



Ag Easement Affordability Mechanisms

**Washington State
Conservation
Commission**



**Office of
Farmland
Preservation**

Washington State Legal Analysis & Findings

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Background of Washington inquiry

- Affordability crisis in WA
 - Overall ag land price increase of 37% since 2017
 - Some counties nearly doubled
 - Markets with range of \$20k/acre to \$50k/acre
- Legal limitations on OPAV use
 - What are our options in WA? What's defensible?



Photo credit: Justin O'Dea, Washington State University Extension, "[Farming on the Urban Edge](#)"

Affordability Mechanisms Analysis

Legal review & practitioner feedback on:

- Option to Purchase at Ag Value (OPAV)
- Preferential Term-Limited Right of First Refusal (ROFR)
- Home Size Restriction
- Requirement for Sale to a Qualified Farmer (RSQF)
- Limitation on Resale Price

Legal Findings - Snapshot

	Furtherers purpose of Conservation Easement Enabling Statutes?	Valid Restraint on Alienation?	Likely Gift of Public Funds Issue?
Option to Purchase at Agricultural Value	Possibly, but only indirectly	Direct restraint, possibly invalid (possibly validated if revised)	No
Preferential Term-Limited Right of First Refusal	Likely, but only indirectly	Directly restraint, likely valid	No
Home-Size Restriction	Yes, directly	Indirect restraint, likely valid	No
Requirement for Sale to a Qualified Farmer	Likely, directly	Direct restraint, likely valid	No
Limitation on Resale Price	Possibly, but only indirectly	Direct restraint, possibly invalid (possibly validated with + term)	No

Practitioner feedback – effectiveness

- Demonstrated near term impact on value
 - ROFR, OPAV, and RSQF (with exceptions)
 - HSR and RVL more variable by market conditions
- High impact on keeping land in productive ag
- High stewardship obligation
- Questions on long term value suppression



Photo credit: Justin O'Dea, Washington State University Extension, "Farming on the Urban Edge"

Limitations; where do we go from here?

- Restrictions to keep in ag may not be enough
- New approaches being piloted:
 - Farmland affordability covenants with shared appreciation (affordable housing model)
 - Resale value limitations based on potential production value



Photo credit: Sarah Richards,
Whidbey Conservation District

What's next for Washington?

- Sample easement language drafting
- Learn from states with Affordability Covenant Enabling Acts
- Explore options for public support of alternative land access (long term lease)





Photo credit: Justin O'Dea, Washington State University Extension, "Farming on the Urban Edge"

Thank you!

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