

# Considerations for Acquiring a Farm: Selecting the Best Farm Property

A successful farm operation requires thoughtful property selection, whether you are leasing or purchasing land. When looking at properties, you need to consider how the property will support the goals in your business plan. Will the farm be productive? Will the location and regulatory environment fit into your marketing strategies, or can you adjust your strategies to suit your income needs? Is the price of the farm reasonable and realistic given your financial goals? Are there any zoning, covenant, easement, or plat restrictions that might prevent you from producing or selling what you want, where you want?

Maryland farmers are fortunate to have strong regional market opportunities and many farms contain soil types that will grow a wide variety of crops. However, because Maryland has the fifth highest population density of any state in the nation and is bifurcated by the Chesapeake Bay and its tributaries, Maryland has greater need to regulate land use for the health, safety, and welfare of its citizens than other rural states. Much of the land currently in agriculture is available because of zoning, covenants, easements, or plat restrictions that limit non-agricultural uses.

## Lease or Purchase?

Many beginning farmers lack the financial resources to buy land, or would rather invest in their farm business versus using all their capital on a land purchase. Land leasing is a viable option in Maryland. The majority of farmland is leased on a year-to-year basis for grain or forage production. A disadvantage of leasing is that it is difficult to secure leases long enough to be comfortable making major improvements to a farm. If you have a long-term business plan and can find a property that meets your needs, then land purchase may be the best option.

Several resources exist online to help beginning farmers understand leasing option and what to look for in leasing agreements. The University of Maryland Extension and Agriculture Law Education Initiative provide legal resources to help farmers looking to lease.<sup>1</sup> Loan options for land or infrastructure purchase are available at the federal and state levels, including: USDA loans,<sup>2</sup> the Farm Credit System,<sup>3</sup> and

Maryland Agricultural & Resource-Based Development Corporation (MARBIDCO).<sup>4</sup> Maryland FARMLink<sup>5</sup> has a land link service that aims to connect those who want to sell or lease farmland with those who want to buy or lease.

## Utilizing a Farm Real Estate Agent

When you begin the search for a farm property, consider utilizing the services of a quality farm real estate agent. A good agent will know what to consider when purchasing farmland, will have an idea on what to expect during the transaction, and can make the process less stressful. An agent will serve on your behalf and will often be able to catch land caveats.

- **Buyer and seller representation.** It is important to understand how a real estate agent is typically paid and who represents the buyer and seller. The Maryland Real Estate Commission (MREC) has prepared a document entitled “Understanding Whom Real Estate Agents Represent” that explains the roles of each agent in different circumstances.<sup>6</sup> The buyer’s agent can only prepare offers and negotiate in the best interests of the buyer after a written agreement has been signed between the buyer and the buyer’s agent. This written agreement will contain the provisions of the agreement, including how the agent will be paid and the timeline. The buyer’s real estate agent will represent the buyer’s interest in the transaction. According to the MREC, a seller’s agent “works for the real estate company that lists and markets the property for the sellers and exclusively represents the sellers. That means that the seller’s agent may assist the buyer in purchasing the property, but his or her duty of loyalty is only to the sellers.” In some cases, the same broker may represent the seller and the buyer. This must be disclosed in writing and agreed to by all parties.
- **Real estate agent fees.** The seller of the property will typically pay the entire cost of the agent/broker fee. This fee is normally a percentage of the selling price of the property, and typically ranges from 5 to 7%. The fee is split between the buyer’s agent/broker and the seller’s agent/broker (normally equally) based upon the agreed

upon terms of the contract. For example, if a property sells for \$300,000, and the agreed upon fee is 6% split equally, the seller will pay a 3% fee to the buyer's broker/agent and a 3% fee to the seller's broker/agent. While this arrangement is typical, the terms can vary widely and are governed by the agreed upon terms stated in the contract. Some buyer's agents may require an administrative fee or may stipulate a minimal guaranteed amount for their services.

The fees for real estate agent services are transferred during the settlement process. In situations where the property is offered for sale by owner, without the use of a real estate company, the fee for the buyer's agent will need to be negotiated with the seller. In cases where neither the buyer nor seller utilize a real estate agent, there is typically not any fee. The seller is not under any obligation to pay buyer agent's fees.

- **Finding a good farm real estate agent.** Maryland FarmLINK has a listing of realtors who have professional training on issues related to buying and selling farmland.<sup>7</sup> Realtors going through this training are given information on zoning and planning issues that impact agriculture, how to check soils on the property, how to check if the property is enrolled in a conservation easement or other conservation program, how to handle agricultural leasing issues, and how the septic law can impact agricultural properties. The listing does not currently cover all Maryland counties, but the training is on-going and more realtors are added in additional counties as the course is completed across the state. Before picking a realtor, take your time to do the research to make sure that they have the skills you need when purchasing new farmland.

## Internet and Other Sources Provide Information about a Property

There are multiple avenues available for researching general information regarding farms. Twenty years ago, this information could only be obtained by visiting the courthouse or state record offices. Now there is a tremendous amount of information available online through the internet. The obvious place to start is the landowner offering the property for sale. Realtors can also help to provide information.

- **Review Property Assessment Data.** Maryland offers a free Real Property Search Data Search database<sup>8</sup> where you can search for property information using either an address, tax ID number or map/parcel number. You can obtain records such as the tax assessed value of the property, prior property sales data, deed reference, map/parcel number, account ID, legal description, use classification, and name and address of the current owner. The Real Property Data Search database is often a good place to start to find information on a property.<sup>9</sup>

- **Reviewing the Deed and Plat.** Maryland offers access to all verified land record instruments through MDLandRec.Net,<sup>10</sup> a digital image retrieval system for land records in Maryland. As of 2019, this service is provided at no charge to individuals who apply for a user name and password. After obtaining them, you can search by county for land records based on name or by deed reference number.<sup>11</sup> Note that not all properties have recorded plats. All properties should have a recorded deed, however. Interpreting deeds can be a difficult task and it is advisable to seek legal assistance when conducting deed research.
- **Using GIS Mapping Software.** Online mapping tools can also be useful for garnering more information about the history, location, and topography of a property, as well as surrounding farms, building locations, and more. Many county governments use GIS mapping systems as part of their planning and zoning information systems. Check the individual county government website to see if your county offers this service. Other free public mapping software, such as [Google Earth](#), can be used to visualize aerial photographs of the property, and have measuring software for determining approximate acreages of farm fields, proximity to water, and historical imagery. For example, you can use Google Earth to toggle between historical imagery and visualize changes in land use over time.

## Before Purchasing, Check for Land Use Restrictions

Most open farmland in Maryland can be used for commodity crops. However, before signing a lease or purchasing a property, it is best to be safe and determine if there are any land use restrictions, particularly if you are considering direct farm sales or value-added sales (e.g. wineries, creameries, etc.), or agritourism (e.g. corn mazes, on-farm weddings, etc.).

- **Zoning ordinances.** Nearly every county in the country has a zoning ordinance and each one is different. However, most counties use similar zoning terminology and most in Maryland are available on-line, along with the zoning maps which define where the ordinances apply. If you are unsure about a particular use, visit the Planning and Zoning office in your county for more information.
- **Covenants and easements.** A covenant or easement is a written agreement, usually recorded in land records, that applies conditions to the use of the property. To be fairly certain as to whether there are covenants on a property, you will need to consult with your attorney about obtaining a title search. However, you can do some initial research on your own. You may ask the owner or owner's agent if there are covenants. A particularly important area is access to the property, especially in cases of a shared right of way or shared maintenance responsibility. If you are leasing, not

purchasing, your quest for information might stop there.

However, you might want to note the response in a lease agreement. Reading through the deed, you might find special covenants or conditions that apply to the land. This is by no means a failsafe method. The covenant may have been recorded after the deed was recorded or the attorney may not have mentioned the covenant specifically in the deed. However, the deed may contain some information that you may want to learn early in the property selection process.

- **Plat restrictions.** Many properties will have a corresponding plat recorded in the land records. Plats may contain notes or conditions that are binding upon future owners of the property. Plat notes may indicate where access to the property is restricted, whether or not the property may be further divided, where a storm water easement crosses a farm, and so on. Plat conditions may describe permit requirements, land clearing limitations, forest buffers from streams, etc.
- **Federal, state or local conservation agreements.** Farms will often have existing conservation agreements or contracts implemented prior to the farm being offered for sale. These agreements relate to conservation practices installed on the farm using cost share funds, such as grass buffers, grass waterways, manure storage structures, or fencing. For example, the owner of a farm for sale may have entered into an agreement to place acreage in the USDA Conservation Reserve Program (CRP). In return for converting the land into the CRP program, the farm owner receives financial compensation each year. These contracts or agreements are binding and often stretch over a period of 10-15 years. As a new farm buyer, you should take steps to learn of any existing conservation agreements. There are several options for dealing with these contracts, depending upon the type of contract, which agency is responsible for the contract and whether you wish to keep or cancel the agreement. Be sure to ask if there are any existing conservation contracts on the property. For further information, check with the USDA Farm Service Agency or Natural Resource Conservation Service (NRCS) for federal programs, the Maryland Agricultural Cost Share (MACS) for state programs, and the local Soil Conservation District for local programs.

## Shop with a Shovel

**Evaluate Farm Soils.** Experienced farmers often provide one piece of advice to those looking for farmland: *Shop with a shovel*. In other words, be sure to fully investigate the inherent characteristics of the soil before you buy. Soil characteristics, such as texture, drainage, depth to water table, or depth to restrictive layer can vary greatly across a region, county or even the same field. In general, prime farm land contains deep, well drained soils without restrictive features such as steep slopes.

- **Web Soil Survey.** How do you find out about the soils on a particular farm? USDA's Natural Resource Conservation Service (NRCS) provides on-line soils mapping data that describes the type and features of soils by exact location in Maryland. NRCS developed a website, titled the [Web Soil Survey](#), where you can determine soil classification, ratings, and suitability for your type of farming operation as long as you know the approximate boundaries of the farm. You may want to start with [the tutorial](#) or you can go straight to the *USDA Web Soil Survey* if you are familiar with basic web mapping tools and understand soils nomenclature. Unless the farm is irrigated, you will want to view the "non-irrigated capability class" under Land Classifications. Further, talk to farmers that are familiar with the farm and ask the opinion of your local [Soil Conservation District](#) and/or [University of Maryland Extension](#) staff.
- **Soil structure.** Soil structure, or how well the soil particles are held together, is another component of soil quality that needs to be evaluated. A friable, porous soil with good organic matter and microbial activity will support plant life much better than a compacted soil with poor structure. Soil structure can be improved over time with good management and addition of organic matter.
- **Testing your soil.** Soil testing provides a snapshot of the fertility of the soil, including levels such as pH, phosphorous, potassium, calcium, magnesium, and the micro-nutrients. When selecting a farm, soil fertility is not as important as the inherent soil properties such as drainage or soil type because poor soil fertility can be improved over time (2-3 years) with the addition of organic matter, manures, fertilizer, lime and other amendments. Soils with lower fertility values will require a larger upfront investment in lime and other nutrients. These costs are minor, however, in comparison to correcting drainage or erosion issues. Soil fertility levels are a more important consideration if you are leasing farmland for a shorter period of time, due to the shorter payback window. For more details on soil testing, refer to the chapter [How to Take a Soil Sample](#) for testing steps.
- **Excessive phosphorous levels.** In Maryland, regulations limit the amount of manure, fertilizer, or other amendments containing phosphorous you can apply to soils with excessive phosphorous fertility levels.<sup>12</sup> This restriction should be a consideration for organic farmers who may not be able to use non-P bearing materials for nitrogen sources and/or livestock farmers who need land for manure application. If you intend to conduct soil testing, after you have signed a contract to purchase but before the final sale, remember to include a contingency in the purchase contract to allow you the time to conduct the testing and the right to terminate the purchase if you are unhappy with the soil test results.

## Water Quality and Availability

**Water potential for irrigation and livestock.** Most intensive crops require some type of irrigation. Livestock need daily access to a clean water supply. Farm water sources can include public or municipal water, deep artesian wells, ponds, fresh water rivers and/or shallow wells.

- Check artesian wells for the gallon per minute water flow and the size pump installed. Typically, the county health department can provide information on well depth and flow rate based upon the well ID number.
- Ponds vary greatly in their recharge capacity and size, so ask when the pond was last used for irrigation, how deep it is and if the pond ever goes dry.
- Drip irrigation will require relatively clean water to prevent clogging of the sand filters and drip tape.
- It is also advisable to ask if the farm currently has a water appropriation permit (required if using on average over 10,000 gallons per day) if used for agricultural irrigation.<sup>13</sup>

**Water potential for packing or food processing.** If you are buying a farm with the intent of conducting value-added processing, you will need to consider the potability of the water source. Water used in food processing activities must be able to meet strict potability standards. Public or municipal water and deep artesian well water typically will meet potability standards. Shallow dug wells, ponds and springs will typically not meet potability standards. In addition, Good Agricultural Practices (GAP)<sup>14</sup> and the Food Safety Modernization Act<sup>15</sup> require water to be tested routinely to ensure it is safe for use in produce production. If you intend to conduct water testing, after you sign a purchase contract but prior to the final sale, consider including a contingency in the purchase contract to allow for the time and ability to terminate the contract based on the results of the water testing.

## Also Consider These Factors when Researching a Farm Property

**Neighbors.** After you make the real estate purchase, what kind of neighbors will you have? Knowing your neighbors will give you an idea early on of the types of issues you may experience using the property. In Maryland there are state and county Right-to-Farm laws which provide farmers with a defense that can be asserted, in certain circumstances, when neighboring property owners make nuisance claims.<sup>16</sup> The best preventative measure for neighbor relation issues is communication. Although it is not a guarantee, establishing good communication with neighbors can help minimize legal issues, based on a misunderstanding, from interfering with your farm operation.

**Timber value can be significant.** When buying a property, it is always a good idea to estimate the market value of existing timber, which will affect the overall value of the property. Consult with a public or private forester to estimate the value of the existing timber as well as when timber will be ready to harvest.<sup>17</sup> The forester can provide information on harvest restrictions for your specific area. Asking the current landowner when the timber was last cut and whether there is a timber management plan is also helpful.

## Land Preservation Program

Land Preservation programs provide a financial incentive (normally a cash payment, though tax credits are also used) in return for the property owner giving up future development rights. The use of land preservation programs is one method to lower the effective price of a farm. While land preservation programs impose some limitations on the use of property (see covenants and easements above), they provide an economic incentive to maintain property as farmland in Maryland. Being in a community of preserved farms provides stability and permanence. Farmers are more likely to invest in their farm enterprises if they know that neighboring farms will not be developed in the near future.

Maryland offers some of the most progressive land preservation programs in the country. There are several types of land preservation programs that operate in Maryland including the Maryland Agriculture Land Preservation program (MALPF); Maryland Rural Legacy program; and Maryland Environmental Trust program.

*Disclaimer: The information provided is intended for educational purposes only and is not legal advice.*



## References

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- <sup>2</sup> *Farm Loan Programs*, USDA, <https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/index> (last visited March 19, 2019).
- <sup>3</sup> Congress established the Farm Credit System in 1916 to provide a reliable source of credit for the nation's farmers and ranchers. For more information, visit the website <http://www.farmcreditnetwork.com/> (last visited March 19, 2019).
- <sup>4</sup> [www.marbidco.org/](http://www.marbidco.org/)
- <sup>5</sup> Maryland FarmLink, <http://www.marylandfarmlink.com/>; For information on farmland for sale in Montgomery County see the Montgomery County Land Link, <http://www.mocolandlink.org/> (last visited March 19, 2019).
- <sup>6</sup> *Understanding Whom Real Estate Agents Represent*, <http://www.dlr.state.md.us/license/mrec/mrecprep.shtml> (last visited March 19, 2019).
- <sup>7</sup> A listing of farm realtors on Maryland FarmLINK can be found at [http://smadc.com/farmRESOR/realtor\\_listing.html](http://smadc.com/farmRESOR/realtor_listing.html) (last visited March 19, 2019).
- <sup>8</sup> MD SDAT Real Property Data Search: <https://sdat.dat.maryland.gov/RealProperty/Pages/default.aspx> (last visited March 19, 2019).
- <sup>9</sup> For more information on how to use the Real Property database see *How to Access a Farm's Land Records*, ALEI video, [https://www.youtube.com/watch?time\\_continue=1&v=9sJN5YRYUhY](https://www.youtube.com/watch?time_continue=1&v=9sJN5YRYUhY).
- <sup>10</sup> <http://mdlandrec.net/main/index.cfm> (last visited March 19, 2019).
- <sup>11</sup> For more information on how to use the Maryland Land Records website see *How to Access a Farm's Land Records*, ALEI video, [https://www.youtube.com/watch?time\\_continue=1&v=9sJN5YRYUhY](https://www.youtube.com/watch?time_continue=1&v=9sJN5YRYUhY).
- <sup>12</sup> For more information on Maryland's Agricultural Nutrient Management Program see the Agriculture Law Education Initiative's Legal Resources webpage, <http://umaglaw.org/legal-resources/> (last visited March 19, 2019).
- <sup>13</sup> For more information about the water appropriation process, see Sarah Everhart and Ashley Ellixson, *Agricultural Water in Maryland: the Water Appropriation Application Process and Use in the time of Drought*, <http://umaglaw.org/download/agricultural-water-law-in-maryland-the-water-appropriation-application-process-and-use-in-a-time-of-drought-pdf/> (last visited March 19, 2019).
- <sup>14</sup> See *Good Agricultural Practices/Good Handling Practices*, Maryland Department of Agriculture, [https://mda.maryland.gov/food/feedquality/pages/good\\_ag\\_practices.aspx](https://mda.maryland.gov/food/feedquality/pages/good_ag_practices.aspx) (last visited March 19, 2019).
- <sup>15</sup> For more information on the Food Safety Modernization Act see the Agriculture Law Education Initiative's Food Safety webpage, <http://umaglaw.org/about/food-safety/> (last visited March 19, 2019).
- <sup>16</sup> Paul Goering and Lori Lynch, *Understanding Agricultural Liability: Maryland's Right-to-Farm Law*, <http://umaglaw.org/download/understanding-agricultural-liability-marylands-right-to-farm-law-md-rtf-fact-sheet-pdf/> (last visited March 19, 2019).
- <sup>17</sup> For more information, see the University of Maryland Extension's Woodland Stewardship Education website, <http://extension.umd.edu/woodland/your-woodland> (last visited March 19, 2019).
- <sup>18</sup> For more information about the Maryland Agriculture Land Preservation Program visit: <https://mda.maryland.gov/malpf/pages/default.aspx> (last visited March 19, 2019).
- <sup>19</sup> For more information about the Maryland Rural Legacy Program visit: <https://dnr.maryland.gov/land/Pages/RuralLegacy/home.aspx> (last visited March 19, 2019).
- <sup>20</sup> For more information about the Maryland Environmental Trust Program visit: <http://www.dnr.state.md.us/met/> (last visited March 19, 2019).

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