

Washington State
Conservation
Commission

Office of
Farmland
Preservation

Washington State Legal Analysis & Findings

Hilary Aten, OFP Coordinator Saving America's Working Lands Conference April 24th, 2025

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



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

- Legal limitations on OPAV use
 - What are our options in WA? What's defensible?

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

	Furthers 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

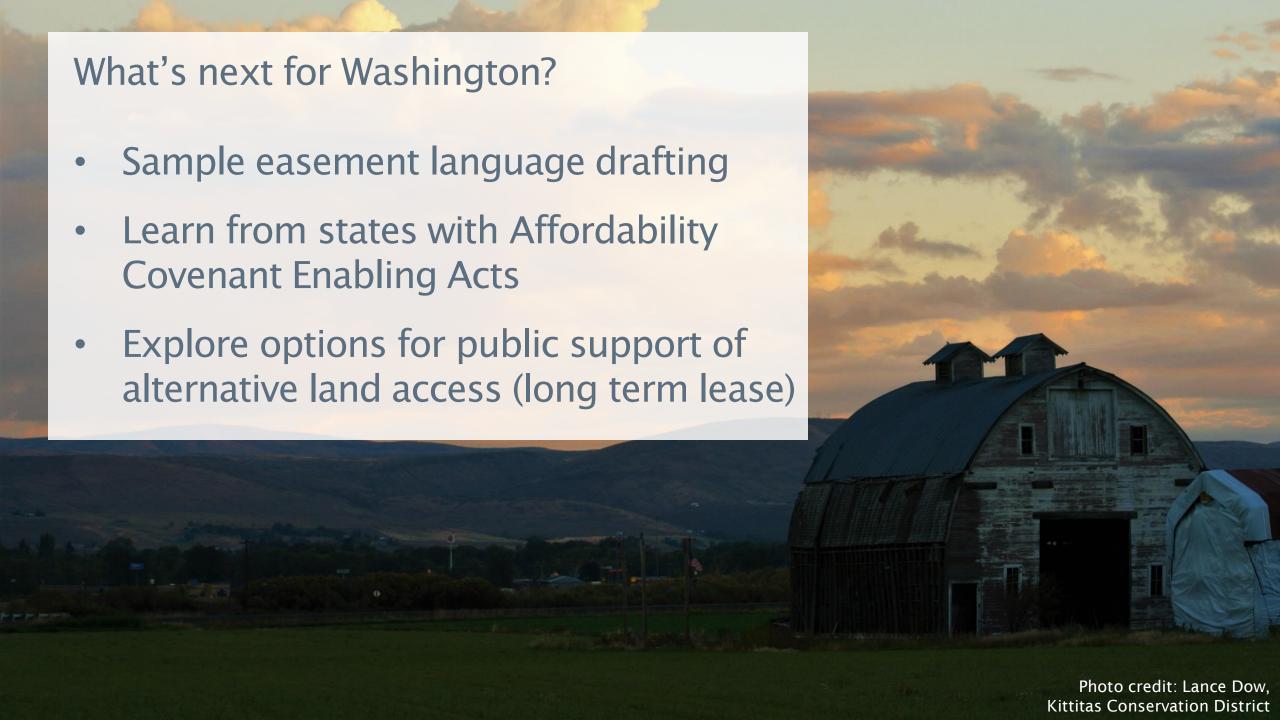
- Demonstrated near term impact on value
 - ROFR, OPAV, and RSQF (with exceptions)
 - HSR and RVL more variable by market conditions
- High impact on keeping land in productive ag
- High stewardship obligation
- Questions on long term value suppression



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







Thank you!

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