these properties from the reach of active, commercial farmers. The basic design of the technique would seem to prevent such a situation from occurring – the restrictive conservation easement imposed on the property would so limit future uses and non-agricultural subdivisions of the land that when it went up for sale it would naturally be sold to another farmer. However, while the easements may have required that the land remain in active agricultural use, as in the Massachusetts document, there were no requirements for example that the land be farmed by the owner or sold to another farmer.

As land prices generally went up in the late 1980's and early 1990's and rural properties became more attractive, especially in the Northeast, there were cases of previously protected farms being sold to non-farmers. While there is no definitive data on how many farms protected through state and local PACE programs are no longer owned by operating farmers, and studies of the federal Farmland Protection Program and the programs in Massachusetts, Vermont and Ohio indicate that the majority of protected farms remain in active agricultural use and ownership, the threat of protected farms being taken out of the agricultural marketplace became a concern for farming advocates and lawmakers (Clark, 2010; Esseks & Shilling, 2013; Ferguson & Cosgrove, 2000; Sherman, Milshaw, & Wagner, 1998). In addition, as the ageing farmer population exits from farming, their protected farms are vulnerable to going out of farming.

In response to this issue and to ensure that protected farmland remains available for commercial agriculture, Massachusetts in 1994 instituted the addition of an Option to Purchase at Agricultural Value (OPAV) to the conservation easements purchased on farmland in the state through its [Agricultural Preservation Restriction \(APR\) Program](#). Vermont followed suit in 2003 and began to include a similar provision in agricultural conservation easements purchased through its [Vermont Housing and Conservation Board \(VHCB\)](#).

The OPAV requires that when affected land is sold, it be sold at a price that reflects its agricultural value, rather than a price that may be influenced by any non-farming market demand, for example for rural estates. The OPAV gives the easement holder the right, if necessary, to purchase a protected farm at a predetermined agricultural value or to assign that right to a qualified entity such as a land trust. The option is triggered when a protected property is offered for sale, except that certain sales are exempt or the option can be waived. Exempt transactions may include sales to family members¹ and sales to defined "Qualified Farmers." Vermont, for example, defines a "qualified farmer" as "a person who presently earns at least one-half of his or her gross income from the 'business of farming' (as defined by the IRS)."

While Vermont exempts both family and qualified farmer transfers, Massachusetts only exempts family transfers and reviews all other transfers for price and plans of the buyers. The option may be waived by the easement holder, if the prospective buyer of the farm can demonstrate that they intend to keep the land in active farming, supported typically by a

¹ The Vermont Housing and Conservation Board notes that the term "family" includes: (a) any spouse of Grantor and any persons related to Grantor by blood to the 4th degree of kinship or by adoption, together with spouses of family members, (b) a corporation, partnership or other entity which is wholly owned and controlled by Grantor or Grantor's family (as defined herein), (c) any estate of Grantor or Grantor's family, and (d) all owners of a Grantor corporation, partnership, trust or other entity who are related to each other by blood to the 4th degree of kinship or by adoption, together with spouses of family members.

description of the buyer's farm training and experience and a proposed farm business plan or a legitimate plan to lease the farm on a long term basis to an active farmer.

The purpose of the option is to promote, but not require, farmer-to-farmer sales and avoid the unintended consequence of protected farms selling to non-farmers at inflated prices.

The OPAV has been heralded by some farming advocates as essential to ensuring the future availability and affordability of protected farmland, and in particular critical to enabling access to protected farmland by new and beginning farmers. But just how successful has OPAV been at keeping protected land in the hands of farmers? Does it present an avenue to farm ownership for those looking to start farming or to purchase farmland for the first time?

Analysis

Land For Good (LFG), a New England-wide nonprofit organization, specializes in farmland access and transfer. With funding from the US Department of Agriculture, it led the Land Access Project (LAP) in partnership with over two dozen organizations and agencies. The purpose of LAP was to build programs and services to help beginning (and other) farmers access farms and farmland in New England.

Over the summer and fall of 2012, LAP commissioned studies of the experiences to date with OPAV in the Massachusetts and Vermont farmland protection programs – the Agricultural Preservation Restriction (APR) program and the Vermont Housing and Conservation Board (VHCB), respectively. The Massachusetts Department of Agricultural Resources conducted the analysis of the APR program, and staff of VHCB and the Vermont Land Trust covered the experiences in Vermont. All available information and data on the re-sale of protected farms with OPAV was collected and reviewed – 98 instances in Massachusetts and 87 in Vermont.

In Vermont, the option to purchase at agricultural value was only considered in 10 of the 87 sales of protected farmland – the remaining sales were between family members or to qualified farmers. In 9 of the 10 cases that could have triggered OPAV, the option was not exercised based on the buyers' business plans for the farms and their credentials as prospective farmers. In the lone exception, the easement holder, Vermont Land Trust, purchased the farm and became an interim owner. In Massachusetts, all the sales of farms with OPAV were qualified sales and the option has not yet been exercised.

The review of protected farm sales in Massachusetts and Vermont yielded the following findings:

- Existing farmers expanding their current farming operations represented the largest group of buyers. In Massachusetts, over half of the individuals purchasing APR land were

doing so to expand existing farming operations. In Vermont, 78% of the arms-length, non-family, sales were to established farmers.

- In both states, it was not surprising to find that most of the purchases were made by farmers engaged in typical farming operations for each state – in Vermont, dairy farming, both conventional and organic; and in Massachusetts, high-value field crops.
- The protected farms, even subjected to OPAV, demanded higher than expected prices. In Vermont, for example, some of the re-sales were 300-400% higher than appraised values 5 to 7 years earlier. Since the farms were purchased by existing farmers, this suggests the extreme competition among farmers for available cropland. In Massachusetts where sales of protected farms without OPAV could be compared to sales with OPAV, the OPAV farms still commanded a higher per acre price. One explanation for this phenomenon is that the newer APR farms with OPAV tend to have a higher concentration of better soils, reflecting the increased competition for APR funding in recent years.
- The Massachusetts analysis uncovered that 10% of the purchases were by individuals who previously rented the land that they purchased.
- Both programs reported that purchases by new and beginning farmers represented a very small number of the re-sales – 5 in Vermont and 4 in Massachusetts.

The analysis of protected farm re-sales in Vermont and Massachusetts clearly show that OPAV is—as intended—indeed keeping protected land in the hands of farmers and farm families. However, it is not necessarily ensuring that protected farmland is affordable to all sectors of farmers interested in purchasing it.

It should be pointed out that the “A” in OPAV is for “Agricultural” value and not “Affordable” value. The objective of the clause has always been to keep land affordable for farmers, generally, but not necessarily a particular class of farmers, e.g., new and beginning farmers or limited resource farmers. OPAV is not a tool that specifically favors or even prioritizes new farmers without competitive capital resources.

The main advantage of OPAV is to ensure farmer-to-farmer re-sales and to give the restriction holder a clear role in all communications about the transfer. Landowners have tended to support OPAV because it does allow qualified transfers at appreciated prices – an important consideration to them when enrolling land in the agricultural conservation easement program in the first place. The existence of OPAV creates an important dialogue between the entity named in the OPAV (e.g., in the case of Massachusetts, the Massachusetts Department of Agricultural

Resources and in Vermont, the Vermont Land Trust), the buyer and the seller that has headed off the need for waivers or to exercise the option.

It appears that OPAV can help to ensure that protected farmland remains available to farming and farmers into the future. But as currently structured, it cannot ensure access to this land by new and beginning farmers who typically cannot compete against well-established farmers. If there is a public policy goal to make protected land accessible for beginning farmers, what additional modifications to or new sub-programs of PACE should be considered to specifically address their needs?

Policy Recommendations

Here are some suggestions for state-level policy reforms that would address this additional policy goal:

- Develop entirely new PACE-like programs or special offerings within existing PACE programs geared specifically to new and beginning farmers – Such programs could condition access to capital to purchase farmland with the protection of the land with an agricultural conservation easement. The [Delaware Young Farmers Farmland Purchase and Preservation Loan Program](#), the [Carroll County, Maryland Critical Farms Program](#) and the [New Brunswick, Canada New Land Purchase Program](#) are offered as examples for consideration.
- Develop a “Starter Farm” Program within Existing PACE Programs – This option would target the protection of smaller farm properties with housing. To encourage that the property remain as a stand-alone farm, require that the house remain with the farm. To maintain its future affordability consider restricting the size of the house; requiring that the house only be used as housing for the farmer or farm employees; appraising the house in any re-sale on the size of the house and not its amenities; appraising the house based on an index of the median house price in the local area and/or limiting the re-sale price of the farm to its assessed agricultural value. In addition, such “starter farms” would include an OPAV in the agricultural conservation easement. The Vermont Land Trust’s [Farmland Access Program](#) has had success in helping new and beginning farmers purchase their first farms. The presence of the OPAV in the Vermont PACE program has helped the organization facilitate these transfers at an affordable price.
- Purchase retroactive OPAVs on previously protected farms – Institute a program that buys an OPAV on farms already conserved with traditional easements that did not include OPAV. Target this program to farms that are most at risk for estate conversion and that offer ownership possibilities for new and beginning farmers. VHCB has already begun to do this to facilitate the transfer of these older, protected farms to farmers, but

not necessarily to new and beginning farmers. Massachusetts does not have a program to purchase after-the-fact OPAVs, so older APRs that do not include the OPAV provision transfer with their original terms and conditions intact. However, certain actions trigger the filing of an updated APR document including the OPAV, such as any consideration of subdivision of an older APR into one or more smaller parcels.

- Create a Farm Viability Program specifically targeting previously protected farms – Modify, add to or create a Farm Viability Program that provides business planning assistance and matching grants for capital investments in farm infrastructure to new owners of PACE-protected farms. Such a program could provide needed financial assistance to new and beginning farmers who have purchased older, protected farms that may be less desirable to established farmers and are in need of rejuvenation. The Massachusetts [APR Improvement Program](#) was created to “help sustain active commercial farming on land that has already been protected through [the APR program].” The program offers new owners (by purchase or inheritance) of APR land access to grants for business planning and infrastructure investments. The goal of the program is to enhance the viability of the farming enterprises to help keep the protected land in the required active agricultural production.

The following suggestions are specific to the Federal Farm and Ranch Lands Protection Program (FRPP), which partners with state, local and private farmland protection programs to protect land with agricultural conservation easements.

- Ensure that FRPP Addresses the Needs of New and Beginning Farmers – Remove the current restriction in FRPP on land trusts applying directly to the program to sell agricultural conservation easements on properties they own if these properties are designed to advance creative solutions to land access for new and beginning farmers.
- Remove the current restriction in FRPP on future subdivisions of protected farms. Flexibility needs to be maintained to allow protected farms to adapt to changing agricultural circumstances and needs. The appropriate subdivision of large, previously protected farms (e.g.: former dairy farms) can be an important tool for providing access to land for new and beginning farmers.

This study provides an important perspective on OPAV as a farmland protection tool. It raises the question whether and how public policy should specifically attend to certain sub-sectors of farmers. More specifically, it suggests that policy improvements can improve OPAV as a mechanism to address the particular land access needs of beginning farmers.

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