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CONSERVING FARMLAND... BUT FOR WHOM?

*Using agricultural
conservation easements to
improve land ownership by
next generation's farmers*



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Community Development
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ABSTRACT

It is unclear who the farmers of the future will be, and how they will afford the land they work. Due to unprecedented residential development pressure, land prices in many of the state's most productive agricultural areas have climbed well out of the reach of new farmers. High land prices, coupled with an increasingly marginal, globalized agricultural industry, have given rise to two interrelated problems: farmland conversion to other uses, and the flight of young people from rural farming communities.

Agricultural conservation easements (ACEs) have emerged as a market-based tool to slow farmland conversion by extinguishing development rights on threatened land. Rather than being reduced to a market price consistent with its agricultural income potential, easement-encumbered land sells to non-farmers at well beyond its farming value. What can the farmland conservation community do about this?

This study frames the ACE—a relatively new farmland conservation tool—in the context of land reform; examines the extent to which the ACE and its actors address land tenure currently; and formulates recommendations for improving ACE application.

A review of the literature provides background on land reform in the West and why we should concern ourselves with land access for beginning farmers. It then describes how agricultural conservation easements emerged, how they do and do not address land access, and how they might be used to this greater effect. The results of interviews with Land Trusts and other ACE practitioners reveal what these groups anticipate for farm ownership of easement-encumbered parcels, and whether they take an active role in these outcomes. Several models are then presented whereby land trusts and

public policy are improving land access for farmers. Three of these are illustrated using detailed case studies.

Finally, recommendations are made that land trusts partner as frequently as possible with younger-generation farmers to purchase land; include farming and farm succession in their selection criteria; improve easement record-keeping practices; consider innovative easement language and provisions; provide assistance to incoming farmers; work to improve public support for local farmers; and better integrate with land-use planning and other publicly-administered efforts to conserve farmland and farming.

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1. INTRODUCTION and METHODS

“It’s Not Farmland Without Farmers,” cautions a bumper sticker produced by American Farmland Trust. Conservationists concerned about farmland protection, “Locavores” promoting regional food economies, and Farm Bill reformists proposing new ways to support domestic agriculture are all concerned that young farmers are becoming scarce. It is indeed unclear who the farmers of the future will be, and how they will afford the land they work. Due to unprecedented residential development pressure, land prices in many of the state’s most productive agricultural areas have climbed well out of reach of new farmers. The disparity between a highly profitable real estate development industry, and an increasingly marginal, globalized agricultural industry, has given rise to two interrelated problems: farmland conversion to other uses, and the flight of young people from rural farming communities.

Agricultural conservation easements (ACEs) have emerged as a multi-sector, market-based tool to slow farmland conversion by extinguishing development rights on threatened land. It would seem that implicitly, ACEs could also address the second problem—loss of young people from farming—by ensuring that land remain accessible to farmers for continued productive agriculture. It has not yet been demonstrated, though, that easement-protected farmland will be controlled by the next generation of farmers. If the conversation about conservation does not begin to include access and affordability strategies, farmers will not experience the benefits of farmland protection—nor will the greater goal of protecting agriculture be realized.

How can agricultural conservation easements be used to improve land tenure for next generation’s farmers? My aims in this study were to frame this relatively new

farmland conservation tool in a context of land reform; examine the extent to which the ACE and its actors address land tenure currently; and to gather and formulate recommendations for its use toward improving farmer land ownership. Toward these aims I gathered qualitative information via literature review, interviews, and case study accounts.

I approached Background and Literature Review (Chapter 2) with a general history of agricultural land use and family farming in California. Trends toward an aging farmer population and current challenges to tenure were explored next, followed briefly by the social and environmental ramifications of land insecurity—rationale for my research question. I then sought relevant literature to describe the parallel pattern of farmland loss in California. I used policy briefs, fact sheets, and academic papers to explore the role that the controversial agricultural conservation easement—a tool designed to curb this loss—might play in ameliorating this problem.

A good deal has been written about conservation easements in general; less literature pertains to the specific challenges of agricultural easements. I reviewed policy and opinion papers about both to explore the main strengths and critiques of ACEs—in particular their limited capacity to improve farm ownership by farmers. Finally, I reviewed some known innovations in the use of ACEs to improve land tenure, setting the stage for the case studies and recommendations that conclude this study.

I wanted to know what the practitioners of ACEs anticipated for farm ownership of easement-encumbered parcels, and whether they took an active role in these outcomes. I interviewed directors or staff of twelve agricultural easement programs (mainly conducted by, and henceforth referred to as, “land trusts”). For accessibility, the land trusts selected to interview were all from Northern or Central California. They were all

known to hold at least a small number of ACEs, but otherwise they varied greatly in approach, regional context, and scale of impact. The interview questions (see Appendix) were designed to shed light on three topics: 1) how land trusts perceive the problem of ACE-encumbered land affordability; 2) how their mission statements and associated goals aim to address this problem; and 3) what their current activities reveal they are doing to address this problem.

Contact with land trust staff—usually organization directors, stewardship directors, or transaction specialists—was made first by phone. A list of interview questions was then emailed to the appropriate person, who was invited to look over the questions in advance. Then a follow-up phone or in-person interview was scheduled to garner and discuss the interviewee’s responses. In a few cases, busy land trust staff found it preferable to email responses than to schedule a personal interview. I did not record interviews but instead kept detailed notes and expanded upon these subsequent to each interview. Responses were then categorized into the aforementioned themes, and analyzed by theme.

I also interviewed the Director of the California Farmland Conservancy Program (CFCP) and a staff member of the Massachusetts Agricultural Preservation Restriction. I attended two Central Valley Land Trust Summits in Sacramento and was able to ask questions of land trust staff and land use attorneys during my work as Regional Program Coordinator with California FarmLink.

From conducting research for *A Farmer’s Guide to Securing Land* (California FarmLink 2008), and working with farmers on ACE projects, I derived a set of models whereby land trusts and public policy are improving land access for farmers. The breadth

of case examples was chosen to illustrate challenges to farmland tenure on ACE-protected land, and/or creative approaches being used or recommended by land trusts and public entities; for instance, “Land trust helps finance easement-encumbered land purchase by selected new farmer.” Case examples for most of these models were found at FarmLink, in the media, and in conversation with land trusts. I worked on two of these examples, and interviewed a key player in a third. These three expanded case studies are illustrated in detail in the remainder of Chapter 4. Each case study describes the use of an agricultural conservation easement to help landless farmers or ranchers buy farmland, and is followed by an analysis of that study’s applicability to the improvement of land ownership via ACE.

After identification, comparison, and analysis of problems and approaches to land tenure using agricultural conservation easements, this study concludes with Discussion and Recommendations, Chapter 5. Emergent themes from the interview findings and case studies are reiterated. Several “best practices” are identified for easement approach and implementation. These include recommendations that land trusts consider improving farmer-tenure via project selection, stewardship and monitoring, easement language and affordability covenants, technical assistance, advocacy for improved local farm economies, and that they work in close partnership with regional planning efforts.

2. BACKGROUND and LITERATURE REVIEW

Using literature from the fields of political science, rural sociology and land use law, from nonprofit advocates of sustainable agriculture and local food, and from policy studies in land-use planning and farmland conservation, this chapter provides important background for my research question. It addresses the meaning of land reform in California and the American West, the political and economic contexts of changing farmland ownership and loss of young farmers, and the rationale for improved land tenure for small and beginning farmers. It then positions the Agricultural Conservation Easement (ACE) in this context by describing the emergence and use of ACEs in California and nationwide, summarizing existing critiques of ACEs— including the concern that they alone do not significantly improve land affordability for new farmers— and by exploring the ways in which innovative agricultural easement programs elsewhere in the U.S. are addressing land access and affordability issues.

Land Reform in the West

U.S. colonial history has mapped out vast land-holdings by settlers of European descent, to the devastation of pre-existing native people, and more recently to the exclusion of other non-white people and ethnic minorities (see the Alien Land Law of 1913). It would be an incomplete critique of the social and environmental implications of modern-day land use to assume that small-scale “family farms” are some sort of historical ideal, an arrival at social appropriateness that was later overshoot by industrial agriculture. Private land ownership, sacred to American individualism and the Jeffersonian philosophy of land stewardship, is a legal construction. It is changing over

time to accommodate unprecedented need for environmental and other common-pool resource protections. It is subject to an important debate about the needs of the individual versus those of society, and is thoughtfully treated in the anthology *Property and Values: Alternatives to Public and Private Ownership*, edited by Charles Geisler and Gail Daneker (Geisler 2000).

Geisler, also co-editor of *Land Reform, American Style* (Geisler 1984), is perhaps the most prolific author on the topic of land reform in the US. In this anthology, Geisler's essay "Land and Poverty in the United States: Insights and Oversights" describes the influences of land access on wealth and poverty, and how various forms of land policy redistribute wealth. This study focuses on opportunities for ownership of private property, but Geisler's and other alternatives such as lifetime or ground leases and purchase of farming rights, may offer important answers in the future. These will be addressed briefly in Chapter 5.

The philosophy and practicality of private property ownership should continue to be questioned, and so should be the distribution of working lands within systems of private ownership. The French Revolution of the late 18th century; peasant revolutions throughout 20th-century Latin America, and largely disastrous attempts at land redistribution in present-day Zimbabwe, were fueled by popular desire to reclaim working lands from an elite few by small-scale, dispossessed farmers.

The "agrarianism" of household production and land-based rural livelihoods may have all but gone extinct in the twentieth century (Bernstein 2004), but land still provides the basis for human sustenance, health, and culture. We must ask ourselves if agriculture is more than food production, and whether farmers provide the greatest public benefit

when they have land security. I argue that the agrarian democracy envisioned by Jefferson, and later argued for eloquently by Illinois Senator Paul Douglas (MacCannell 1984), remains meaningful today.

Agricultural lands of California were first established as Mexican Ranchos, in tracts of thousands of acres. After annexation of California to the United States, land use law and major irrigation projects contributed to this strong culture of private property ownership, which has persisted since. Richard Walker, in *The Conquest of Bread*, tells the history of California agriculture as a truly capitalistic industry—from, he insists, its very inception. Scale in California agriculture has not always been large, though this has depended heavily on crop and location. Small farms—of vegetables, vineyards, potatoes, and fruit—proliferated in the late 1800's, along the routes that had boomed with the mining industry. Wheat and cattle barons found they could profit by subdividing their ranches and selling smallholdings, which actually almost tripled in number during the last quarter of the 19th century (Walker 2004). These smaller farms were operated over the decades by a remarkably diverse sequence of people, often immigrants. They grew the abundant diversity of crops California is known for, and made for the rural livelihoods about which Walter Goldschmidt later wrote in *As You Sow* (Goldschmidt 1947).

Goldschmidt found that industrial agriculture, where it replaced family farming, was highly correlated with social degradation in farming communities in California's Central Valley. Dean MacCannell and Jerry White followed up on this work and studied how water distribution had begun to exacerbate the problem. The 1902 Reclamation Act, they argue, was designed to subsidize water for private land-owning farmers on a maximum of 160 acres, with the goals of promoting settlement in agricultural areas,

spreading the benefits of water subsidies to the largest number of farmers, and promoting family farming in rural areas (MacCannell and White 1984). Industrial agriculture circumvented these intentions, however, and in areas irrigated by the likes of the Westlands Water Project, managed to appropriate water rights on parcels much larger than 160 acres. Outrage that the Reclamation Act was not enforced, and that family farmers faced unfair competition as a result, gave rise to the first real demand for land reform in the state. The demand was largely unheard, however, and large-scale producers would consolidate California's newly irrigated San Joaquin Valley farms during most of the 1900's. The consolidation of agricultural landscapes has, again, been shown to contribute to the detriment of rural welfare according to rural sociologists MacCannell and White (1984), Goldschmidt (1947), Lobao (1990), Welsh (2001) and others.

Where have all the farmers gone?

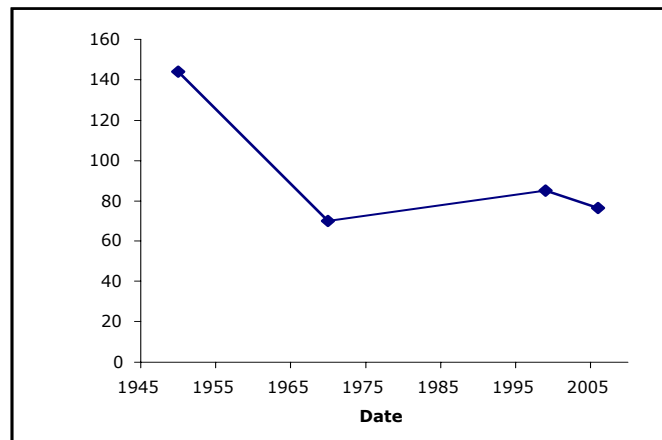
The average age of the California farmer has climbed steadily since the late 1970's to a current age of about 55 years (Counting California 2008). According to California FarmLink and American Farmland Trust's Ed Thompson (California FarmLink 2008), there is one farmer under the age of thirty-five for every eight farmers over sixty-five years old. Fewer and fewer heirs of these aging farmers who seek retirement are choosing to take over the family farm. The second-, third- and fourth-generation farm kids who do elect to study agriculture are ushered into agricultural economics, finance, marketing and other aspects of agribusiness, but rarely do they study production techniques or plan to go into farming themselves.

This presents the obvious question—*what is becoming of these end-of-the-line*

farms? Sometimes, neighboring farm operators begin leasing this land. It has been said that a farm unable to increase gross earnings by ten to fifteen percent per year will not remain economically viable. (Participant, Tehama Farm Succession Workshop, 2008). Some retiring farmers seek an experienced farmer from elsewhere to lease. Sometimes agriculturally zoned land simply goes out of production—at least while a transition is made to a new farmer. Of greatest concern is the frequency with which farm owner-operators, in need of retirement funds or debt relief, succumb to market pressure to subdivide or sell their land to developers for housing or other non-farm permanent uses.

The Agricultural Statistical Review in California's Agricultural Resource Directory of 2006 gives us a picture of the number of farms going out of business: There were a reported 144,000 farms in California in 1950; that number plummeted by more than half by 1970, then climbed to a consistent 85,000 or so for most of the 1990's. Between 1999 and 2005, however, the number of reported farms in California has dropped alarmingly again—from 85,000 to 76,500 farms statewide (California Department of Food and Agriculture 2006).

Figure 2.1—Change in number of reported California farms over time.



Sprawling development, meanwhile, is gobbling up many of these endangered farms: about 50,000 acres of farmland in California are paved over each year (American Farmland Trust 2008). Concurrent with this aging of the farmer population and dwindling of the next generation, demand for housing has been at an all-time high, contributing to skyrocketing real estate prices over the last decade—even in agriculturally zoned areas. Although the real estate market has cooled down recently, and new ethanol subsidies and other market trends have raised agricultural land values, the gap remains daunting.

Even California's most lucrative products (nuts, grapes, strawberries, dairy, for example) cannot out-compete suburban and rural-residential development in land markets, where zoning is often weakened and parcel sizes begin favoring ranchettes. It was not very long ago that a beginning farmer could buy farmland and pay it off in less than ten years, solely on farm receipts. Now, most banks will not make land loans on anticipated agricultural production alone; in parts of the San Joaquin Valley, for example, even almonds—one of the State's most profitable crops—can't generate a high enough return on a land investment to pencil out (Representative, Wells Fargo 2007).

The drop in economic viability of agriculture, the dwindling pool of interested young farmers, and the market's selection for residential real estate as land's "highest and best use" have together created a somewhat impossible situation. Sibella Kraus, founder of Agriculture at the Metropolitan Edge, a new program at UC Berkeley calls it "financial disequilibrium." (Kraus 2007).

Why improve tenure for family farmers?

Despite its colorful horticultural history, California's agricultural acreage has been historically dominated by large ranchos, later by early-capitalist cotton and grain producers, and currently by the most profitable dairy, fruit and nut, vineyard, and vegetable industries in the nation. Small family farmers have never been responsible for a majority of agricultural land use or production here—so why should we concern ourselves with land reform, now?

Rural livelihoods, local economies, land health and cultural histories are generated and enriched by agriculture—a human relationship with land and food (and fiber and fuel). Yield and acreage are only part of the meaning of agriculture to California communities. Small- and medium-scale operations account for the majority of farming livelihoods and carry on these relationships; corporate agriculture does not.

There are at once social, economic, and environmental reasons to be concerned about the small farmer. Land conservationists have rightly focused on maximizing acreage protected, but sheer number of family farm livelihoods must also be considered. Small- and medium-scale producers far outnumber factory farms, support more families, and as such may have greater social benefit. As mentioned, rural sociologists have long suggested that rural communities with a diversity of farm owner-operators enjoy more civic engagement and general welfare than do similar communities dominated by industrial farms. Economically, this makes sense as well: A critical mass of family farmers in a given area is more likely than corporate agribusiness to support local inputs, services, and markets, and their products are likely to spend more time in the local value chain. Family farms, it turns out, may provide important economic benefit to their

communities.

Second, investments in good environmental stewardship practices are easiest to justify by farm operators who own—or at least have secure and lasting access to—their land. As water quality, species biodiversity, and carbon sequestration rank high on the environmental priorities list of the twenty-first century, agricultural land management has a key role to play. Government cost-share and other incentives programs, and now even private trading in environmental services, offset the costs of making land improvements for farm operators of all sizes. Certainty of tenure provides the necessary motivation to enter but motivation to enter such programs and maintain improvements over time. The Nature Conservancy in Nebraska, in the following case study, insists that family-scale land management may be the best way for TNC to meet its ecological goals. Land For Good, a New England nonprofit and California FarmLink, a similar organization dedicated to helping farmers access land and keeping California farmland in production, are embarking on a USDA-supported national research and outreach project called “Farmland Access, Succession, Tenure and Stewardship” to more clearly define the effects of land tenure on farmland stewardship efforts.

Third, agriculture at the urban edge provides a host of unique public benefits. These include creation of buffers and the urban growth boundaries favored by today’s smart-growth advocates (Kirkpatrick 1999; Libby 1999), scenic views, reduction of transport miles, access to healthy and nutritious food, educational and recreational opportunities, jobs for urban dwellers, and more. There is an emerging demographic of young people from non-farm families that includes farmers likely to engage in organic or sustainable production methods, agri-tourism, access to adventurous markets, etc. These

farmers are therefore particularly suited to peri-urban farming. Paradoxically, however, these are the parcels that are least affordable to beginning farmers.

Lastly, small- and medium-scale producers contribute to local and national food security. They are responsible for a great majority of California's crop diversity and almost all locally marketed fruits and vegetables. In an era of rising transportation costs and volatile global trade conditions, these producers fulfill an important role. Lawrence Libby and Patrick Stewart, in their contribution to *Under the Blade*, point out that increasing efficiencies in agricultural production will depend on the millions of farmers who work the land—people we cannot afford to lose. The food security debate is a controversial one, but these authors suggest we “take the long view” by protecting our land and human agricultural resources while we still can (Libby and Stewart 1999).

These impacts of small- and medium-scale farming on number of livelihoods, community well-being, land stewardship potential, benefits of urban-edge agriculture and its importance to new farmers, and regional and domestic food security provide rationale for farmer land ownership or tenure. Current trends in farmland conversion, however, prevent access.

Patterns of farmland conversion

The Institute for Local Self Government published a report in 2002 called *Farmland Protection Action Guide: 24 Strategies for California*. Californians surveyed by this research team reported that they “agree or strongly agree that agricultural land is an essential part of California's identity and we must fight to preserve it” (Institute for Local Self-Government 2002). In spite of this overwhelming public concern, which has

in fact helped support policies to slow the rate of farmland conversion to urban uses, development continues to threaten California's farming future.

American Farmland Trust, a nationwide nonprofit organization, was founded in 1980 to address farmland conversion and declining economic viability of agriculture via research, advocacy, and action. AFT has taken the lead researching and documenting trends of farmland loss nationwide, and by working in highly sensitive areas to promote agricultural viability and creative planning strategies. A recent AFT report, *Paving Paradise: A New Perspective on California Farmland Conversion* cautions that an acre of land is being paved over for every 9.4 people in the state, and that almost two-thirds of the converted land in the San Joaquin Valley is land of the very best quality. AFT projects that if this trend of urban sprawl were to continue, another 2 million acres will be permanently converted from farm to urban or residential use by 2050 (Thompson 2007).

The California Department of Conservation's Farmland Conservancy Program (CFCP) publishes a quarterly newsletter called *Focus on Farmland*, which is searchable from the Department website. This newsletter reports on the latest events affecting farmland protection in California. The CFCP is also responsible for the single most important data collection on California farmland conversion, the Farmland Mapping and Monitoring Program. With technical support from American Farmland Trust, this monitoring team produces maps and statistical data for analyzing impacts on California's agricultural resources. Links to these maps and reports are available from both California Department of Conservation and American Farmland Trust websites.

Though California's rapidly growing population drives the conversion of farmland, AFT points out that inefficient development patterns greatly exacerbate the rate

at which land is used to accommodate this population growth. Former AFT president Ralph Grossi found that development is converting agricultural land at a rate two-and-one-half times greater than population growth rate. (MALT 2008). The impact of rural ranchettes on land-use efficiency is poorly known, because rural residential zoning is categorized as agricultural land in most areas. In the Fresno area, where data has been gathered on this trend, it is known that ranchettes tend to make agricultural production more difficult and expensive due to conflicts with new neighbors. They also generate new market demand for rural land, driving up prices beyond viable farm values. “In this sense, ranchettes are like the bow wave created ahead of a ship; long before the ship itself hits, anything in its path will be swamped by the wave,” warns this study’s author, Edward Thompson Jr. (Thompson 2007).

Also of concern is that urban-edge farmland, uniquely positioned to improve local food security and urban benefit, has increased in value to the extent that agricultural production will never justify its purchase—creating extreme pressure for these unique agricultural areas to be converted to non-farm uses. The Institute for Local Self Government reported six years ago that average value of California farmland on the urban edge was \$12,000 per acre, and that even the most lucrative fruit and nut crops could support land values of only \$5,500 per acre. Rangeland values are even lower, at less than 10% of so-called “development” values (Institute for Local Self-Government 2002). John Logan and Harvey Molotch raise a similar concern in their book *Urban Fortunes: The Political Economy of Place* (Logan 1987). They write that the kinds of farmland safest from development tend to require higher capital inputs, and be farther from markets. “In California, the crop land sacrificed to urbanization is fertile, proximate

to markets, and already served by irrigation. The cropland gained (if any) is more distant and marginal, thus requiring chemical treatment and extended irrigation to sustain productivity. The capital-intensive quality of such ‘hard-path’... farming penalizes small-acreage agriculture.”

Richard Olson and Thomas Lyson, in *Under the Blade* add to the above concerns about farmland loss. They reiterate that farmers are economically priced out of land purchasing, express concern about the aging of the U.S. farmer population, and describe the importance of agriculture in the American consciousness (Olson 1999). Contributors to this anthology such as Lawrence Libby and Patrick Stewart in “The Economics of Farmland Conversion” add depth to this perspective by examining human expectations and values with regard to American agriculture (Libby and Stewart 1999). Thomas Lyson, Charles Geisler and Charles Schlough, in “Preserving Community Agriculture in a Global Economy,” explore the social implications of its loss (Lyson, et al. 1999).

Agricultural conservation easements

Agricultural Conservation Easements have been protecting western farmland from conversion to development for less than two decades. They have proven a valuable tool thus far, but concerns remain about their future enforceability, democratic process, and social outcomes. This chapter defines the ACE, reviews some of its strengths and weaknesses, and describes the precedent for its use to improve land ownership by farmers.

What is an agricultural conservation easement?

A conservation easement is a deed restriction on allowable uses of a parcel of land,

which is attached to that deed in perpetuity. Real property is imbued with rights under common law. Each right, such as the right to subdivide, can be thought of metaphorically as a stick. If a parcel deed includes an entire bundle of sticks, an easement is one such stick, which can be transferred to another party while retaining the title and the remaining bundle.

Initially, an easement must be granted to a third-party land trust or other qualifying agency by a private landowner, in a legally enforceable transfer of usage rights. Every subsequent owner holding title to the property is then subject to the terms of the easement. Conservation easements, which typically extinguish subdivision and development rights, are provided for in federal property law and in the California Public Resources Code (beginning at section 10200). Federal tax law (Internal Revenue Code) allows for substantial tax benefits to donors of conservation easements. Agricultural conservation easements are derived from these, but used specifically to protect productive farmland.

This approach to agricultural land conservation has been tremendously effective in some counties. One of the most successful easement programs in California, for example—the Marin Agricultural Land Trust—had protected 38,000 acres of farm and ranch land by 2005—a full 25% of all farm and ranch land in that county (Sokolow, 2006). Easement activity in the threatened and highly fertile San Joaquin Valley, by contrast, has only just begun to garner political support. Tens of millions of dollars of taxpayer bond money have been granted through the California Farmland Conservancy Program for statewide easement acquisition since codification; an estimated billions of

dollars have been spent on easement acquisition nationwide (American Farmland Trust 2005).

Real estate attorney Ann Taylor Schwing describes the purposes of an ACE:

“To keep the land in agriculture, to keep the land available for farming, to make the land affordable for farmers to purchase, to keep scenic open space, to buffer protected natural resources, to enable diversification within defined limits...” and so on. (Schwing 2007, p.2)

While most land trusts might generally agree, the legal parameters of an easement are more simply defined. Found in federal tax code and state Public Resources Code, requirements are that the price of an easement must be based on real property interest; the buyer or holder of the easement must be a charitable organization 501(c)(3), the donation must be exclusively for conservation purposes (according to four Internal Revenue Code definitions of “conservation”), and the easement must exist for perpetuity. However, neither Internal Revenue Code requirements for public benefit, nor most land trusts’ criteria for holding easements, include any means to ensure that the land remains affordable to farmers—nor that it remains continuously farmed.

Critical to improving the value of agricultural conservation easements is a careful analysis of the strengths and limitations of this tool. Questions are often raised regarding future enforceability of easements. Violations of easements have been enforced in the courts, and there is concern that the very legal foundation for easements will be challenged in the future. Alarming, California’s Farmland Conservancy Program states in its Request for Grant Applications that “a perpetual ACE” may “be reviewed for possible termination after 25 years from the date of sale” (CFCP 2001, p. 5). The landowner would have to request a review of that land’s status from the CFCP. If termination were granted, it is not clear how the land trust or other easement grantee

would be compensated. This provision does state that the landowner can waive this option in the original easement but it is unlikely that landowners are generally aware of this. This little-publicized provision for possible future termination of agricultural easements threatens to undermine the very value of a perpetual ACE.

Agricultural conservation easements were not developed explicitly as a tool for land reform—defined by Charles Geisler as “redistributive policies intended to eradicate grossly unequal landownership and oppressive tenancy patterns” (Geisler 1984a, p. 5). Instead, they are popular for their efficiency in preventing unwanted development on farmland. One of the main sponsors of the bill which created the California Farmland Conservancy Program and established State support for acquisition of ACEs was the California Farm Bureau Federation, a lobbying group which has historically favored private property rights and is not necessarily an advocate for the small farmer. The legislation’s intent was to ensure that farmland would remain *available* for agriculture. It was not meant, according to California Farmland Conservancy Program Director Chuck Tyson, to “engineer” its affordability or the continued economic viability of agriculture (Tyson 2007). The director of one land trust interviewed had a different perspective. Using a broader definition she felt that ACEs *are* a kind of land reform in that they alter land use and economics and therefore geographies of ownership. I contend that easement selection, acquisition and monitoring practices are political acts. Since each easement is carried out in a process inherently loaded with human values, the ACE can indeed be wielded *as a tool for* land reform. Used without care, however, this tool can have unintended or inequitable consequences.

A Fact Sheet published by American Farmland Trust’s Farmland Information Center, “The Farmland Protection Toolbox,” briefly describes a handful of tools used by

state and local governments to both preserve farmland and promote economic viability of farming. Among these tools are agricultural district programs, executive orders, growth management laws, right-to-farm laws, tax relief and term easements, zoning and planning, mitigation ordinances, transfer of development rights policies, and technical support for farmers. They also include Purchase of Agricultural Conservation Easement (or PACE) programs—of which we are here concerned. This useful fact sheet states “removing the development potential from farmland generally reduces its future market value. This may help facilitate farm transfer to the children of farmers and make the land more affordable to beginning farmers and others who want to buy it for agricultural purposes.” It also explains that existing farmers can use the capital from sale of their development rights to maintain agricultural viability and thus “help perpetuate family tenure on the land” (AFT Farmland Information Center 2002, p.2). These desired outcomes, however, are not always realized. While the authors acknowledge that farmland protection must include *farmer* protection, the section on PACE programs does not make mention of the often persistent lack of affordability of even ACE-encumbered farmland for beginning farmers.

Benefits of ACEs

Agricultural conservation easements offer several distinct advantages for the protection of agricultural land. Because they are voluntary, often remunerative and built on individual relationships with landowners, they enjoy more political support than would regulatory or planning tools. Though funding, appraisals and legal questions can slow down the easement process, ACEs are generally executed in a fraction of the time it would take to amend a general plan or otherwise publicly protect land.

ACEs are customizable to individual parcels. Each document is unique to the parcel it restricts, and can therefore be adapted to protect unique conservation features, address local market trends (for large estate homes for example), or otherwise express landowner wishes where allowable. This parcel-by-parcel conservation process provides a kind of flexibility that general land use policy cannot.

Public funds are often made available for easement acquisition for these same reasons. Whereas traditional approaches to land conservation have relied on fee-title acquisition of land, conservation easements require only a fraction of the in-fee cost of protecting land. Because they rely on private ownership to uphold easement requirements, ACEs only demand modest management costs compared with parks and other protected lands. Federal and state tax incentives result in a large number of easement donations by the grantor, or at least “bargain sales” involving partial donations, thus covering more ground with available resources.

Another significant benefit of ACEs is that they are designed to last in perpetuity. In this way, they are removed from speculation on “soft” zoned areas that are otherwise subject to constant pressure by developers. Conservationists are often chagrined that developers wield as much power as they do on boards of supervisors. ACEs are more permanent and stable, in other words, than the public planning process. As a result, counties and municipalities often embrace ACEs as the preferred tool to accomplish their goals. Placer County and the town of Lincoln, for example, have recently designated areas of preferred growth. They will collaborate with their local land trusts to purchase agricultural easements around their growth boundaries using developer mitigation funds. In this way, ACEs will help establish a growth margin and contain urban sprawl. Without

the third-party land trust involved to hold and steward those easements and appeal to the public, the County would find it much more difficult to implement these planning goals.

Critiques of ACEs

There are myriad critiques of conservation easements as a land-use planning tool, which are here summarized. For the purposes of this study, a particular suite of flaws affecting the social outcomes of easement usage will be examined. Their collective result is that agricultural conservation easements do not appear, as a whole, to significantly improve control of farmland by small- and medium-scale farmers.

Jeff Pidot, in a contribution to the newsletter of the Lincoln Land Institute, offers a long list of reservations about the use of conservation easements. The list, paraphrased below, includes issues concerning lack of uniformity, valuation problems, and lack of legal standards in the use of conservation easements in general (Pidot 2005):

- deficiencies in conservation easement design and uniformity
- disparities in quality and clarity of easement terms
- lack of publicly accessible recordkeeping
- concerns about institutional capacity of easement holders
- uncertainties about the process of easement termination and amendment
- lack of legal precision about who can step into the void if easements are not enforced or the third-party easement holder ceases to exist
- lack of public transparency in easement creation
- lack of accountability for determining the public benefit or conservation purpose of easements
- lack of strategic planning in targeting areas that should be subject to conservation easements
- ambiguities with regard to appraisal and assessment to determine the public subsidy embodied in each easement
- capacity of conservation easements to undermine public regulatory and land acquisition programs
- failure to assess opportunity costs of conservation easements
- issues related to environmental justice and equity

Many of Pidot's critiques, relevant to ACEs as well as standard conservation easements, are manifest as public benefit and tax code issues, including the overall concern that removing regulatory power from public to private jeopardizes democratic land-use planning. The very last critique, scantily addressed in Pidot's essay, mentions the concern examined in this paper—that equity may not be well served by conservation easements.

Adina Merenlender, Extension Specialist for UC Berkeley, with Berkeley faculty Lynn Huntsinger, Sally Fairfax and others, wrote a helpful article called “Land Trusts and Conservation Easements: Who is Conserving What for Whom?” (Merenlender 2004). In this overview of the public-benefit effectiveness of conservation easements, the authors raise the issue of land access and point out that there is no structure in place to ensure that easements function in an equitable manner, or for the benefit of agriculture or good land stewardship.

Timothy P. Duane, of U.C. Berkeley, authored a paper in 2006 called “Maximizing the Public Benefits of Agricultural Conservation Easements: A Case Study of the Central Valley Farmland Trust in the San Joaquin Valley” (Duane 2006). In this critical look at the outcomes of Agricultural Conservation Easements, Duane points out that ACEs can disproportionately benefit wealthy landowners to the deprivation of the public tax base.

Christopher M. Anderson and Jonathan R. King also critique the use of conservation easements in their article “Equilibrium Behavior in the Conservation Easement Game” (Anderson and King 2004). In this paper, the authors test the hypothesis “that conservation decisions are made based on private incentives ... without

consideration of the public goods conservation provides” (*ibid*, p2), thereby favoring private landowners and failing to optimize conservation or public benefit. This is a fair critique. Some of these public benefit concerns are addressed in Chapter 5, Discussion and Recommendations.

There is growing concern in the land trust community that farmland preservation efforts will not be not sufficient to keep farm livelihoods viable on that land. Agricultural profitability must improve as well. Consumer education, improvement of market opportunities, and revitalization of agricultural support services are some necessary steps toward addressing farm viability. Affordable land for farmers is another. A recent article in the New York Times describes how Suffolk County, New York—one of the first to purchase agricultural easements from farmers—has such high real estate values that even easement-encumbered properties were selling for as much as \$100,000 per acre, or up to ten times what a local potato or vegetable grower could afford to pay (Cotsalas 2007). It describes how farmland preservation goals have been foiled by the high amenity value of “open space” (location near New York City notwithstanding), and how residential homeowners near protected farmland often protest certain agricultural activities—even when they have moved to such areas for the rural atmosphere.

ACEs usually improve farm leasing availability over that of unprotected land, but they do not by themselves improve land ownership opportunities for next-generation farmers (Sokolow 2006). Dr. Alvin D. Sokolow of the UC Davis Agricultural Issues Center, managed the first nationwide assessment of agricultural easement programs, in conjunction with the American Farmland Trust. The “National View of Agricultural Easement Programs” includes four reports. The first gives an overview of Purchase of

Agricultural Conservation Easement (PACE) programs nationwide, using profiles and maps. The second describes how funding is allocated to easement grantees, and the third explores opportunities for ACEs to support local planning efforts. In the final report, “Measuring Success in Protecting Farmland” Dr. Sokolow finds that easements do help keep land in agricultural production—though ACE-encumbered parcels are often sold to non-farmers by the second generation. Buyers of these parcels sometimes enter agriculture as a hobby or retirement activity. Otherwise they build or buy homes on farmland for the amenity value of being surrounded by fields or orchards. There is usually incentive to lease these properties for land management and tax reasons. Some easements require that the land remain in production for the near-term, or less commonly that a minimum farm income be generated from the land each year. Both non-farmer landowners and farmer tenants tend to benefit from ACEs, Sokolow writes, because of the certainty that the land will remain available for agricultural production.

That easement-encumbered parcels tend to remain in production is good news. The bad news is also reported in this study: “Easement programs had little or no effect in reversing or stabilizing other types of negative changes in agricultural economies at the county level—including the aggregate market value of local farms, individual farm profitability and the continued aging of farm operators” (Sokolow 2006, p27).

Broad economic and social trends are, of course, out of reach of land-use tools such as easements. When further examining the land market trends, however, Sokolow reports that ACEs do lower market value when compared to similar but unprotected land, although not necessarily to levels affordable for farmer-buyers where demand is high for rural residential use. Though the study summarizes both known and anecdotally

estimated land resale prices for almost thirty easement programs, a comparison has not yet been made to non-encumbered agricultural parcels in the same areas. When easement program staff of twenty-five programs was interviewed regarding “perceived affordability for agriculture of easement parcel re-sales,” only five reported that average prices of these parcels remained affordable for primarily agricultural buyers. Seven—including the Marin Agricultural Land Trust—suggested affordability was marginal, and a majority of the twelve said that farmland resale prices “clearly had become not affordable.” This last finding may in fact be at least partly remediable.

The remainder of this study is based on the premise that ACEs alone are not adequate to maintain production by owner-operators, and hence may only insignificantly curb the transfer of even protected farmland to non-farmer ownership. The limitations of agricultural easements as restrictive documents suggest that they alone cannot be expected to result in equitable land ownership. If used as simply a tool, however—in conjunction with the strategies discussed in Chapter 5, and with careful attention to social outcomes—ACEs can play an important role in keeping farmers in control of these protected landscapes.

ACE Innovations

Little has been written about the persistent affordability problem on easement-encumbered agricultural land. Less still has been published to suggest how agricultural conservation easements might be improved to address this particular problem.

One nonprofit organization in Massachusetts, however, has hit the nail on the head. Dedicated to helping communities gain ownership interests in their food, land, and housing, Equity Trust produced a video documentary in 2005 called “Farmland and

Farmers for the Future: Beyond Conservation Easements” (Equity Trust 2005). In this short informative film, land trust directors, planners, farmers, and farmer-advocates are interviewed about how to address the growing affordability problem on even ACE-encumbered parcels. “When conservation easements were first talked about as a means of protecting farmland twenty years ago,” says interviewee Bob Berner, Executive Director of Marin Agricultural Land Trust, “I’m not sure that anyone envisioned that there might someday be a difference between protecting farmland and protecting farmland as farmland.” The video documents two approaches to keeping land affordable for farmers. The first uses an easement with affirmative language, in conjunction with a purchase option held by the land trust to limit future resale values.

Of two types of easements recognized in American property law, negative and affirmative, the ACE generally relies on a negative land-use control (e.g. the property shall *not* be subdivided). Affirmative easements are commonly used to grant driveway access or utility access, for example. Affirmative agricultural easements state “mandatory uses” of a minimum level of continued agricultural production. Two Eastern U.S. easement programs use affirmative farming covenants as a matter of course. I am aware of only three such easements in California, and two underway (Main 2007; California FarmLink 2008).

Still, a surprising level of support is emerging in California for the use of affirmative easements. Members of the California Farm Bureau Federation, for example, as well as the Coastal Conservancy and even the California Department of Conservation have expressed interest. Some affirmative easements require a minimum farm income

level (theoretically verifiable by requiring annual submission of Schedule F income tax forms).

Affirmative covenants go further than simply naming intent of agricultural use; instead they list productive agriculture as a “mandatory use.” A broad and detailed definition of agriculture is usually included as corollary, as well as criteria for compliance. These might be as simple as submission of a farm management plan, or use of verifiable production methods (such as required by the National Resource Conservation Service or an Organic certification organization, for example). Affirmative agricultural easements may also require that the property generate a minimum percentage of the area median gross farm income, or even that the landowners earn a minimum percentage of their household income from agricultural uses. California FarmLink and the Coastal Conservancy collaborated in 2007 to host a workshop on the use of affirmative easements to facilitate intergenerational farm transfers.

There is legitimate concern that these requirements may be difficult to enforce in court, and that land trusts will be required to spend significant monitoring time, if not legal costs, in their enforcement. Some lawyers recommend that land trusts include as much restrictive language as possible when drafting affirmative easements. Prohibitive language is easier to defend in court in the event that enforcement of the agricultural use requirement becomes necessary (Schwing 2007).

An advantage of affirmative easements is that they become more valuable than standard easements, by further limiting the pool of willing property buyers. This presents a challenge to easement programs seeking initial funds, but lowers post-easement property values, improving the likelihood that such parcels will remain affordable into

the next generation. Revisiting Duane (2006) and (Anderson and King 2004), this does present an opportunity cost to the public tax base.

Another tool, used often in conjunction with affirmative easements, is specifically designed to ensure affordability. An Option to Purchase at Agricultural Value (OPAV) may be retained by the land trust or easement grantee, in a perpetual right to intervene any time that agricultural parcel goes up for sale. The land trust is required to offer the landowner a purchase price determined by a pre-determined formula for agricultural production value, and can subsequently re-sell that property at the same value to a qualifying farmer. The OPAV is now used as a standard tool in every agricultural easement transaction by the State of Massachusetts' Agricultural Preservation Restriction program and participating land trusts. The Vermont Land Trust as standard practice also uses it. In California, the Community Land Trust holding Live Power Farm's ACE in Covelo, California (Lawson 1997) includes an Option, and the Brentwood, Marin, Solano land trusts as well as the Coastal Conservancy are currently considering the same.

The second approach detailed in the Equity Trust video involves a land trust or similar nonprofit, circumventing the need for affordable land purchasing by farmers. Instead, it assures farmers of lifetime tenure and equity in their improvements, and similar access to the following generation. Improvements are owned and saleable by the farmer. Under these circumstances, a long-term "ground lease" (usually 99 years, and allowing for the farmer to own improvements) may be preferable to ownership.

3. INTERVIEW FINDINGS

Between July, 2007 and January 2008 I interviewed staff or other representatives of twelve Central and Northern California land trusts with active agricultural conservation easement programs. For a list of interview questions asked, see Appendix. I supplemented the interviews by gathering text from the land trusts' websites and printed materials. This chapter provides an overview of land trust ACE activity, and summary and analysis of the interviews conducted.

Below is a list of the land trusts and individuals interviewed with corresponding abbreviations for easy reference. Interviews with additional land trusts and policymakers are also listed. This list can also be found in Appendix B.

Land trusts with PACE programs:

1. Brentwood Agricultural Land Trust (BALT)—Kathryn Lyddan, Executive Director
2. Central Valley Farmland Trust (CVFT)—Bill Martin, Executive Director
3. Marin Agricultural Land Trust (MALT)—Bob Berner, Executive Director and Jeff Stump, Transaction Specialist.
4. Monterey County Agricultural and Historic Land Conservancy, Inc. (MCAHLC)—Brian Rianda, Managing Director
5. Peninsula Open Space Trust (POST)—Paul Ringgold, Executive Director
6. Placer Land Trust (PLT)—Jeff Darlington, Executive Director
7. Sacramento Valley Land Conservancy (SVLC)—Aimee Rutledge, Executive Director
8. Solano Land Trust (Sol LT)—Rob Goldstein, Transaction Specialist
9. Sonoma County Agriculture Preservation and Open Space District (SCAPOS D)—DeAnna Kamber
10. Sonoma Land Trust (Son LT)—Amy Chesnut, Taber Ward, Georgiana Hale
11. Tri-Valley Conservancy (TVC)—Sharon Burnham, Executive Director
12. Yolo Land Trust (YLT)—Debbie North, Interim Executive Director

Other interviews

1. California Farmland Protection Program (CFCP)—Chuck Tyson, Director
2. Massachusetts Agricultural Preservation Restriction (Mass APR)—Christine Chisholm
3. The Nature Conservancy (TNC)—Jim Luchsinger, Regional Manager, Nebraska

Overview of the interviewees

Four of the land trusts interviewed—the Brentwood Agricultural Land Trust, Central Valley Farmland Trust, Marin Agricultural Land Trust and the Tri-Valley Conservancy—deal exclusively in farmland; the others also hold conservation easements for habitat, water quality or other environmental benefit. Together, the twelve land trusts hold a total of 303 agricultural conservation easements. The two smallest ACE programs, BALT and PLT, hold three easements each, while the largest—The Monterey County and Marin agricultural land trusts—hold an impressive 60 and 61 ACEs, respectively.

Four of the land trusts interviewed are publicly funded or otherwise affiliated with a public agency; the others are private non-profit organizations. One of the public land trusts, the Sonoma County Agricultural Preservation and Open Space District, was instated by voters and its acquisitions are made possible by a 1/4-cent county sales tax. The others rely on a combination of in-kind donations from landowners and developers, foundation grants, private donations, mitigation monies, and other public funds to pay for their easement acquisitions. The oldest ACE program, begun twenty-one years ago by MALT, has now protected 39,350 acres of productive agricultural land from development!

The overwhelming majority of ACE-encumbered parcels represented in this sample remain in agricultural production to date. The percentage of these parcels being farmed by their owner (rather than leased to a farmer), however, varies significantly from 50% to 100%, the least owner-operated being on Tri-Valley Conservancy parcels, where vineyards and orchards were designed for compatibility with residential development.

Table 3.1-Overview of ACE transactions and outcomes

Land Trust	How many ACE's	Simultaneous sale to farmer?	# farmed by owner	# farmed by tenant	Any out of production?	Notified when title changes?	# sold with ACE	Did any drop out of production?	Experience/succession criteria?
BALT	3	1	1	1	1	yes	1	no	no
CVFT	14	1	14	n/a	no	no	n/a	no	no
MALT	61	~15	~45	~15	no	no	6-Jan	no	yes
MCAHLC	60	not yet	~36	~24	no	yes	3-Feb	no	no
PLT	3	no	3	0	1, sometimes	no	0	no	no
POST	11	5	8	3	no, but concern	no	1	no	yes
SVC	n/a	not yet	n/a	n/a	no	theoretically	0	no	yes
SCAPOS	33	yes, n/a	n/a	n/a	no	theoretically	n/a	n/a	yes
Sol LT	15	yes	9	6	no	yes	2+		yes
Son LT	9	1	8	1	1 threatened	theoretically	2	1 threatened	no
TVC	58	n/a	27	27	no	theoretically	38	no	no
YLT	36	not yet	36		1 threatened	theoretically	0		no

**Total: 12 Land Trusts
303 easements**

Responses to the remaining interview questions are organized below into three categories: 1) Land trusts' perception of the problem of farmer affordability of ACE-encumbered parcels; 2) How their mission statements and associated goals aim to address this problem; and 3) What their current activities reveal they are doing to address this problem.

Perception of problem

I asked each land trust to comment on the “problem”—that rising land values are threatening next generation’s farmers, and that even ACE-encumbered properties tend to continue appreciating in value until only non-farmers can afford to buy them.

Interviewees generally acknowledged the problem and blamed three main reasons:

Development and rural estate home pressure and associated land prices; lack of sufficient agricultural zoning integrity to keep prices in check; and failing economic viability of agriculture.

Almost all respondents concurred that rising land prices are a problem, even where easements are in use. “Affordability is not an issue if you’re just interested in protecting land as open space,” says MALT’s Executive Director, Bob Berner in *Farmers and Farmland for the Future: Beyond Conservation Easements*. But groups interested in working farmland must consider the plight of farmers themselves. Jeff Stump, a transaction specialist at MALT, pointed out in an interview that the greatest factor in pricing farmers out of the land market in a place like Marin County “is conversion of agricultural land to estate home use.” Non-farmers who wish to live in rural settings drive

up land values, ironically threatening the rural livelihoods that give such places their character.

Most interviewees acknowledged this problem of development pressure. “I kid you not ...development is like a gauntlet coming in on us,” said MCAHLC’s Managing Director Brian Rianda, for example. He said that in some parts of Monterey County pressure for new developments and rural home sites pushes farmland prices beyond their agricultural potential. The Executive Director of the Central Valley Farmland Trust calls this “blue sky value,” and agrees that it prices farmers out of land markets. The majority of Rianda’s region, however, is an exception to this rule: in the Salinas Valley, for instance, agricultural production values are still high enough (and the surroundings residentially undesirable enough) that agriculture remains that land’s most valuable use.

The real-estate phenomenon of particular concern to land trusts and farmers they work with is that of non-farmers building expensive homes in rural agricultural areas. One land trust surveyed farmers to find out what they thought about land conservation. “Farmers are pissed off that rich people only want scenic value,” said that organization’s director. The farmers want recognition that their livelihoods are part of the resource environmentalists and wealthy rural residents say they wish to protect.

The Peninsula Open Space District concurs that widening gaps between agricultural values is a significant problem, to the extent that easement-encumbered lands may begin to sell for estate homes. This is not only an unintended consequence of the easement, it degrades confidence by the farming community in the land trust’s work.

Interim Director for the Yolo Land Trust, Deborah North, cites this as the most serious threat to agricultural land affordability. “What nobody anticipated,” she says of

the start of the farmland conservation movement, “was people moving out from the cities for their green acres.” She remembers boardroom conversations about the “influx of wealthy landowners creating a rural fiefdom” where land values are not kept within reach of farmers even by easements. She reports that ranchettes represent not only a failed attempt to maintain agricultural land productivity, but that weeds and other problems arising from mismanagement actually threaten active farmers’ operations. When parcels go on the market for near their pre-easement values, occasionally becoming *more* valuable for the open space amenity (a phenomenon North has observed in other parts of the country), there is cause for serious concern. She foresees that transferring these properties to the next generation will be increasingly difficult, easement or no.

The Brentwood Agricultural Land Trust also clearly sees the affordability problem. In the 12th-fastest-growing city in the nation, ranchettes are rapidly being built where agricultural landowners had subdivided their properties to maximize resale values. This, in fact, was a clear issue of failed public policy: Landowners caught wind of proposed zoning changes to increase minimum parcel sizes in the county agricultural core, “and everybody and his mother went out and subdivided their farms into 10-acre parcels.” Now the City’s agricultural easement program may slow sprawl and even ranchette development, but Executive Director Kathryn Lyddan made one thing clear. “Easements’ best virtue is that they protect prime soil; easements alone do NOT improve agricultural viability. Period.”

Agricultural zoning has been developed in virtually every California county to mediate inefficient market forces, encouraging denser urban development and leaving

agricultural land available for farms. Zoning is always subject to change, Rianda pointed out. He suggested that easements are the only truly lasting way to protect farmland.

Declining economic viability of agriculture was also considered a threat to farmland affordability for the majority of land trusts interviewed. “One thing I know for certain is that if we don’t have farmland, we’re not going to have agriculture...” said Bill Martin of the Central Valley Farmland Trust, regarding the need to keep land available to farmers. “...But just because we have farmland, we don’t know for sure that (farming) will remain economically viable.”

The Sacramento Valley Conservancy also sees economic viability as the paramount issue. If the public does not support local agricultural producers, thought Aimee Rutledge, farmland could continue to be protected but without anyone to farm it. (At this point, however, there appears to be high demand for leasing of good agricultural land within reach of urban areas).

The Sonoma County Agricultural and Open Space District’s Deanna Kamper reported that a price gap has developed between agricultural value and residential value in some areas—on some grazing land, for instance, and certainly at urban edges. But vineyards can still compete with housing. The District has apparently not yet seen evidence of speculation or inflated resale prices on easement-encumbered parcels.

Mission and goals

Agriculture is referenced in a variety of ways in the organizations’ mission statements: Some land trusts emphasize preservation the land itself, as an agricultural resource. Some aim to maintain farming as livelihood in their communities. Other land

trusts refer to scenic or aesthetic values of farmland, or preservation of an area's agricultural "character." Many refer to farm legacies, but few mention the current farm succession crisis. It is interesting to note that some land trusts work to preserve land, but don't make it their work to preserve farming. Others acknowledge that easements are only good for protecting land, but that the land trust can be involved in promotion of its local food economy as well.

Virtually all of the land trusts' mission statements include the words "preservation" or "conservation" and "perpetuity," "permanent" or "forever." Conservation easement programs are indeed the most permanent legal means of land protection ever used. Forever is a long time.

Four of the land trusts make reference to prime soils or other "agricultural resources" in their mission statements. There is a lively debate in the land trust community, in fact, about project selection priorities. Some consider their main responsibility to be protecting prime soils as an irreplaceable resource; other land trusts are criticized for protecting more marginal lands, or land in areas projected to be less viable for farming in the future.

Five of the land trusts explicitly aim to support the "economic viability" of agriculture in their regions, or "working family farms," but most of these say so in the background on the land trust, not the initial mission statement. BALT's mission statement includes "promote the economic viability of agriculture," and the Monterey conservancy is perhaps boldest of all in its aim to "preserve farmland and benefit farmers who make their living from that land." These mission statements, along with the Central Valley group's mission of "working with farmers and ranchers" are the only which refer to

Table 3.2—Land trust mission statements pertaining to agriculture.
 (All quotes in second column excerpted from land trust websites unless otherwise noted).

BALT www.brentwoodaglandtrust.org	"Preserve productive agricultural land and promote economic viability of agriculture." (Lyddan, 2007) "Ensure that future generations will continue to enjoy a local source of food ... Keep our precious, prime farmland available for farming forever."
CVFT www.valleyfarmland.org	"Work... with farmers and ranchers to save agricultural land for future generations." "Protect the Central Valley's agricultural economy, heritage and resources."
MALT www.malt.org	"Preservation of family farms and agricultural lands for local food production, open space and wildlife habitat... To be partners in stewardship with landowners by providing an option that can help farming families keep their land farmland forever."
MCAHLC www.mcahlc.com	"Preserve farmland and benefit farmers who make their living from that land."
Peninsula Open Space District www.openspacetrust.org	"Give permanent protection to the beauty, character and diversity of the San Francisco Peninsula landscape for people here now and for future generations."
Placer Land Trust www.placerlandtrust.org	"Work with landowners and conservation partners to permanently preserve natural open spaces and agricultural lands in Placer County for future generations."
Sacramento Valley Conservancy www.sacramentovalleyconservancy.org	"To preserve the beauty, character and diversity of the Sacramento Valley landscape by working with citizens, property owners, developers, public agencies and other nonprofit organizations"
Solano Land Trust www.solanolandtrust.org	"...Protect lands with highly productive soils and adequate ag water"
Sonoma County Agricultural Preservation and Open Space District www.sonomaopenspace.org	"Permanently protect the diverse agricultural, natural resource, and scenic open space lands of Sonoma County for future generations." <i>Specifically mentions dairies/ranches, small-scale working farms, local food, agricultural character, ranches and farms that provide services critical to long-term viability.</i>
Sonoma Land Trust www.sonomalandtrust.org	Ensure "that the natural beauty and rural landscapes of Sonoma County are protected forever."
The Nature Conservancy www.nature.org	"Protect ecologically important lands and waters for nature and people."
Tri-Valley Conservancy www.trivalleyconservancy.org	"To permanently protect the fertile soils, rangelands, open space and biological resources and to support a viable agricultural economy in the Tri Valley area."
Yolo Land Trust www.yololandtrust.org	"To "protect the farm, open space and habitat lands in Yolo County".

farming livelihoods, though many would acknowledge that the agricultural landowners they work with use easements as a tool for keeping their farms viable in the present.

The values of their donor constituents come through clearly where land trusts mention, as a few do, preservation of their regions' "agricultural heritage" and "character." This is difficult to measure, but garners political and financial support for the cause.

Seven land trusts aim to protect land on behalf of "future generations." Though rarely mentioned in land trust literature, agricultural easements are clearly an important tool in farm succession—the passing on of a farm from one generation to the next. The Marin Agricultural Land Trust, an exception, regularly uses easements for succession. It aims to help "farming families... keep their land farmland forever." These last statements are full of implication—how, then, will they ensure that the farmland they protect will be accessible for that next generation?

What land trusts are (or are not) doing about it

Several land trusts have already taken steps to ensure that their ACE-encumbered properties remain in agricultural production for as long as possible. To a few, this meant careful attention to facilitating transfers of ownership to experienced younger-generation farmers. Other land trusts take a much more hands-off approach, preferring instead to trust their ACEs to keep land available as long as social and market conditions allow for farming. Several themes arose in the data gathered from these discussions. These include ACE project selection criteria, stewardship and monitoring practices, specific easement language and affordability covenants, provision of technical assistance, attention to local

agricultural viability, and thoughtful integration with land-use planning. These same themes will be expanded upon in Chapter 5.

Selection criteria for optimal farming experience and succession

I asked land trusts about their selection criteria, since the decision about whether to undertake an ACE project must be based on the values of the selection committee. To what extent are these land trusts concerned with current operations—the *people*—on these properties? Perpetuity, of course, is a time-scale which will long outlast any current farmer and his or her children. I was curious, though, whether land trusts see their stewardship role as one of support for the producers on these properties—support to develop careful farm management plans or even farm succession plans, for instance.

The Brentwood (BALT), Marin (MALT), Peninsula (POST), and Sonoma County (SCAPOSD) land trusts interviewed require submission of a management plan when they buy an ACE from a farm owner-operator, when they work with an oncoming farmer to buy a property and place it under ACE, or when they own a property in fee and transfer it to a new farmer, retaining an ACE. MALT, in fact, was formed partly to facilitate ranch succession from one generation to the next. SCAPOSD asks prospective easement grantors questions such as “what values are important to you? How are you likely to use this land in twenty years?” POST, similarly, only sells easement-encumbered properties to experienced and dedicated farmers—often former tenants on those parcels.

Others see this as impractical at best, meddling at worst. Yolo Land Trust’s interim director felt that including selection criteria based on people’s experience would be “like mixing apples and oranges.” Placer Land Trust’s director, when asked about selection criteria, responded simply that he “hope(s) the project selection criteria allow

for continued agricultural productivity.” This land trust, to consider an ACE, specifies only that the land must have historically been used for agriculture or is currently in agricultural production, and that the overall project provide “clear benefit to the community or region.” PLT subscribes to Land Trust Alliance standards, but these are not any more specific. Placer County advocates of local, sustainable agriculture are spearheading a host of new projects to support entry into farming by young people there, and it will be interesting to see if the land trust evolves in response.

The Central Valley Farmland Trust operates in the most agriculturally-important region of the state—if not world—but has very little in the way of agricultural experience or management requirements in its ACE selection criteria. Like almost all the other land trusts, CVFT does not ask about succession plans or next-generation farmers in deciding to do a project. The Sacramento and Monterey groups interviewed also prefer not to screen landowners for farming experience or motive, instead letting the easements speak for themselves.

Stewardship and monitoring

Changes in land ownership often lead to changes in land management as well. In order to know the status of their ACE-encumbered properties, don’t land trusts need to be notified if a parcel is up for sale? Do they have a chance to influence the next generation at these junctures?

Interestingly, only one land trust answered unhesitatingly “yes” to the question of whether the landowner is required to notify the ACE holder when placing the land on the market. The majority of respondents answered “theoretically...”, that their easements stipulate that they be notified when a property changes title (mostly after the sale), but

that landowners and realtors often fail to notify them. Five land trusts said they are not required to be notified. Overall, most land trusts rely on annual monitoring visits to be apprised of changes in land ownership!

The acting director for YLT expressed concern that realtors are often unfamiliar with the meaning of ACEs and fail to adequately brief their buyers about easement implications. The buyer of one of BALT's ACE-encumbered properties actually claimed he was unaware that the easement existed when he bought it (though it must legally be revealed, and was, by the title company when documents are signed).

If the process for keeping track of parcel data is inadequate (and exacerbated by a paucity of communication with county assessors' offices), land trusts have an even harder time learning if new buyers are actively farming. The Sonoma County Agricultural Preservation and Open Space District, for example, holds 33 ACEs and has not yet developed a database with which to monitor ownership and production status (they're working on it). Based on their right to visit and visually assess activity on these parcels, most land trusts interviewed have reasonable data about whether parcels remain in production. Thankfully, the vast majority of easements represented in these interviews are still in production, though many land trusts share uncertainty about the future. One smaller, ACE-encumbered parcel which seems to be going out of production is being converted to a motorcross arena, apparently within the legal parameters of that particular easement. Another land trust is in court with a landowner over that individual's interpretation of "agriculture;" he is improving a neighboring parcel by dumping dredged materials from the marina there onto his ACE-encumbered land. Not surprisingly, both of these properties are in their second generation of ownership—suggesting that as they change hands easements on protected lands will be tested for all they are worth.

Easement language for affordability

If there is concern about ACE-encumbered parcels going out of production, why not require in the easement that they remain farmed? The requirement of such activity, as compared with simple subdivision and building prohibitions (negative covenants), is known as affirmative language. A Brentwood city council member was reported mistakenly assuming that agricultural easements *do* constitute affirmative farming requirements. Farmers in the same area, who tend otherwise toward political conservatism, support the concept of affirmative language as well. Even a prominent member of the California Farm Bureau, a staunch advocate of private property rights, is prepared to support affirmative easement language if it values farming as an occupation.

Each easement must be written uniquely for the property it describes, and its value is based on the integrity and clarity of that language, *as enforceable by law*. Easements are only enforced by individual suits brought by the grantee (usually land trust), so it is in every land trust's interest to execute simple, clear-cut documents.

MALT has executed one affirmative easement, but remains cautious about this approach. "How do you enforce such an easement?" is the question which often arises. Jeff and Annie Main, Yolo County farmers initiating a very unique affirmative easement project, have not won the support of their local land trust for the same reason. Yolo Land Trust does not want to get involved in "social engineering," said the director. The Central Valley, Peninsula and Monterey County groups are also in agreement on this issue. Sonoma County, Solano Land Trust, and Brentwood Agricultural Land Trust, on the other hand, are still exploring ways affirmative language could be safely used to ensure

continued agricultural productivity and thereby easement value—helping discourage the non-farmer mark-up of otherwise viable agricultural land.

Christine Chisholm, of the Massachusetts Agricultural Preservation Restriction Program, cheerfully confirmed the program’s approach: that the Commonwealth of Massachusetts is out to protect farmland *for farmers*. Not only do Massachusetts and the Vermont Land Trust use affirmative language in their easements, they use a standard Option to Purchase at Agricultural Value (OPAV) in *all* of their easements.

Both of these easement tools are designed to keep the land affordable for future farmers. The “affirmative covenant” in the Massachusetts program reads that the land must remain in active agricultural use and not be abandoned.

An OPAV gives the land trust (in this case the State of Massachusetts) first option to purchase the parcel should the landowner (“Grantor”) choose to sell. The intent of such an option “is to ensure that the Premises remains affordable for agricultural production and that its market value for other uses does not preclude its profitable use for agriculture” (Sample easement, Massachusetts APR 2008). The Grantor is guaranteed an offering price of either the fair market (ACE-encumbered) value or a formulaic agricultural value, whichever is greater.

Chisholm conveyed that these ACEs require a farmer-landowner to submit a business plan, demonstrating that he/she is a commercial farmer. The OPAV has been in standard use for ten years now, and helps maintain the integrity of these affirmative easements. At this time, houses are not included in the MaAPR—when homes exist on ACE properties, they must be excluded from the easement and the farmer negotiates their purchase or rent separately. This may create problems, Chisholm conceded, as the only

residences on protected farmland could become too expensive for those farmers to live on their own farms.

Overall, however, the program is working remarkably well. Several of the California land trusts interviewed here (such as MALT, SCAPOSD, BALT, and TNC in Nebraska) expressed interest in these tools and said they might consider using them where affordability seemed a significant issue.

Technical and financial assistance

Most land trusts have program funds available to research potential projects and meet with prospective easement grantors; some do regular outreach to educate the public about what ACEs are and how landowners can benefit from associated tax incentives. From answers given, very few land trusts have allocated funds or staff-time to work with prospective buyers of ACE-encumbered properties. About half the land trusts have worked with farmers on the purchase of newly- or already-encumbered properties; presumably providing some coaching along the way. Assistance with financing is even more rare. Only POST responded that it sometimes assists these buyers by providing no-interest loans, and retaining an ACE in exchange. TNC has been known to do this as well.

Economic viability

Not every land trust considers itself responsible for the social and economic context of its agricultural land preservation work. BALT's board of directors is clear that the easement program should preserve land *available for*, not necessarily succeeding in, farming. Its parallel programs (local food marketing, for example) to promote agricultural

viability complement the easement work but do not rely on the extinguishment of development rights to promote economic viability of farming. BALT does, however, consider its easements “farmer-friendly”—they specifically allow for processing facilities to add value to agricultural products, whereas other land trusts very strictly prohibit new construction.

The Central Valley Farmland Trust, while acknowledging the emerging viability of “boutique” farms and high-value crops, does not yet consider small parcels to be economically viable. “We wouldn’t consider an easement on a twenty-acre parcel,” said Bill Martin, “unless public mandate required.” POST also emphasizes large parcels, according to Ringgold always working at the 100+-acre level and never dabbling in what he opines are “questionable” parcels. POST does careful cost-benefit analysis of conservation or agricultural value against ongoing monitoring costs. Sol LT, on the other hand, is trying to tackle the challenge of preserving small parcels under the most conversion pressure.

Several cases of public programs and land trust collaboration with public agencies are worth noting. The Sonoma County Agricultural Preservation and open Space District, a publicly administered and funded program, has identified the need to assist beginning farmers with land purchases, and has adopted a Small Farms program designed specifically to protect these valuable and important pieces of the agricultural landscape. Tri-Valley Conservancy successfully collaborated with the County of Alameda and the City of Livermore to place a large number of ACEs on land surrounding residential development. The development, through mitigation, helped pay to protect valuable

vineyards and other farmland, and the Conservancy was unafraid to require continued agricultural production for at least eight years from the onset of the original easement.

Central Valley Farmland Trust and some of the larger land trusts emphasize building contiguous blocks of ACEs, preserving a “critical mass” of farmland. Martin referenced the Delhi area, in which skeptical agricultural landowners watched a few of their neighbors sell easements, saw how they benefitted, and overcame the previous stigma associated with giving up those private property rights. Now a large block of dozens of parcels around these San Joaquin Valley towns has successfully created an urban growth boundary and permanently protected a substantial amount of land. This process, which could be duplicated in other areas via collaboration with the zoning process, certainly affects agricultural viability for that region. It is yet unclear if the economic benefits of agricultural conservation easements to farmer-landowners land will persist into the next generation.

These land trust interviews, in sum, revealed that Land Trusts generally see farm affordability as a problem. They are philosophically split with regard to their willingness to select for specific qualities in their landowner partners. As a group, land trusts are not keeping careful track of parcel transactions and the occupations of second- or third-generation landowners. Only one of the land trusts interviewed have forayed into affirmative easement language; about one third of the groups are considering an Option to Purchase at Agricultural Value. It is promising that about half the land trusts have worked with incoming farmers to purchase their land, but begs the question—where do land trusts find these incoming farmers? Very few have a process in place to provide such legal and financing technical assistance. The Brentwood and Marin trusts

are good models of regional efforts to promote local agricultural viability. There are isolated instances which have worked well with planning; of course county organizations are in the best position to do this.

4. CASE STUDIES

There are few examples of easements being used to help promote land affordability for beginning farmers and ranchers in California. In this chapter I present eight different models of how ACEs have been used to facilitate access to land by new farmers. Land Trusts are the key actor in most models but nonprofit organizations, funders, and new and retiring farmers may also contribute to the creative use of ACEs.

Figure 4.1—Eight models for creative use of ACEs to improve land ownership by next-generation farmers

1. Farmer-landowner sells easement; future affordability improved
2. Farmer-landowner sells easement simultaneously with succession to next generation. (Case 1)
3. Land trust partners with new farmer to buy qualifying farm property. Farmer retains title; land trust retains easement.* (Case 2)
4. Land trust purchases property in fee, retains easement, sells to farmer.* (Case 3)
5. Developer buys threatened farmland as mitigation requirement; land trust retains easement and facilitates sale to farmer.*
6. Farmer buys in-fee, sells easement later.
7. Farmer with multiple contiguous parcels sells easements separately to improve options for new farmers to buy.
8. Farmer sells easement to community land trust; community finds value in affirmative requirement and perpetual affordability.

**These three ways of partnering with farmer-buyer are most effectively used with Request-for-proposals process, Option-to-Purchase-at-Agricultural-Value, creative financing and other technical assistance.*

In the first model, an existing farmer sells an ACE. By pulling equity out of the land, that farmer is able to pay off farm debts, expand operating capacity, or in some cases, purchase more land to farm. The money received for the ACE can be freed up to help an incoming farmer with a down payment, or (as in Model 2) to facilitate succession to an heir in the next generation. Conservation easements are commonly used for farm

and ranch transfers within families. The Marin Agricultural Land Trust has executed more easements as part of succession plans than any other California land trust or conservation agency. Case Study 1 illustrates how sale of an agricultural conservation easement can make succession to the next generation possible.

In a similar approach to that used by the Gutierrez brothers, a beginning farmer looking to buy land may pull together an offer on a parcel's full-market value to secure that property, then sell an easement later (Model 6). This is not ideal, of course, since securing that initial financing can be so difficult. A young but experienced farm couple in Placer County is doing just this: they took the initiative to ask their local land trust and county farmland protection program to partner with them in the purchase of a farm property where they could move their operation (now on leased land) permanently. The land was owned by a retired Japanese-American farmer, whose children did not wish to farm. The land trust agreed to purchase an agricultural conservation easement, but the funding application and disbursement processes are slow. So the couple scraped together loans from friends and family to cover their down payment and high initial mortgage, and are still working to secure the easement money to justify the purchase. If the easement were to fall through, their financial back-up plan would ironically be to subdivide the property and sell a portion of it, hopefully retaining a lease.

Another model, illustrated in the Solano County case study below, requires initiative by a land trust. When the land trust has identified a farm property for sale which strongly meets its acquisition criteria, it may call for proposals by qualified farmers to partner in its purchase. The land trust would then purchase and retain an easement. This

scenario requires that the land trust have access to the farming community, and commitment to a careful interview and selection process for farmers.

This approach may also be undertaken by a land trust who has the resources to secure important farm parcels first in-fee, and to later sell them while retaining an easement, through a similar request-for-proposals process. Acquisition funds for such short-term purchases have been made available in the past by the California Farmland Conservancy Program. This is a valuable way to keep up with the pace of land markets and buy time to transfer farm properties to appropriate successors. An example of this is described in the final case study involving The Nature Conservancy and a young ranching family in Nebraska.

Another interesting way to involve especially public farmland conservation agencies in the selection of farm buyers, is to take advantage of agricultural mitigation requirements. These programs require developers to protect valuable farmland in agricultural settings to offset conversion of farmland nearer urban centers. In their haste to resolve regulatory issues and begin construction, developers often buy farmland in-fee; then transfer the easement to a land trust. This can present a prime moment for the land conservation group to recruit a qualified farmer-buyer, and has been used successfully in Brentwood and other areas with farmland mitigation requirements.

In any of the models involving a new-farmer selection process, a land trust may choose to retain the option to purchase that land at agricultural value, were it ever to be placed back on the market. This option, used as a matter of practice by the Massachusetts Agricultural Preservation Restriction program and the Vermont Land Trust, grants the land trust perpetual involvement in the selection of oncoming farmer-buyers.

In a unique example of Model 7, a well-respected organic fruit grower in Brentwood will soon sell easements on multiple parcels to the local land trust, with the stated commitment of transferring each parcel to an incoming farmer over time, at its reduced value.

In a more “home-grown” approach (Model 8), a farming couple might wish to sell a parcel’s development rights or non-farm home site value to free up equity for debt service or retirement, and voluntarily grant a land trust this option to purchase at agricultural value, for permanent affordability. In the case of Good Humus, a 20-acre farm in the Capay Valley, Jeff and Annie Main are working with Equity Trust from Massachusetts to garner community support for the funding of this unusual easement. Their goal is to pass down their farm—now established, productive and healthy through their own sweat equity, to a young farmer at an affordable value.

The scenarios described here do not comprise a complete cross-section of agricultural easement acquisitions, nor do they illustrate all of the tools in use to improve the effectiveness of easements for farmland affordability. They do, however, each illustrate how a particular easement project has impacted land use and affordability in a new generation of ownership. Following are three of the above-mentioned cases, described and analyzed further.

Case 1: Pilot Hill Ranch, American River Conservancy, and the Gutierrez Brothers
Farmer-landowner sells easement simultaneously with succession to next generation

In March of 2007, Ricky Gutierrez contacted California FarmLink for help trying to buy into his family’s large ranch on the American River, in El Dorado County. He wanted to know how the sale of a conservation easement might affect the purchase price

of his uncle's share, and whether such a sale would allow the brothers to take over partial ownership of the ranch. The ranch had been in his family since 1899 and was operated by Ricky's great grandfather until 1985. At the time Ricky called, the ranch was owned by his mother and four of her siblings as tenants-in-common, and was being leased to a local cattle rancher. Ricky's mother owned a 60% share in the property, and her siblings each owned 10%. Two uncles were anxious to get out, so the brothers decided to offer to buy 20%, contingent upon the ARC agreeing to purchase an agricultural conservation easement.

Ricky and his younger brother, who lives on site, have put substantial voluntary effort into ranch up-keep and hope to carry on their family legacy. The impetus for Ricky's inquiry was that his uncle was threatening to force a sale of the ranch in order to extract his equity. Sibling relationships among the owners were strained, and the need for a family ranch-succession strategy was imminent.

It was clear that there was high conservation value. Just shy of 1,000 acres bordering the American River, the property was comprised of seven parcels, each under rural residential zoning. If subdivided, minimum allowable parcel sizes varied from 10 to 160 acres. The region was under significant development pressure. A major housing development had recently gone up across the road, and land conservation efforts had already begun in the area. The American River Conservancy (ARC) already held easements on adjacent land.

Meanwhile, Ricky's uncle had pursued real estate listings and was beginning litigation. It seemed a perfect opportunity for a conservation easement to protect the

scenic and working landscapes of this family-owned ranch, while bringing the purchase price down to a lower, non-developable value.

Figure 4.2—Pilot Hill Ranch in springtime



Photo: Ricky Gutierrez

After eight months of difficult bargaining, the Gutierrez brothers purchased their uncles' shares for approximately \$640,000. Working with ARC, Ricky negotiated the sale of a 630-acre conservation easement on the ranch's three riverfront parcels. The \$1.8 million easement will be funded by the Wildlife Conservation Board and a "Preserving Wild California" grant. Due to the lengthy funding application process, the brothers don't expect the easement deal to go through for another year or so.

What was necessary in the facilitation of this land-share purchase? The director of the ARC worked closely with the young men throughout the deal. A real estate attorney with years of experience with conservation easements was recommended by California FarmLink and helped them negotiate easement language. Finally, the ranch's history, current use status, and the brothers' ranching aspirations helped them secure low-interest financing through the USDA Farm Service Agency. They received a 30-year, FSA-guaranteed loan with fixed interest at 7.25% for fifteen years. This loan requires that Ricky and his brother operate their own ranch business on the land, and terminate their lease with the neighboring rancher. Seller financing was not an option in this case, as relations were strained. The easement proceeds will be distributed among the new group of owners. Ricky's mother hopes to use her share to buy out her remaining two siblings, and Ricky and his brother plan to pay down their loan.

The challenges which arose during Ricky's family succession process are not unique. Accessing financing for easement-encumbered land can be difficult, as lenders often view easements as a risk. In this case, the Gutierrez brothers were fortunate to be able to back their loan with their mother's equity in the four parcels *not* covered by the easement; simplifying their loan qualifications substantially.

The property had to be re-assessed and there is concern that property taxes will be raised considerably. Whether the easement reduces the property value enough to compensate for this expected tax increase, remains to be seen. Timing of funds disbursement can also jeopardize easement projects. Had the brothers been unable to secure financing for their part of the purchase, relying instead on the easement to make it affordable, they would have risked exhausting their uncles' patience while waiting for easement funding to come through.

Once the easement has been purchased and a final succession plan is in place, the brothers will be in a position to begin building a ranching business on their land, carrying on their family legacy and protecting this valuable natural and agricultural resource in perpetuity. Ricky and his brother are currently working with California FarmLink to develop a business plan for the ranch.

Case 2: Tip Top Farm, Solano Land Trust, and Leonard and Judith Diggs

Land trust (recruits and) partners with new farmer in land acquisition

This ACE project is distinguished by the land trust's effort to recruit a farmer to partner in a farm acquisition. The farm's small size (twenty acres) and expensive location (Vacaville's suburban edge, less than an hour from San Francisco) called for a unique approach. Solano Land Trust and California FarmLink offered technical assistance to interested farmers, and designed a request-for-proposal process to find a qualified prospective buyer. They researched innovative easement language as a means of closing the enormous value gap between the selected farmers' offer and the land's full market value. Ultimately, the project failed due to the farmers' concerns about the unusual easement, and lack of sufficient funding to pay for it.

With inherited money, a young farmer had bought a twenty-acre prune orchard in Vaca Valley in the late 1990's. She made way for gourmet vegetables and named her business Tip Top Produce. Over several years there, she established a much-loved organic farm business which supplied some of the Bay Area's finest restaurants and farmers' markets. When she died suddenly in September of 2006, her neighbors, former

interns, and friends sought ways to fulfill one of her life's wishes—that the land always remain actively farmed.

Since an estate plan had never been made for the property, the late farmer's family faced hefty inheritance taxes and decided to sell the land. California FarmLink publicized the estimated \$1 million purchase opportunity to land-seeking farmers in its database. Since that was an unlikely price tag for a farmer to muster, Solano Land Trust was contacted to see if they would consider an agricultural conservation easement on the farm.

Although agricultural easements on such small farms are almost unheard of in the land trust community, the SLT board had recently agreed that a need was emerging for protection of smaller-scale, urban-edge farms. The trust's easement committee considered purchasing the farm in fee, but decided it could not justify tying up such substantial funds for the small acreage. The property was zoned for a twenty-acre minimum parcel size, ostensibly for agriculture, though large estate homes had been built on many surrounding parcels. This meant there were no subdivision rights to extinguish, so the first draft easement written by SLT simply attempted to reduce the farm's value to would-be estate home buyers. The proposed easement restricted allowable home size (to 2,500 square feet); confined construction of any buildings to a limited building envelope; prohibited construction of equestrian facilities, provided for a setback from the seasonal creek; and prohibited subdivision in the event of future zoning changes.

Initially, SLT was committed to an "arms-length" transaction in which the described easement would be drafted and the ACE-encumbered farm could then be sold to the highest bidder. The process of accepting bids on the open market would help

inform the appraisal process for this unusual easement. FarmLink was concerned that the easement restrictions would not be enough to discourage non-farmers from making high bids on the property. We wanted to know if there was a way the farm could be protected *for farming*, and sold at approximately agricultural value to an experienced, newer farmer.

The land trust responded. Its board of directors' easement committee had acknowledged the ranchette problem, and a particular board member felt particularly strongly about it. The last thing she wished to see was another "hobby farm" and expensive house in this formerly productive agricultural community. Since California FarmLink had ready contact with hundreds of farmers seeking land opportunities, Solano Land Trust's transaction consultant, Greg Kirkpatrick, suggested that we organize and issue a request for proposals. This RFP called for interested buyers with farming experience to apply for a chance to purchase the property in collaboration with the land trust, who would simultaneously purchase an easement with funds from the California Farmland Conservancy Program. Initially, CFCP appeared receptive to the proposed project.

The land, meanwhile, had gone on the market. The seller made it clear that while he was willing to entertain offers including an easement purchase and would like to honor his sister's wishes, he did not feel he could afford to make a financial sacrifice on the purchase price.

While California FarmLink waited for formal proposals, we provided applicants with technical assistance in easement interpretation and negotiation, beginning farmer financing opportunities, and help locating realtors to prepare their purchase offers.

A selection committee, consisting of representatives from Solano Land Trust and FarmLink, was formed to review the proposals and rank the farmers according to both farming and financial criteria. These included agricultural production and business experience, farm vision and management plan, amount of offer, ability to finance that offer, and goodness of fit to project intent. By prioritizing experienced farmers, this process was meant to further the land trust's exploratory goal of supporting agricultural use of even modest-sized parcels, within proximity of urban areas. It was also consistent with California FarmLink's goal of helping farmers obtain secure land tenure.

Figure 4.3—Farmer candidates tour Tip Top Farm



The request for proposals to purchase the land in conjunction with SLT garnered interest from nine parties. Four of the candidates had commercial farm experience; the others were interested in the property’s agricultural potential but had never farmed commercially. Three of the farmer-candidates, and none of the non-farmers, were under forty years old. Only one of the candidates (also a farmer) had never before owned a home. Upon being advised that they would not likely score well against experienced farmers, most of the non-farmers dropped out of the running. Another two farming couples decided that they were not prepared to face even an easement-reduced purchase price, or that the terms of the easement were yet too vague. A total of three proposals were finally submitted and the selection committee met to review them. The results from this meeting are summarized in Table 4.1.

Table 4.1—Results of selection committee meeting to choose farmer partner.

	Candidate 1	Candidate 2	Candidate 3
Farm Experience	Med – 2	Low – 1	High – 3
Farm Vision/Plan	High – 3	Low-med – 1.5	High – 3
Amount of Offer	Low – 1 (\$175,000)	High – 3 (\$675,000)	Med – 2 (\$360,000)
Ability to Finance	Med-high – 2.5	High – 3	High – 3
Fit to Project	Med – 2	Low-med – 1.5	High – 3
Totals	10.5	10	14

Candidate 1 was a young man who had farming experience but had not yet run his own business. His offer included a sound farm management plan but reflected his limited means, and his understandable but naïve determination to make land payments from sheer farm income. Candidate 2 was a senior couple with substantial equity in a home out-of-state, where they operated a goat rescue operation. They wished to move near their grandchildren, and embraced the idea of continuing to hobby farm in Solano County.

Only Candidate 3 had both ample farming experience and an offer the land trust could work with. Leonard and Judith Diggs, a middle-aged couple, had home equity, substantial organic farm production and management experience, and highly appropriate goals for both farming and passing on the farm. Mrs. Diggs had studied organic agriculture in her native Switzerland, and had greenhouse management and propagation experience. Mr. Diggs had grown up farming in Woodland. He had owned one and managed several large organic farms. For many years since, he had been teaching agriculture to young people by managing a well-respected educational farm for a community college.

Considering that no permanent house existed on the property, and expressing general disillusionment with the inflated housing market (“It is just crazy,” said Judith more than once), the Diggs were only willing to put a modest purchase amount down which they justified with a long-term farm business plan. “We won’t be here forever,” said Leonard. “We want to be able to afford to sell this farm to a young farmer when we retire from it, a farmer who can continue farming as we have done.” They had actually put their home on the market in anticipation of this purchase opportunity, and planned to use part of that money to build a house and farm infrastructure: Even if they had been able to afford more for the land, they said we would not, because their goal was that the whole farm would be transferable at a reasonable purchase price when they were ready to pass it on.

The land was on the market for \$995,000 and the seller was interested in a competitive bid. Whether an easement helped constitute that bid was of secondary concern to him. A formal appraisal had been requested by Solano Land Trust, and confirmed a property value of almost asking price: \$950,000. We knew that the market value of the easement-encumbered farm, as proposed, would still outstrip the Diggs’

offer, and that this would affect the eventual easement appraisal. More importantly, the funder (California Farmland Conservancy Program) had never allocated more than \$20,000 per acre for even the most restrictive conservation easements. For this project, CFCP indicated they could only justify \$5,000 per acre, or \$100,000. With \$400,000 from the Diggs and \$100,000 for the easement, a total purchase offer would still be just over half of the asking price—not a viable offer.

Early on, the project team recognized that the draft easement as written, even if more funds had been available, was not restrictive enough to close the value-gap between the Diggs' offer and the asking price. We would need to explore alternative easement language to increase its value, while helping minimize risk of a ranchette sale, to ensure that the land would remain farmed. We had begun researching affirmative covenants and other tools and had discussed those with the Diggs, but the land trust was not yet prepared to write an actual draft easement incorporating this language.

With such a significant funding shortfall, we knew our options were limited. But if a willing land trust could not use an agricultural easement to structure a reasonable farm purchase, then what good would easements ever be to keep small, urban-edge parcels in the hands of farmers? We decided on two plans of action: The first would be to draft a formal offer to the seller for \$500,000, write a particularly restrictive easement (see Table 4.2), and seek a bargain sale in which the seller would donate a portion of the easement to take as an income tax write-off. The property had been on the market about six months and we felt we were in a position to negotiate.

Table 4.2—Comparison of options for Tip Top easement

<p>The original draft easement placed restrictions on:</p> <ul style="list-style-type: none"> • Home size • Size of accessory dwelling, farm labor quarters • Building envelope for “Farmstead” area • Any commercial equestrian use and all pertaining infrastructure <p><i>Easement value: approx. \$100,000</i></p>	<p>An alternative easement could additionally provide for:</p> <ul style="list-style-type: none"> • An “affirmative” covenant stating that the land must be continuously farmed. Enforcement would depend on the land trust retaining option to lease to another party. • “Option to purchase at agricultural value” (OPAV), retained by land trust or grantee, to limit resale value and keep affordable for a farmer-successor. <p><i>Easement value: approx. \$400,000</i></p>
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Our second option, not exclusive of the first, would be to ask the seller for a four to six- month purchase option during which time California FarmLink could apply for foundation grants to pay for an innovative easement with a farm affordability clause. This strategy could then be used as a model for projects of similar scale and market conditions. The pilot project would help California FarmLink launch a farm affordability program, to be used in partnership with land trusts in similar situations where traditional ACEs simply don’t help farmers buy land. Convincing the seller to agree to wait, we knew, would be difficult.

It turned out that the seller didn’t have to wait. The Diggs respectfully withdrew from the running before we made either proposal. This choice was based on several concerns. First was that the Diggs’ offer was to be made in conjunction with a letter of intent from Solano Land Trust, which in turn relied on the drafting of a new easement

and its appraisal—neither of which had been completed yet. We discussed the creative language which would need to be added to the easement, and this raised new concerns as well: If the land trust were to retain an option to purchase at agricultural value (OPAV), how would the Diggs' new home construction and equity in other improvements be affected? Though they did not intend to profit from an eventual sale of the property, they needed to be assured that they could retire by recuperating their investments at some point. How would the resale value be calculated? (Some land trusts in the East which use OPAV, incidentally, exclude houses and other structures to avoid such complications). Finally, the realtor felt obliged to caution the Diggs about their mortgage. Such an easement was unusual and she was concerned it created a risk for the Diggs should they ever need to back out. "There were too many unknowns," said Mr. Diggs. Determined to find a farm to purchase by next growing season, they decided it was time to search elsewhere.

Several weeks after notifying the seller of our withdrawal, a purchase offer was accepted by a restaurant from the San Francisco Bay Area. Their intention is to grow produce for their restaurant, at the farm once known as Tip Top.

Several interesting issues emerged from the original request for proposals and farmer-selection processes. First was the question, what constitutes a true farmer? Is the agriculture practiced by a "hobby farmer" who does not rely on farm income, a less important use of that land than farming for a living? If yes, what percentage of total income must his family earn from the land? Or should she earn a minimum percentage of the median area farm income, based on acreage in production? How much should the farmer's management plan factor into the decision? In the selection process, we had to

acknowledge that our candidates were each located on a continuum of these issues. Fortunately one of the candidates stood head and shoulders above the rest.

Other questions raised were whether we should prioritize candidates who were most likely to hire local labor, use local services or sell to local markets. Should they use organic or other environmentally-benign methods? What about candidates with children likely to succeed them? Consensus was that these qualities would be ideal in a chosen farmer-buyer, but should not be requirements. Qualitative criteria like these can allow “goodness of fit to project” to be determined through committee discussion, on a case-by-case basis. On a policy level, however, these decisions would be difficult to operationalize.

Another lesson learned from this project was how a farmer can shape the process. The Diggs’ desire to steward a farm which would remain in agriculture in the next generation, and their level of comfort with the purpose of agricultural easements, helped inspire Solano Land Trust to explore affirmative easement language and affordability covenants. The couple came to the process with only a very basic knowledge of easements. Staff-time spent explaining the legal and financial ramifications of the proposed easement was necessary, and would be for any similar project.

The challenges to helping a farmer purchase Tip Top stemmed in great part from the unique nature of small-scale, urban-edge farms. Tip Top farm was ideally situated for organic, high-value production for Bay Area markets. Ironically, however, high market pressure for estate homes has continued to drive the real estate value of such farms far beyond affordability: this farm was listed at easily 250% higher than similar farmland

elsewhere! This dilemma will continue to pressure conversion of urban-edge farms into other uses unless new tools are developed.

In sum, the lack of a tried-and-true easement model, lack of clarity about possible ramifications, lenders' lack of experience with easements, and the time it would have taken to raise funding to execute an alternative easement, placed too much strain on this project. The future establishment of a farm affordability program could help resolve these issues as a matter of process.

Case 3: Horse Creek Fen, The Nature Conservancy, and Shane and Kristi Daniels
Land trust purchases property in fee, retains easement and sells to farmer

Nebraska's Sandhills cover a whopping third of that state, and have become important—though fragile—grazing land for ranchers. Tens of millions of acres of wind-deposited sand dunes, held together by perennial grasses, characterize this landscape which acts as a “sponge” for the enormous Oglala Aquifer. Having evolved with large grazing animals, the grasslands can in fact be maintained in good health by careful livestock management. The Nature Conservancy (TNC) and the US Department of Fish and Wildlife have been involved in conservation efforts in the Sandhills, and both promote grazing as a means of maintaining species biodiversity there.

Meanwhile, fewer and fewer young ranchers are able to make ends meet out on the range. Many ranches, no longer economically viable, have been bought and consolidated by American media mogul (and environmentalist) Ted Turner—who now, with a sizeable team of cowboys and biologists, runs bison on over 400,000 acres in the Sandhills area. Turner is known for his attention to conservation practices, but some are concerned about the longevity of such an operation and the loss of rural livelihoods in the

area. Ranching organizations and conservation groups alike tend to share the opinion that a mosaic of diverse private, profitable family ranches can provide the most lasting social and ecological benefits.

The State of Nebraska, in fact, adopted an anti-corporate farming law in 1982 out of concern that industrial agriculture would consolidate and supplant family farming and degrade rural communities. Unsurprisingly, this law is currently being challenged in court. Nebraska has also implemented a Beginning Farmer Program. This program is designed, via tax incentives and a land-linking program, to stem the outflow of young people from agricultural production and instead support them to succeed the state's rapidly aging farmers and ranchers. The existence of this program, along with one of the nation's first ranching and conservation coalitions – the Sandhills Task Force—facilitated a unique move in 2005 by the Task Force and The Nature Conservancy's Jim Luchsinger.

The Nature Conservancy of Nebraska (TNC) had formerly purchased the Horse Creek Fen Ranch—3,240 acres of sandy hills with environmentally-significant fens and associated species. It was monitored periodically by TNC staff biologists, and leased to a rancher for general grazing management. TNC decided its management goals would be better met if it could divest itself of the property, retaining only a conservation easement and allowing a private landowner to manage it. Easement value in the Sandhills tends to be quite low, since there is no development pressure to speak of, and very little activity is suited to the place apart from ranching. Also unique to this region is its unforgiving grassland. “The checks and balances are already built in,” Luchsinger said, since poor management quickly results in poor pasture in a delicate system such as this (Luchsinger 2008). For these reasons, TNC decided it would be a better use of the Conservancy's

money and would better support its conservation goals to help a young ranching family buy the land in fee and set up a profitable business.

The Sandhills Task Force was crucial to the steps that followed. Comprised of a majority of ranchers, including members of the State Cattlemen's Association, and several government agencies and conservation groups, the Task Force has forged a strong and politically unlikely alliance between ranching and environmental interests. It was this 16-member board, including Luchsinger, that agreed to try to facilitate a land transfer to a new ranching family. Understanding that a traditional purchase would be out of reach of preferred candidates, the board worked with TNC to offer unique equity and financing options to the selected rancher(s). "We could have gone out and sold to the highest bidder", Luchsinger said (2008). But as TNC staff, he wanted to work with a family who would be capable and profitable, and who might ranch into the next generation.

The deal would work like this: Rigorous application, interview, and finally selection processes would yield a qualified young rancher or ranching couple to lease the ranch with an option to purchase at the end of five years. The purchase price would reflect the land's appraised value *at the start of the lease*, minus the appraised value of a conservation easement, which would be retained by TNC. Appreciation of the land would be a bonus to lessees if they decided to exercise their option to purchase. During the five-year lease, the young ranchers would be required to use management practices consistent with the terms of the eventual easement; to put a specified amount of "sweat equity" into the homestead and land improvements; and to attend a minimum number of mentoring meetings with members of the Task Force. These meetings would cover topics such as soil and water conservation practices, ranch business management, and marketing—

designed to optimize the mentees' stewardship and business practices. The Nature Conservancy would have to endure very little financial risk; only the cost of staff time to implement the deal, and the cost of delaying the sale.

Shane and Kristi Daniels were among a sizeable pool of applicants for this opportunity. They had both grown up on cattle ranches nearby and had left for college and jobs in town. They dreamed of returning to the Sandhills area, but knew not how to finance an entry into the business. The Task Force Board required all finalists to submit detailed resumes, and business and financial plans for the ranch. Shane Daniels, in an article from *Western Horseman* (Mangum 2007), called it the toughest interview of his life. He and his wife were also encouraged to bring all four of their young daughters to the interview, which they did. Luchsinger says the the board wanted to know all they could about the applicants and their plans for the future.

Financially, what does this look like for the Daniels? They are paying a fair market lease rate, in order to comply with TNC's non-profit mandate not to unfairly benefit private individuals. The ranch was appraised with and without the easement at the start of the lease, in 2005. The difference, or easement-encumbered value, was written into the purchase option for 2010, giving the Daniels five years to build equity. The deal had been based on expected land value appreciation of four to five percent per year; it has in fact appreciated at closer to fifteen percent! This will put the young ranchers in a good position for financing should they need it later on. TNC is, in turn, returning a sizeable portion of the lease income to property improvements—the house, farm buildings and fences, and a state-of-the-art irrigation system. The Daniels even qualified for an eighty

percent federal cost-share grant for this last improvement, spreading TNC's resources even further.

Figure 4.4—Shane Daniels rounds up his cattle at Horse Creek Fen



Photo: Michael Forsberg, from The Nature Conservancy website:
<http://www.nature.org/magazine/summer2006/misc/art17776.html>

Now, halfway through their preliminary lease, Shane and Kristi are meeting their financial and conservation benchmarks and it appears that they will be prepared to make the purchase when the time comes. TNC, meanwhile, is soundly meeting its conservation goals by fostering responsible ranching practices on this land, which have a good chance of being transferred down to yet another generation. To Jim Luchsinger, this possibility for succession is invaluable. The Beginning Rancher concept seems to be emerging as a promising, yet still untested, way for conservation groups to meet ecological goals. “It is *a tool*,” he said. “We don’t know yet if it will work, or how you measure success” (Luchsinger 2008).

There are several lessons to be learned from this beginning rancher project. First was TNC's willingness to think holistically about its conservation goals. Landscapes are dynamic, and their management is as important as their protection. It is notable that this internationally-renowned conservation group, in seeking to transfer the Horse Creek Fen Ranch to a private landowner, was comfortable relating its ecological goals (such as enhancing biodiversity) with social goals (such as contributing to economic diversity). In a decision uncommon in the conservation world, TNC embraced Nebraska's tradition of supporting small and beginning farmers and ranchers.

Secondly, the Sandhills Task Force Board, representing both ranching and environmental interests, was committed to working with a ranching family who would demonstrate commitment and capability. The board dedicated its time to a thorough interview process, considering candidates to be future partners, and was willing to get personal. Board members understood that both husband and wife, in the Daniels' case, would be working as a team, and that their children would be raised ranching—these were bonuses. The establishment of a structured mentorship program and yearly assessments was a good-faith investment in the success of these future partners, much in the way monitoring and restoration are necessary to successful conservation efforts. This real-life family was considered part of the ecological system of the ranch being protected.

Third, TNC has tremendous experience negotiating land deals and was willing to invest financially in their partners' success, too—leveraging special interest rates for beginning farmers, and helping design a land financing plan realistic for the young couple with the understanding that the more stake they have, the better the chances they'll

steward carefully. Good technical assistance and creative financing are valuable ways to facilitate land transitions to young farmers and ranchers.

Finally, although there is nothing particularly remarkable about the easement to be placed on the ranch (it is a conservation easement, protecting sensitive fen species and allowing ranching and ranch-related activities as permitted uses), it is nonetheless a permanent legal restriction and should not be taken lightly. By crafting lease terms to reflect the easement conditions, the Daniels are afforded five years to familiarize themselves with the meaning of this document before it becomes binding and permanent. It is rare that any landowner, or easement grantor, gets this kind of lead-time before making such a commitment.

5. DISCUSSION and RECOMMENDATIONS

The interview results summarized in Chapter 3 suggest that land trusts generally perceive farmland affordability as a barrier to farm ownership. They vary, however, in their philosophies and approaches to addressing the affordability barrier. The case studies and examples of innovative recent easement projects suggest tried-and-true approaches for new and old farmers, land trusts, funders and policymakers to consider when using the imperfect ACE tool.

As a general rule, land trusts are charged with protecting and conserving land. Most use easements as their tool of choice. That is where their likenesses end, however. Even primarily agricultural land trusts operate in a vast diversity of landscapes with equally diverse funding sources, boards of directors, and mission statements. There is also variation in the level of complexity of these groups, and in their perceptions of the problem.

Some land trusts, such as the Central Valley, Yolo and Monterey trusts, emphasize productivity and acreage, plain and simple. Because they operate in areas of high agricultural earning potential, this hands-off approach to land conservation serves existing farmers relatively well for the time being. Efforts such as the Nature Conservancy collaboration with the Sandhills Task Force, Marin Agricultural Land Trust's PACE (Purchase of Agricultural Conservation Easements) program, and the California Rangeland Trust (not interviewed in this study) emphasize the overlap between conservation goals and private ownership, working hard to make ranchers' needs as much a priority as those conservation goals. Some agricultural trusts, like those of Brentwood and Marin, emphasize agricultural viability by getting involved in marketing

initiatives and educational programming to garner support for local producers. Others, such as Solano County Land Trust and the Sonoma County Agricultural Preservation and Open Space District, have small farm programs to address the unique attributes of that land use. BALT and the Tri-Valley Conservancy are supported by their city and local planning processes to preserve a specific agricultural industry. Most others in this sample operate more generally, acquiring easements on a variety of landscapes for land's sake and without a developed commitment to agricultural viability. The majority of land trusts interviewed do very little follow-up assessment of changing ownership status of their ACE-encumbered parcels.

The great diversity in land trusts' context, values and supporting programs requires that recommendations for their use of ACEs be equally diverse. Most of the following recommendations for policy and practice address easements themselves. These include recommendations for easement selection processes, monitoring and stewardship, innovative easement language and affordability covenants, and funding. Also recommended are easement-supporting activities meant for coupling with ACEs to keep farmland owned and managed by farmers. They include technical assistance to small and beginning farmers; support for local agricultural viability efforts; and better collaboration with public planning efforts.

Integrate social criteria into project selection

Easement selection criteria should prioritize farmers likely to stay farming. Potential ACE projects should be evaluated not only for soils, development threat, supporting infrastructure, etc., but also for the experience and plans of farmers involved. Does the existing farmer operate a successful farm business? Does she use conservation

practices? How long is he likely to farm? Are her children actively involved? Has he created a farm business succession plan? If the evaluating land trust plans to work with a new farmer on a land purchase, what is that farmer's business plan? What are her farming and land stewardship experience? Does he have children who might continue to farm? Is she already part of the local farm community?

In the time-scheme of perpetuity, these factors may seem fleeting or subjective. On the other hand, land trusts regularly work with such subjective project criteria as "scenic, rural and/or historical qualities" (Tri-Valley Conservancy 2006). It is interesting that both "history or rural character" and "rural and scenic ambiance" are considered, but not whether a property supports a family. Apart from asking whether the property is presently used primarily for agriculture, few land trusts make a point to question the people engaged in farming lands under review for ACEs.

Other factors being equal, ACE selection priority should be given to farms whose owner has already created a succession plan for an inter-generational farm transfer. (The plan might even require ACE proceeds to complete.)

Many land trusts dedicate staff time to scouting for land with high conservation value, and some have funding for outreach and education to landowners. Few, however, have connections to any network of younger farmers who aspire to buy ACE-encumbered land. In order to partner with qualified incoming farmers on acquisitions, land trusts must have a way to "scout" for these partners. A formalized partnership with an established farm- or land-linking organization, public or nonprofit, could help land trusts find beginning farmers who are ready and qualified to buy land and farm.

Land trusts with firm criteria for minimum parcel size should be sure to examine their assumptions about scale and viability. Parcels near urban markets, strategically

located on “green belts” around cities, and with potential for educational activity may provide substantial public benefit. Small farms with these attributes should be considered for protection, despite high initial easement costs. Additional funding sources must be identified to supplement easement “going rates,” if these high transaction costs are to be met.

Improve monitoring and evaluation

There are currently very few land trusts with mechanisms in place to monitor ACE outcomes. Careful records should be kept of ACE-encumbered parcel sales, preferably using GIS technology. This is critical to understanding how ACEs can best be used to promote future agricultural land ownership. To become accredited under Land Trust Alliance standards, land trusts must now require notification by property owners when a parcel goes up for sale. This is difficult to enforce, but if land trusts improve follow-through on this requirement, they should be able to collect enough transaction data over time to help answer the question: Do ACE-encumbered parcels tend to remain in farmer ownership into the second generation?

Develop new easement language

ACE’s have largely been executed as negative deed restrictions. Land trusts concerned that ACE-encumbered parcels are at risk of falling out of production, especially on parcels near urban areas, should consider using affirmative language in their easements. ACEs must clearly state the document’s intent, and “agriculture” must be clearly defined. Any “Mandatory Agricultural Use” language should be very carefully worded, and phrased for maximum enforceability. Land trusts should not pursue such

easements unless they are prepared to seek skilled legal counsel and spend significant staff-time monitoring for compliance. They must also plan for generous stewardship funds in case they are forced to take legal action against a landowner for noncompliance.

Land trust retention of an Option to Purchase at Agricultural Value is the best overall affordability clause. An OPAV accompanies an agricultural conservation easement and is enforceable by the same means. It gives the easement grantee an opportunity at each generation (only when placed on the market, not when inherited) to help facilitate transfer of the land to a new farmer. While there is ample precedent for the use of this tool in Massachusetts and Vermont, California land trusts would benefit from training about OPAV and its impact on affordability for incoming farmers. Because farmer-owners can only expect limited returns on resale at agricultural value, other equity-building options, such as ownership of home and improvements, must be considered carefully.

Because of the high easement value of such projects, and the desirability of farmland near urban centers, land trusts who do exercise an option to purchase should implement a sophisticated request-for-proposals process whereby candidates can be selected from a large pool of qualified applicants. This improves the chance that the subsequent farmer-operator will be familiar with easements, and may provide incentive to young farmers concerned about the financial risk of getting started. In many locations it will be important to provide immigrant farmers with additional outreach efforts in the RFP process, and to take the selection process seriously.

An overall farm affordability program—whether run by a private nonprofit, or preferably by a county or state program such as the Massachusetts program—would be the best way to develop this approach for use by California land trusts and farm

protection groups. Akin to affordable housing programs in use in cities, and to the work of the community land trusts fostered by Equity Trust (at Live Power Farm in Covelo and being developed by Good Humus Farm in the Capay Valley, for example), such programs could extend the benefits of this support to a still broader base of small and beginning farmers, fostering their long-term tenure on land.

New sources of funding for more expensive affirmative easements will need to be identified, and the long-term impacts and potential pitfalls of this tool studied carefully.

Provide assistance to incoming farmers—partners in success

Another measure which would improve chances for successful easement-encumbered farm purchases by small and beginning farmers would be to provide those farmers with technical assistance throughout the project selection and implementation processes.

Beginning farmers seeking farm ownership with an ACE need to know what that easement legally entails. They may also need assistance approaching sellers for potential owner-financing or bargain sales, structuring their purchase offers carefully, and financing these offers. The Federal Land Contract Pilot Program and special direct farm ownership loans are available to help beginning farmers buy land; these could function very nicely with additional ACE funding. Incidentally, there is a chance that the Beginning Farmer and Rancher Opportunity Act in will be passed in the 2007 Farm Bill, with substantial funds made available for just such uses.

Another useful kind of technical assistance for farmers would be long-term mentoring, such as that provided by the Sandhills Task Force to Shane and Kristi Daniels.

Guidance with business-planning, marketing, stewardship and more can be offered by existing organizations or built in to the easement process.

Work to improve local farm economies, vital to ACE success

This approach to keeping farmland for farmers is unrelated to ACEs themselves. Some farmland conservation groups believe that a thriving regional agricultural economy is essential to their work to protect farmland. They may wish to follow the lead of the Marin and Brentwood Land Trusts, Placer County and to some extent Yolo and Sonoma Counties. These groups are leaders in the promotion of local or regional consumption of agricultural products—some of them via place-based labeling initiatives, some through valiant efforts to improve processing and value-added options for small producers, and others by supporting of agritourism. They are all involved in general education and outreach efforts to increase awareness of the importance of supporting local farmers.

This strategy can help build respect and confidence in the land trust and county agencies involved, but most importantly it represents a good-faith effort to act holistically on behalf of farmers and ranchers, to value the contributions of local producers to their regions' identity, and perhaps most importantly, to play a role in the success of these farmer-partners who are both beneficiaries and stewards of agricultural land conservation.

Better integrate easements into land-use planning and other public-good goals

One of the drawbacks of farmland affordability work in the West to date has been its project-by-project nature, benefiting individual farmers and to some extent their

customers and communities, but still not enjoying broad public support or influence. Using models developed in the East, several California jurisdictions have successfully developed farmland mitigation requirements and transfer-of-density programs, for example, allowing and encouraging developers to build more densely while paying for strategically placed easements around urban growth boundaries.

Tri-Valley Conservancy and the Brentwood Ag Land Trust, for example, have raised substantial agricultural mitigation money, a spoil of the rampant real estate development industry in their areas. Fees of \$5,500 per acre developed have been collected by Brentwood, raising a startling \$10 million for BALT's agricultural easement program! Farmland advocates such as Ed Thompson of the American Farmland Trust, would like to see these fees be magnitudes higher. "Developers can afford it," he says.

We should continue to use these longer-term land use strategies along in better collaboration with land trusts, as well as zoning and taxation policies which help alleviate development pressure on farmland and the people who farm it.

Alternatives to Ownership

Last but not least, land trusts and public agencies can help create positive models for long-term leasing of farmland *with* the opportunity to build equity. Urban low-income housing projects in cities provide an example: land is owned by a community land trust and residents can own their homes and all the improvements thereon, with the security of a lifetime, inheritable ground-lease on that land trust land beneath them. The Equity Trust video documents two cases of this model being used to provide land security to farmers elsewhere in the U.S.

Another innovative non-ownership strategy is under consideration for use by California FarmLink and the Monterey County land trust interviewed. Instead of struggling to buy land in-fee, sinking vital operating money into the non-farm property values of home site potential and location, what if farmers could buy the exclusive farming rights in a kind of permanent agricultural lease or affirmative easement? Such properties would continue to hold significant value for non-farmers who wish simply to live adjacent to agricultural land. By signing over one of their property rights—the affirmative right to farm—to an individual (not a land trust), each of the property values are allocated to those with the most use for them. This concept has been reviewed and supported by a number of land-use attorneys for California FarmLink, and to FarmLink’s knowledge a variation of it has been used once.

As developers and existing or oncoming farmers compete in the same land markets, strategies must be developed to protect farmers and the public benefits they provide.

Conclusion

Farmland needs farmers if it is to remain in working use. For reasons of land management, rural welfare, healthy cities, and food security, society needs farmers too. Agricultural land conservation organizations have made headway over the last twenty-five years, and are purchasing more easements than ever. Agricultural conservation easements do not necessarily ensure that farmland will remain under the control of farmers. Land trusts, and the funding and policy apparatus which enable them, must study this problem. By reviewing their organizational goals, considering selection criteria for

farmers, adopting innovative easement covenants, collaborating with planners and public agencies, and working with existing farmer-advocacy groups to help select farmer-partners as well as provide technical assistance and financing, these groups will be best able to keep ACE-protected farmland within reach of the people who make it farmland.

APPENDIX A—Interview Questions

1. Many land trusts and conservation organizations foresee continued speculation on easement-encumbered properties, continuing to widen the gap between agricultural land value and homesite value. Is this a problem in your region? Please comment.
2. How many agricultural easements do you hold?
3. How are they paid for?
4. What percentage are in agricultural production by their owner? What percentage are leased?
5. Have any of them gone out of production, or are there indications that any might? (e.g., short-term leases, signs of other use by owner)
6. Did any of these easement transactions occur simultaneously with a sale of the property? If so, was the property sold to a farmer?
7. Are you notified when property title changes?
8. (If yes), how many ACE-encumbered parcels have been sold?
9. Have any of these gone out of production?
10. What are your project selection criteria? Which are oriented toward long-term agricultural productivity?
11. Do these criteria refer to farm experience of owner or buyer? Or to plans for farm/ranch succession to the next generation?
12. Has your organization held farmland in fee and sold to farmer, retaining easement? Please describe.
13. Do you provide technical assistance to landowners? To prospective farmer-buyers? Of what sort?
14. Do your board members, funders or other supporters express interest in projects with built-in farm succession plans or opportunities for purchase by beginning farmers?

APPENDIX B—Interviewees

Land trusts with PACE programs:

1. Brentwood Agricultural Land Trust (BALT)—Kathryn Lyddan, Executive Director
2. Central Valley Farmland Trust (CVFT)—Bill Martin, Executive Director
3. Marin Agricultural Land Trust (MALT)—Bob Berner, Executive Director and Jeff Stump, Transaction Specialist.
4. Monterey County Agricultural and Historic Land Conservancy, Inc. (MCAHLC)—Brian Rianda, Managing Director
5. Peninsula Open Space Trust (POST)—Paul Ringgold, Executive Director
6. Placer Land Trust (PLT)—Jeff Darlington, Executive Director
7. Sacramento Valley Land Conservancy (SVLC)—Aimee Rutledge, Executive Director
8. Solano Land Trust (Sol LT)—Rob Goldstein, Transaction Specialist
9. Sonoma County Agriculture Preservation and Open Space District (SCAPOS D)—DeAnna Kamber
10. Sonoma Land Trust (Son LT)—Amy Chesnut, Taber Ward, Georgiana Hale
11. Tri-Valley Conservancy (TVC)—Sharon Burnham, Executive Director
12. Yolo Land Trust (YLT)—Debbie North, Interim Executive Director

Other interviews

1. California Farmland Protection Program (CFCP)—Chuck Tyson, Director
2. Massachusetts Agricultural Preservation Restriction (Mass APR)—Christine Chisholm
3. The Nature Conservancy (TNC)—Jim Luchsinger, Regional Manager, Nebraska

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