
Considerations for Acquiring a Farm: Selecting the Best Farm Property

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Disclaimer: The following is intended for educational purposes only and is not legal advice.

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 divided 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 they would rather invest in their farm business rather than tying up all their capital on 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 know what your long term business plan is and you can find a property that fulfills the needs, then land purchase may be the best option.

Several resources exist online to help beginning farmers understand leasing options and what to look for in leasing agreements. The University of Maryland Extension and Agriculture Law Education Initiative provides legal resources to help farmers looking to lease www.umaglaw.org. Loan options for land or infrastructure purchase are available at the federal and state levels, including: USDA loans, the Farm Credit System, and Maryland Agricultural & Resource-Based Industry Development Corporation (MARBIDCO). Maryland FARMLink 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 be knowledgeable on 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.

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 <http://www.dlr.state.md.us/license/mrec/mrecrep.shtml>.

When buying a farm property, you may engage the services of a real estate agent to help you in the process. 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, however this must be disclosed in writing and agreed to by all parties.

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 agents may require an administrative fee or may stipulate a minimum 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 buyer’s fee will need to be negotiated with the seller. The seller is not under any obligation to pay buyer agent’s fees.

Finding a good farm real estate agent is not as hard as you might think. Maryland FarmLINK has a listing of realtors who have professional training on issues related to buying and selling farmland. 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.

Finding General Information about a Property

There are multiple avenues available for researching general information regarding farms. 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 database 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 database is often a good place to start to find information on a property <https://sdat.dat.maryland.gov/RealProperty>.

Review the Deed and Plat

Maryland offers access to all verified land record instruments through MDLandRec <http://mdlandrec.net> which is a digital image retrieval system for land records in Maryland. This service is currently being provided at no charge to individuals who apply for a username and password. After obtaining a username and password you can search by county for land records based on name or by deed reference number. 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, topography, 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.

Identifying 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.). For an explanation of the many types of zoning restrictions that could impact the use of farmland, refer to the chapter on *Understanding Zoning for New Farm Enterprises*. Also refer to *Overview of Farmland Preservation in Maryland* for more information on how conservation easements may restrict land use options and development potential.

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 or not 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. 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.

Evaluating 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 farmland contains deep, well drained soils without restrictive features such as steep slopes.

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 <https://websoilsurvey.sc.egov.usda.gov>, 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, 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 the addition of organic matter.

Testing your Soil

Soil testing provides a snapshot of the fertility level of the soil, including levels such as pH, Phosphorous, Potassium, Calcium, Magnesium, and 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 amendments. Soils with lower fertility values will require a larger upfront investment in lime and other nutrients, however these costs are minor in comparison to correcting drainage or erosion issues. Soil fertility levels are a more important consideration if 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.

In Maryland, regulations limit the amount of manure, fertilizer, or other amendments containing phosphorus that can be applied to soils with excessive phosphorus fertility levels. 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

Most intensive crops require some type of irrigation. Livestock require daily access to a clean water supply. Farm water sources can include public or municipal water, deep artesian wells, ponds, freshwater rivers and/or shallow wells. Check artesian wells for the gallon per minute

water flow and size of the 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. 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 food safety regulations, Good Agricultural Practices (GAP) and the Food Safety Modernization Act, require water to be tested routinely to ensure it is safe for use in produce production. As mentioned above, 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.

Other Considerations

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. 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

When buying a property, it is always a good idea to estimate the market value of existing timber. Timber can have significant value, 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. Asking the current landowner when the timber was last cut and whether there is a timber management plan is also helpful.

The Value of a Title Search

As mentioned previously, a title search is an essential step before purchasing a property. This is not a step you will be able to skip or adequately complete on your own. A qualified attorney or title company, by performing a title search, can determine what easements or other restrictions exist on the property. It is common for farmland to be burdened with easements, such as utility rights-of-way or access easements for neighboring property owners. A title search will allow the purchaser to have a full picture of the extent of these types of property

interests. A conversation with the seller or the seller’s agent will often not include mention of the details that will emerge through a title search, and these interests may not be unearthed during a zoning review. Your real estate agent or your lender will typically be able to recommend a local title company who can perform the search and offer title insurance.

Land Preservation Programs

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.

Conclusion

Selecting the right farm property is one of the most important tasks to ensure success as a beginning farmer. Taking time to research a farm’s potential productivity, land-use restrictions and capability before committing to a long-term lease or purchase will pay off in the long run.

