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COALITION

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FARMLAND CONSERVATION 2.0

HOW LAND TRUSTS CAN PROTECT AMERICA'S WORKING FARMS



FARMLAND CONSERVATION 2.0: HOW LAND TRUSTS CAN PROTECT AMERICA'S WORKING FARMS

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Dan and Kim Hulse partnered with the PCC Landtrust and Washington Farmlink to purchase 30 acres of conserved farmland in Western Washington state.



MIDNIGHT SUN FARM

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September 2013

Dear Reader,

**AS A COALITION OF
WORKING FARMERS,
THE ISSUE OF LAND
ACCESS IS AT THE VERY
ROOT OF OUR WORK.**

If we as a nation want access to fresh and locally produced food, then we must take bold steps to secure a permanent and affordable land base for working farmers. There is no room for delay. In the next two decades, more than two-thirds of the farmland in the United States will change hands. As farmers retire and pass on, their land is likely to transition out of family ownership and management forever. In rural areas, family farms are being purchased by speculators or consolidated into mega farms. In urban-influenced areas, active farms are being taken out of production as they're sold for development or rural estates. In both cases, the price of farmland is far greater than what the next generation of farmers can possibly afford.

This report focuses on successful strategies that land trusts are employing to save farmland and support working farmers within urban-influenced areas. We highlight the work of land trust innovators because we believe that their ideas and methods are absolutely critical to keeping farmers on the land and in business. If significantly scaled-up, these strategies that build on traditional farmland conservation models will help to guarantee long-term food security for the 80 percent of the nation's population now living in urban areas.

As a coalition of working farmers, the issue of land access is at the very root of our work. We are eager to grow food for the nation, but we need the nation to pitch in by permanently protecting farmland for businesses like ours. If we continue on our current path, farmers' ability to run profitable businesses, offer a full range of quality products and sell their goods at reasonable prices will be seriously compromised.

Land trust professionals, government leaders, consumers and farmers: we hope that you will work with us to change course and secure a permanent home for family farmers in the United States.



Lindsey Lusher Shute
Executive Director
National Young Farmers Coalition

EXECUTIVE SUMMARY

A new generation of farmers needs land to satisfy the demand for fresh, local produce, but America's working farms near urban markets are increasingly being developed or sold to wealthy estate buyers. Unable to afford the market price for farmland, working farmers are being driven from the most valuable growing regions in the country—the land directly surrounding 80 percent of the American public who now live in cities.¹

Over the past 50 years, the American land trust community has demonstrated great success in protecting farmland from development. Today, this community holds the key to ensuring that farm families have access to affordable farmland near urban markets through innovative conservation easements. These conservation easements keep farmland owned by farmers and in agricultural production.

Although these new conservation easements were adopted decades ago by the state of Massachusetts, the Vermont Land Trust and others, they have yet to be utilized on a large scale. Based on our national survey, we believe these easements are effective, important and could be scaled up with the appropriate incentives, professional development and support for the land trust community.



BEN HARRIS, RIVERBANK FARM

The National Young Farmers Coalition calls on land trusts and public and private funders to adopt and incentivize new conservation easements that keep land affordable for working farmers, thereby strengthening our national food security and addressing the immediate needs of new farmers.

METHODOLOGY

This report features a national survey of 223 land conservation professionals, two focus groups and interviews with conservation leaders. Trends in farmland affordability and land conservation are reviewed based on secondary data from United States Census of Agriculture, academic and non-profit sources.

¹ Central Intelligence Agency, *The World Fact Book: United States*, (Washington, DC: Central Intelligence Agency, 2010), <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (accessed July 2013).

FINDINGS

- Land protected by traditional conservation easements is being underutilized or is going out of production. There is strong recognition among established land trusts of this trend. **Overall, 24 percent of land trust respondents said that they had seen protected farms taken out of production.**
- Traditional conservation easements are designed to protect farmland from residential and commercial development, but they do not prevent non-farmers from purchasing protected farms as estate properties. Land transitioning away from farmer ownership contributes to the trend of farms being underutilized or taken out of production altogether. **Survey participants identified non-farmers as the primary threat to the continued agricultural use of easement-protected farmland.**
- Innovative land trusts are utilizing stronger conservation easements that keep farmland in full production by farmers, but these practices are not widespread. **More than two-thirds of land trust respondents had limited or no familiarity with easements that make land affordable to farmers.**
- Young farmers represent valuable partners for land trusts seeking to protect working farms. **Only 18 percent of land trusts reported that they helped to transition working farmland to the next generation of farmers.**
- Bringing farmland affordability strategies outlined in this report to scale will require incentives from public and private sector funders of the land conservation community, professional development training and strategies to minimize perceived risks for land trust boards. **Nearly 90 percent of land trusts said they would support targeting public funds for conservation easements with affordability protections.**

KEY RECOMMENDATIONS

- 1** Public funding for the purchase of agricultural conservation easements should be directed towards easements that keep farms owned by working farmers and in production.
- 2** To increase farmland protected by affordability and production requirements, cities, foundation and private philanthropists must work together to expand funding for innovative farmland protection projects.
- 3** The USDA should add farmland affordability and production requirements to its national ranking criteria for the Farm and Ranchland Protection Program (or future Agriculture Conservation Easement Program), as well as clarify existing rules to make clear that easements with OPAV or similar language can be funded.
- 4** In addition to supporting farmland protection that keeps farms in production, states should adopt incentives to encourage landowners to transfer land to new and beginning farmers.
- 5** Land trusts that are focused on the viability of agricultural communities must target new and beginning farmers as conservation buyers and strategic partners.



COLUMBIA LAND CONSERVANCY, SPARROWBUSH FARM

1

INTRODUCTION

Land access is a central barrier to the success of the next generation of farmers in the United States, and one that cannot be breached by farmers alone. Helping the next generation of farmers find land will require a large increase in commitment, focus and resources from the private, non-profit, philanthropic and governmental sectors. In an effort to increase the adoption of these strategies and tackle the national challenge of farmland affordability, this report offers lessons from over 30 years of innovative partnerships between farmers and land trusts.

Land trusts are active throughout the United States and have strong credibility with many agricultural producers. These conservation organizations have a clear and respected role in protecting land from development and are adept at leveraging resources and public-private partnerships to fulfill this mission. By recognizing and tackling the new challenge of farmland affordability, the land trust community can keep local agricultural economies alive, securing food for the nation and saving the worker at the root of our national identity: the American farmer.

APPROACH AND METHODS

This report includes a national survey of 223 land trust professionals and findings from focus groups at both the 2012 Land Trust Alliance Rally and in San Rafael, CA, as well as interviews with farmers and professionals in the field.

The survey of land trust professionals investigated the state of traditional conservation easements; land trusts' level of knowledge of, and interest in, new easements to keep farmland affordable to working farmers; the degree to which land trusts are partnering with new farmers; and support for policy change that would accelerate the adoption of conservation easements with affordability protections. The full survey instrument can be found at youngfarmers.org/affordablefarms.

AMERICAN CITIES MUST PROTECT THEIR FOOD-PRODUCING REGIONS

The National Young Farmers Coalition (NYFC) was founded by three farmers in the Hudson Valley of New York State who were struggling to find secure, affordable and long-term land access. Located within 150 miles of New York City, the Hudson Valley has a long and important history of growing food for urban residents. In recent decades, however, agriculture in the valley has been threatened. With development pressure and interest in establishing rural estates by non-farmers, the farmland that once supported vibrant family farms is being taken out of active food production.

The food sheds surrounding many American cities share the same challenges as the Hudson Valley. In these urban-influenced regions that now grow 91 percent of the nation's fruits, tree nuts and berries and 78 percent of its vegetables and melons,² land is increasingly out of the reach of working farmers.

NYFC firmly believes that in order to guarantee our nation's food security, farmland within urban foodsheds must be made permanently accessible to, and therefore permanently affordable to, working farmers.

When non-farmers own the

land base, farmers lack the security and equity they require to build successful and profitable farm businesses. By owning land, farmers are more likely to invest in conservation projects, and employ long-term stewardship strategies to build soil and lessen any harmful impacts of farming.



Ashley Loehr of Sparrowbush Farm secured a five-year farm lease through the Columbia Land Conservancy's (CLC) Farmer Landowner Match Program. The program connects landowners looking to have their land farmed with farmers seeking land.

COLUMBIA LAND CONSERVANCY, SPARROWBUSH FARM

WORKING FARMERS AND YOUNG FARMERS

The term 'working farmer,' frequently used in this report, is defined as an individual who generates a significant portion of her income from the sale of farm products. Many of these farmers and/or family members also work off-farm for supplementary income or for insurance purposes. These farmers stand in stark contrast to hobby farmers or individuals leasing out agricultural land to take advantage of tax incentives.

We also focus on young farmers, generally in their twenties and thirties, who are launching careers in farming. For these first-career farmers who lack significant savings and earn limited incomes, the challenge of land access is particularly acute. With one-quarter of all American farmers expected to retire within the next two decades,³ it is absolutely critical that mechanisms exist to keep the nation's prime farmland in production and accessible to new farmers.

² American Farmland Trust, *Fresh Food Grown on the Urban Fringe*, (Washington, DC: American Farmland Trust, 2007), <http://www.farmland.org/programs/localfood/fresh-food-grown-on-the-urban-fringe.asp> (accessed July 2013).

³ Wisconsin Department of Agriculture, Trade and Consumer Protection, *Farm Transfers in Wisconsin: A Guide for Farmers, Fifth Edition*, (Madison, WI: Wisconsin Department of Agriculture, Trade and Consumer Protection, 2003), http://datcp.wi.gov/uploads/Farms/pdf/transfer_guide.pdf (accessed July 2013).

2

THE NATIONAL CHALLENGE OF FARMLAND IN TRANSITION

LAND IN SUCCESSION

The U.S. is in a period of rapid turnover in farmland ownership, creating the potential for many farmland acres to be underutilized, taken out of production, or consolidated into larger, industrial operations. A trend away from intergenerational farm transfer is at the root of these issues. As described in the 2010 FarmLASTS report:

Inheritance has historically been the most common way to acquire a farm in the United States. For decades, the assumption was that only through “inheritance of or access to land through family ties,” was it possible for the average farmer to have a farm. However, this traditional succession model of farmland transfer—passing a farm from an older generation to a younger one within the same family through purchase, gift, or inheritance—accounted for only about half of farmland acquisitions in the early 1990s. And in a Wisconsin study undertaken later in the decade, only 20 percent of beginning dairy farmers entered farming by taking over a family operation. It seems that the family succession pattern may be shrinking and alternative paths to farm entry may be increasing in importance. Affirming this trend, a recent Iowa study found that farm acquisition by inheritance went from 35 percent in 1997 to 23 percent in 2007, while acquisition via purchase rose by 11 percent.⁴

With over 30 percent of U.S. farmers over 65⁵ and an estimated 70 percent of all farmland set to change hands in the next 20 years,⁶ the transition of land ownership over the next decades will be unprecedented. A 2010 survey by GrowNYC, which operates 53 producer-only farmers markets in the New York area, indicated that 43 percent of the farmer respondents selling at



Midnight Sun Farm is a four-year-old, 7-acre certified organic vegetable farm located in the Prairie Crossing Conservation Community in Grayslake, IL, where Nick and Becky lease land from the Prairie Crossing Farm Business Development Center.

MIDNIGHT SUN FARM

⁴ Robert Parsons, Kathryn Ruhf, G.W. Stevenson, and John Baker, *The FarmLASTS Project, FarmLand Access, Succession, Tenure and Stewardship*, (Burlington: University of Vermont, 2010), <http://www.uvm.edu/farmlasts/FarmLASTSResearchReport.pdf> (accessed July 2013).

⁵ U.S. Department of Agriculture, National Agricultural Statistics Service, *Census of Agriculture: Farmers by Age, 2007* (Washington, DC: U.S. Department of Agriculture, National Agricultural Statistics Service, 2007), http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/farmer_age.pdf (accessed July 2013).

⁶ David Kohn and A. White, “The Challenges of Family Business Transition,” *Horizons*, Volume 13, No. 5, September/October 2001, <http://www.reap.vt.edu/publications/horizons/hor13-5.pdf> (accessed July 2013).

local farmers markets had plans to retire from farming by 2030.⁷ Nationally, it's estimated that one-quarter of all farmers will retire during the same period.⁸

With fewer farms being passed within families and much of the nation's farmland expected to transition, land that's now held by family farmers is likely to be put up for sale. New family farmers needing land will compete against industrial farming corporations, investors and non-farming estate buyers. Undoubtedly, working farmers will be at a serious disadvantage and many family farms will be lost. Food and farming advocates, public and private funders, and land conservationists must work together to ensure that working, beginning and young farmers are positioned to acquire some of these parcels. Farmland affordability is essential to securing land tenure for a new generation of farmers who are coming to agriculture from non-farm families.

FOCUSING ON LAND NEAR URBAN MARKETS

Whether they grew up on the family farm, in suburbs or in cities, there is an exciting movement of young people who are starting new farm businesses in response to the growing demand for local, ecologically responsible food. A majority of these new farmers are selling their products directly to consumers, either through farmers markets or Community Supported Agriculture⁹— and the best place for them to set up shop is near an urban center.

Unfortunately, farmers looking for farm properties within 150 miles of an urban center face competition from city dwellers and estate buyers when looking for land. The result is market prices that are generally many times more than what a working farmer can possibly afford. The median difference between cropland values in rural versus urban-influenced areas is \$2,000 an acre.¹⁰ Figure 1 and 2 illustrate this trend.

The recent economic downturn peaking in 2008, which slowed the activities of car manufacturers, investment banks and residential housing developers, had little effect on demand for rural properties in these regions. On the contrary, as stocks fell and certificates of deposit offered very low returns, private individuals came to see land as an increasingly attractive investment.

Land trust professionals interviewed for this project consistently reported that they had seen little or no significant downward trends on prices of agricultural properties in their areas since 2007, which included the Hudson Valley of New York and San Francisco Bay Area. Ralph Grossi, who served as President of American Farmland Trust for 23 years, reported that in Marin County, immediately north of San Francisco, over the last couple of years farmland values were being bid up based on agricultural income potential “for the first time in memory.”¹¹ Nationally, farmland values have been increasing since at least 2002.¹²

⁷ GrowNYC, *Farmers on the Edge: An Assessment of Greenmarket Growers' Needs and the Growing Challenge of Keeping their Farms Viable*, (New York, NY: GrowNYC, 2011) http://www.grownyc.org/files/gmkt/farmers_on_the_edge.pdf (accessed July 2013).

⁸ Wisconsin Department of Agriculture, Trade and Consumer Protection, *Farm Transfers in Wisconsin: A Guide for Farmers*, Fifth Edition, (Madison, WI: Wisconsin Department of Agriculture, Trade and Consumer Protection, 2003), http://datcp.wi.gov/uploads/Farms/pdf/transfer_guide.pdf. (accessed July 2013).

⁹ Lindsey Lusher Shute, *Building a Future with Farmers: Challenges Faced by Young, American Farmers and a National Strategy to Help Them Succeed*, (Tivoli, NY: National Young Farmers Coalition, 2011), http://www.youngfarmers.org/reports/Building_A_Future_With_Farmers.pdf (accessed July 2013).

¹⁰ Todd H. Kuethe, Jennifer Ifft, and Mitch Morehart, “The Influence of Urban Areas on Farmland Values,” *Choices*, 2nd Quarter, 2011, <http://www.choicesmagazine.org/choices-magazine/theme-articles/farmland-values/the-influence-of-urban-areas-on-farmland-values> (accessed July 2013).

¹¹ Ralf Grossi, Interview by Steven Schwartz, January 24, 2013.

¹² National Agricultural Statistics Service, *Land Values 2012 Summary*, (Washington, DC: United States Department of Agriculture, 2012), <http://usda01.library.cornell.edu/usda/current/AgriLandVa/AgriLandVa-08-03-2012.pdf> (accessed July 2013).

FIGURE 1 URBAN-INFLUENCED CROPLAND HAS HIGHER VALUES NATIONWIDE¹³



Source: USDA/NASS June Area Survey

WHAT'S AFFORDABLE FARMLAND?

A farm business should be able to pay for itself, based on the sale of its products, while also sustaining its workers. Affordable land is central to the success of a farm business. While many common factors determine what land a farmer can afford, most are unique to farming. Affordability depends on the farm's purchase price; a farmer's down payment capacity; the interest rate and other financing terms; existing infrastructure and needed improvements; and the projected productive capacity of the land to generate income. The price per acre that a farmer can afford is generally called the "agricultural value" of the land.

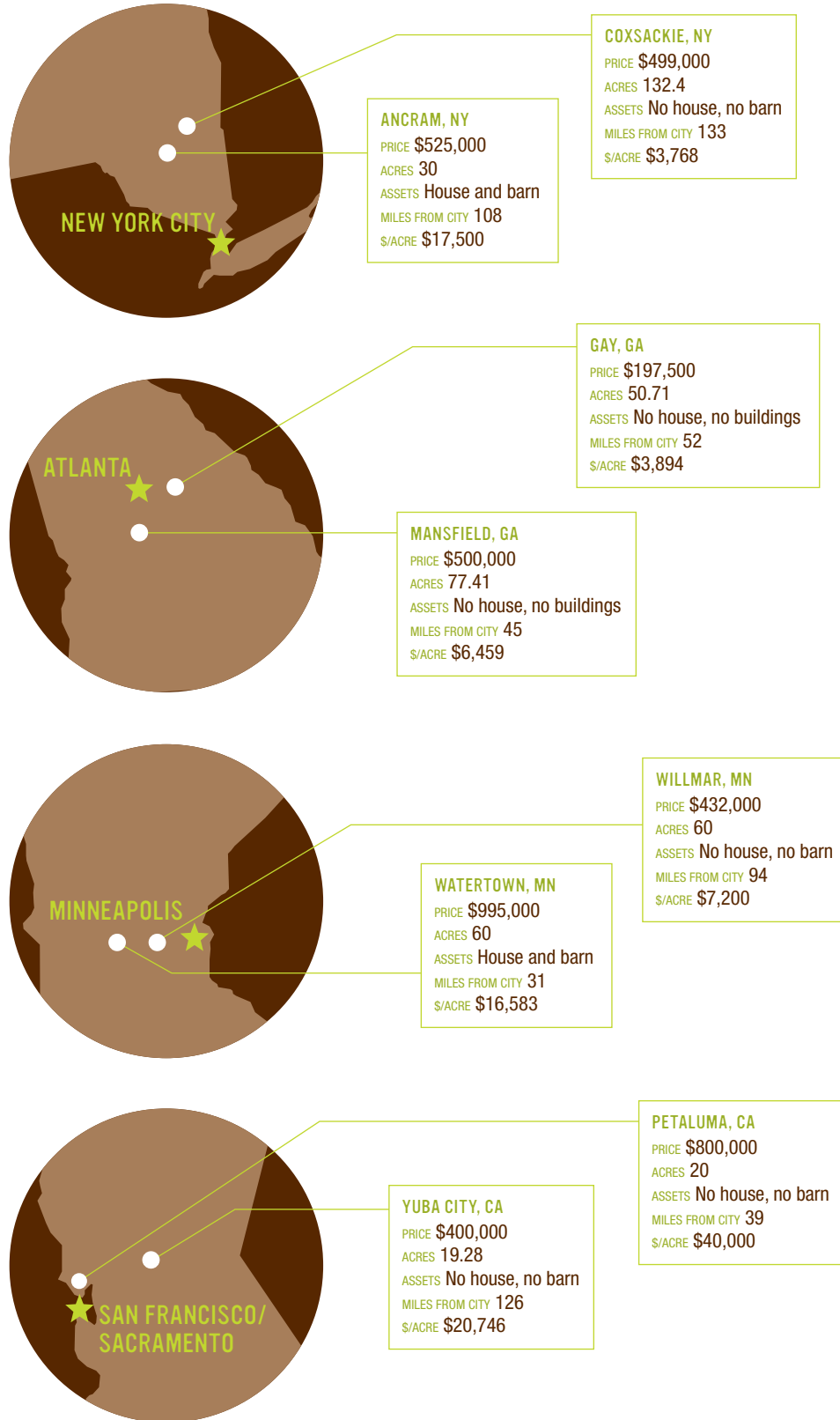
SEARCHING FOR FARMLAND AROUND 4 U.S. CITIES

To illustrate the current farmland real estate market, we conducted an online search for land around four U.S. cities including New York, Atlanta, Minneapolis and San Francisco (see Figure 2 on following page). In each region, we identified the two most approachable and affordable farm properties. We chose properties that were larger than 20 acres, had open fields, were within a two-hour drive of the target city, and had modest homes and barns or no infrastructure at all. None of the farms were protected with conservation easements.

Unfortunately, most of the available farms in these regions included large homes and million dollar plus price tags, and even these eight unassuming properties are more expensive than many farmers can afford.

¹³ Todd H. Kuethe, Jennifer Ifft, and Mitch Morehart, "The Influence of Urban Areas on Farmland Values," *Choices*, 2nd Quarter, 2011, <http://www.choicesmagazine.org/choices-magazine/theme-articles/farmland-values/the-influence-of-urban-areas-on-farmland-values> (accessed July 2013).

FIGURE 2 SEARCHING FOR FARMLAND AROUND FOUR U.S. CITIES



Credit: Online real estate search through Trulia.com

3

LEASING VS. OWNING LAND

Secure, long-term land tenure is the foundation of a viable farm. Without long-term tenure agreements, implementing good stewardship practices on the farm may be difficult to justify economically, and important capital investment to grow and sustain a business may be out of the question.

Many young farmers initially lease land. Leasing can position a farmer to secure financing, access market demand and make a personal commitment to agriculture as a career. Kathy Ruhf, Executive Director of Land for Good, maintains that leasing can serve as a ‘pathway to ownership’ for beginning farmers.¹⁴

Leasing may be seen as desirable, practical or prudent by some, but is more often a form of settling for the best option available. The 2011 study by GrowNYC illustrates the desirability of land ownership: among New York City’s Greenmarket farmers, 53 percent reported they wanted to buy land but faced significant barriers. Of the early-career farmers with 5-10 years experience, 86 percent reported affordability as the primary barrier to ownership.¹⁵

Farmers face a range of challenges with leasing land: arrangements are generally for five years or less; there may be a great deal of instability and uncertainty, making crop and business planning difficult; a farmer’s needs and landlord’s interests may conflict; and farmers can rarely build equity to borrow against. Farmers raising livestock or vegetables may also have a difficult time finding a suitable landlord, as the noise, smells and traffic of these types of operations may be undesirable to a non-farmer.

Given the significant drawbacks to leasing, and the relative rarity of leases that overcome these challenges, farmland ownership remains the most secure option. That is, if the land is affordable.



MIKE NOLAN, MOUNTAIN ROOTS PRODUCE, DURANGO, COLORADO
Mike has been farming for eight years in Southwest Colorado and Northern New Mexico. Leasing his land thus far, he is looking to buy his own Colorado acreage.

¹⁴ Email from Kathy Ruhf to Steve Schwartz, May 16, 2013.

¹⁵ GrowNYC, *Farmers on the Edge: An Assessment of Greenmarket Growers’ Needs and the Growing Challenge of Keeping their Farms Viable*, (New York, NY: GrowNYC, 2011) http://www.grownyc.org/files/gmkt/farmers_on_the_edge.pdf (accessed July 2013).

CASE STUDY: HARTWOOD FARM, FENNER, NY



HARTWOOD FARM

Matt Robinson and Maryellen Sheehan of Hartwood Farm, on their long path towards buying 70 acres in Fenner, NY:

Not owning farmland should not keep anyone from farming. There are amazing land matching opportunities that make farmland accessible to potential new operators, and we have been lucky enough to participate in a few of them. Between us, we worked 11 seasons on various farms. We also leased land for six years. Leasing land was a great learning experience with the additional advantage of forcing us to accrue infrastructure like greenhouses. However, leasing lacked financial stability. As long as we've been working on other farm operations or leasing land, we've had an urge for permanence that we couldn't shake. We wanted to own the land we farmed. And we don't think it's that crazy to try to buy land as a farmer in most of the country, though housing prices did lock us out of our home region.

All those years, we worked second jobs off-farm (typically carpentry or service work), socking away anything we could, and looking at farms for sale across the Northeast. We are not quick decision makers, started off broke, and are extremely risk averse, so it took a long time to work through the spectrum of trying to buy a farm, including five years of focused saving, research on land, business planning, and a fair amount of rejection.

The main economic rationale for us to buy was the cost of rent versus cost of a mortgage. As interest rates dropped, mortgage payments compared favorably to rents. We also discovered that the longer you live without financial distress, things like age, work history, and credit scores keep accruing until lenders actually want to loan to you! We started looking for fewer barns and more land to ensure financial viability and finally found 70 beautiful acres in Fenner, NY.

—Matt Robinson and Maryellen Sheehan

4

LAND TRUSTS: A HISTORY OF PROTECTING FARMLAND



PAIGE GREEN, MARIN AGRICULTURAL LAND TRUST, BARBONI RANCH

Bill Barboni II raises sheep and cattle on his 100-year-old family ranch in Marin County, CA. Bill's family put an easement on the land with the help of the Marin Agricultural Land Trust, removing pressure to sell some of the land and ensuring the land will stay in production with affirmative production language.

Land trusts are private, non-profit organizations dedicated to protecting farmland and open space in perpetuity. According to the Land Trust Alliance, there are over 1,700 land trusts in the United States that are dedicated to conserving open space and “working lands.” These land trusts have protected more than 2.7 million acres of farmland.¹⁶

Community land preservation has more than a 100-year-old history in the New England region, where many farmland preservation strategies were born. In the early 1970's, inspired by the first Earth Day and the growing recognition of urban sprawl, the land trust movement began to spread nationally. The threats to working lands and open space were clear and two-fold: residential sub-divisions and commercial development.

As the population around cities continued to grow, developers began to ‘pave paradise.’ Land developers purchased farmland to construct strip malls, supermarkets or new suburban communities. For citizens wanting to protect the character, scenic beauty and agricultural economy of their communities, the land trust model of protecting land through the purchase of development rights and conservation easements was an answer.

As courts upheld land trusts' conservation strategies and word of their success spread, more land trusts were founded. In the 1990's, while the economy began to boom, state governments committed significant funding to the purchase of development rights. Federal farm bills increasingly supported easement purchases, beginning with the Farmland Protection Program in 1996, which was renamed the Farm and Ranchland Protection Program in 2008.¹⁷

¹⁶ American Farmland Trust, *PACE: Status of State Programs 2012*, (Northampton, MA: American Farmland Trust, 2012), http://farmlandinfo.org/documents/39353/FIC_State_PACE_09-2012.pdf (accessed July 2013).

¹⁷ U.S. Department of Agriculture, Natural Resources Conservation Service Florida, “Farm and Ranch Lands Protection Program,” <http://www.fl.nrcs.usda.gov/programs/ffrpp.html> (accessed July 2013).

PROTECTING LAND WITH CONSERVATION EASEMENTS

Conservation easements protect farmland by limiting how it can be used. Typically, landowners have certain property rights, including the right to build homes and structures, subdivide or even access the minerals below (all within the confines of local zoning and laws). These rights are often compared to a bundle of sticks that a landowner can either keep or sell, if a market exists.

To protect the scenic, environmental or agricultural value of land, land trusts purchase specific rights from landowners—one or two ‘sticks from the bundle.’ This sale and agreement is called a conservation easement. A conservation easement typically entails agreeing, in perpetuity, not to subdivide the property for residential or commercial development. Often easements include restrictions on the number, size and location of buildings on a property. A conservation easement may also restrict farming on specific portions of a property in order to protect wildlife habitat, water bodies or other natural features.

Selling or donating a conservation easement to a land trust can provide a significant financial boost for a farmer. If the farmer is the landowner, opportunities for tax deductions may accompany a donated easement or he may receive a large cash payment from a land trust. These funds can help with estate planning, investing in farm infrastructure, reducing debt or purchasing land.

LIMITATIONS OF CONSERVATION EASEMENTS

In the last decade, a new threat to working farms has emerged in many areas of the country: non-farmers purchasing protected farmland and outbidding working farmers. These private individuals include retirees, urbanites seeking second homes and workers taking advantage of the flexibility provided by telecommuting. Some of these individuals are upgrading old farmhouses, while others are building ‘McMansions.’

Ralph Grossi, Founder and President Emeritus of American Farmland Trust, puts the predicament in perspective, “35 or 40 years ago the thinking was that subdivisions were the greatest threat, now we recognize greater threats.”¹⁸

Sara Press of the Sonoma County Agricultural Preservation and Open Space District said “the biggest threat is agricultural land being turned into high-end estates used as retreats which results in a reduced focus on agricultural production.”¹⁹ Many focus group participants shared this view. Lynne Sherrod, of the Land Trust Alliance, described a similar trend impacting ranchers in Colorado.²⁰

The sentiment is also reflected in a publication of American Farmland Trust, the most important and effective advocacy group focused on advancing farmland protection and promoting public funding of conservation easement programs. Their factsheet on agricultural conservation easements describes many benefits to easements, but also lists a few ‘drawbacks.’ The first on the list is: “Agricultural conservation easements do not ensure that the land will continue to be farmed.”²¹

With non-farm income, these estate buyers are able to outbid young and working farmers and drive up farmland prices overall. Once a non-farmer buys a farm property and adds expensive improvements, it may never be owned by a farmer again.

¹⁸ Ralf Grossi, Interview by Steven Schwartz, January 24, 2013.

¹⁹ Sarah Press, interview by Steven Schwartz, January 22, 2013.

²⁰ Lynne Sherrod, “Focus Group Presentation,” at Land Trust Alliance Rally, October 2, 2012.

²¹ American Farmland Trust, *FIC Fact Sheet: Agricultural Conservation Easements*, (Northampton, MA: American Farmland Trust, January 2011), http://www.farmlandinfo.org/documents/27762/ACE_1-11.pdf (accessed July 2013).

5

TOOLS TO KEEP FARMS AFFORDABLE AND IN PRODUCTION

To keep farmland accessible to working farmers, more and more land trusts are moving beyond traditional conservation strategies by creating innovative partnerships and easements. The following section introduces **three ways** that land trusts are keeping land in the hands of farmers.

1. WORKING WITH FARMERS AS CONSERVATION BUYERS

The simplest way a land trust can help working farmers is to help them acquire farms at ‘conservation value.’²² In other words, when a land trust is in the process of purchasing development rights and putting a traditional conservation easement on a farm, it may also have the opportunity to sell the property at its remaining value or ‘conservation value’ to a farmer looking for land. In this way, the farmer acts as a ‘conservation buyer.’ The Land Trust Alliance’s fact sheet on conservation buyer transactions defines a conservation buyer as, “a real estate buyer who appreciates the natural attributes of a property and who is willing to work with a land trust to protect these values.”²³ This type of transaction can significantly bring down the price of farmland for a working farmer, sometimes by more than 50 percent.

In this scenario, a farmer may purchase a farm already protected by an agricultural conservation easement; purchase a farm at its full market value and then sell the development rights to a local land trust; or enter a simultaneous transaction in which the farmer buys the land at its conservation value and the land trust purchases the development rights.



CHRIS WAYNE

Martin and Gaudencia Rodriguez, of Mimomex Farm, purchased property in Goshen, NY in 2006 with the help of New York Farmlink and GrowNYC.

BENEFITS	DRAWBACKS
<ul style="list-style-type: none">• Land is protected from development• Farmer can purchase land at a price below full market value• No major operational changes are required for land trust• Land trust can demonstrate a strong commitment to working farms	<ul style="list-style-type: none">• Land may not be affordable to farmers in the future• Land may not stay in production

²² Conservation value is defined as the value of farmland that cannot be developed, under the terms of a conservation easement.

²³ Land Trust Alliance, *Land Trust Alliance Fact Sheet: Conservation Buyer Transactions*, (Washington, DC: Land Trust Alliance, 2008), <http://www.landtrustalliance.org/conservation/documents/conservation-buyer.pdf> (accessed July 2013).

2. AFFIRMATIVE AGRICULTURAL PRODUCTION LANGUAGE

Affirmative agricultural production language is added to a traditional conservation easement to keep the land in active agricultural use. In some cases specific production practices are prescribed, such as organic standards. This proactive requirement contrasts with traditional agricultural conservation easement language that focuses on what a landowner is prohibited from doing, specifically commercial or residential subdivisions or commercial development. Land trust staff or consultants monitor the property to determine if the production requirements are being met. The requirement to farm makes properties less attractive to some non-farmer buyers, and can therefore reduce the price of a farm property. A farm protected with affirmative language may sell for less than a farm protected with a traditional conservation easement.

BENEFITS	DRAWBACKS
<ul style="list-style-type: none"> • Land is protected from development • Land stays in production • May bring down cost of acquiring land for a farmer to a price lower than the conservation value 	<ul style="list-style-type: none"> • Easements with affirmative production language are more expensive for land trusts to purchase than traditional conservation easements • Land may not be affordable to, or owned by, working farmers

3. OPTION TO PURCHASE AT AGRICULTURAL VALUE (OPAV)

An Option to Purchase at Agricultural Value (OPAV) is the strongest protection that a land trust can add to a traditional conservation easement to keep land in production and affordable to working farmers. With an OPAV in place, an owner of a protected farm property is only allowed to sell her land to another qualified, working farmer. In this way, because non-farmers are prevented from buying an OPAV-protected farm, its price is based on its potential value for agricultural production (and not on its value as an estate). In many cases, land protected by OPAV agreements will sell at prices that are significantly lower than land protected by traditional conservation easements or easements with affirmative production language.

The Vermont Land Trust, a pioneer and leader in this field, includes an OPAV in all of its conservation easements. Gil Livingston, President of the Vermont Land Trust, explains changes in the organization's approach:

"We recognized the fair market value exceeded the capacity of most farmers and started aggressively focusing on the next generation of farmers. For about 8 years we have been buying farms, conserving them and doing a broad, very competitive search for farmers." He concludes, "Without the affordability provision in the easement it wouldn't work for this generation of farmers; the OPAV [Option to Purchase at Agricultural Value] and farm easements can cut the costs way down and make a huge difference."²⁴

Affirmative production language may also be paired with OPAV protections. Although OPAV protected land is very likely to be farmed (as it will be owned by a working farmer), adding affirmative production language requires that a farmer rent her land to keep it in production if there will be an extended period of inactivity, due to retirement or other reasons. In this way,

²⁴ Gil Livingston, "Focus Group Presentation," at Land Trust Alliance Rally, October 2, 2012.

pairing affirmative production language and OPAV protections offers the best chance that a farm will remain in operation and farmer-owned.

The price of an OPAV is the difference between the full market value of a property and its agricultural value, as determined by a certified appraiser. Because the agricultural value is less than the conservation value of farmland (conservation value is used to determine the price of a traditional conservation easement), the price of an easement with an OPAV protection is greater than a traditional conservation easement. The price difference can be as much as 10-40 percent per acre.²⁵

When an OPAV protected property goes up for sale, the farmer may sell it to a ‘qualified buyer’ (working farmer) or the land trust has the *option* to purchase the property back at its agricultural value. A land trust will only exercise this option if it is not satisfied with a potential purchaser and wants to seek a buyer on its own.

BENEFITS	DRAWBACKS
<ul style="list-style-type: none"> • Land is protected from development • Land will always be affordable to, and owned by, working farmers • Farms are highly likely to remain in production, or will be guaranteed to remain in production if affirmative language is added to the easement 	<ul style="list-style-type: none"> • Easements with OPAV protections are more expensive for land trusts to purchase than traditional conservation easements • Land trusts may not be able to exercise option to purchase if sufficient funds are not available at the time of farmland transition

IS OPAV ENOUGH TO HELP BEGINNING FARMERS?

The Option to Purchase at Agricultural Value (OPAV) is critical to keeping land accessible and affordable for working farmers, as well as to protecting the public’s investment in farmland, but alone it cannot solve the issue of farmland access for new farmers. A recent study by Land for Good which evaluated the purchase and sale of OPAV-protected farmland in Massachusetts and Vermont, found that OPAVs did keep farms in production and owned by working farmers, but that established growers outbid beginning farmers.²⁶ This finding suggests that OPAV is essential to keeping land affordable to farmers, but this tool must be paired with tax and other incentives to encourage landowners to transition their farms to beginners.

²⁵ Alex Wylie, interview by Steve Schwartz, April 10, 2013

²⁶ Bob Wagner and Kathy Ruhf, *Does the Option to Purchase at Agricultural Value Protect Farmland for Beginning Farmers?*, (Keene, NH: Land for Good, 2012), <http://www.landforgood.org/assets/pdfs/OPAV%20FINAL.pdf> (accessed July 2013).

FIGURE 3 RIGHTS & DUTIES ASSOCIATED WITH EASEMENT AND NON-EASEMENT PROTECTED FARMLAND

PROPERTY STATUS	Right to subdivide	Right to build houses or commercial real estate	Right to sell to highest bidder	Right to build structures within certain area, "building envelope"	Must maintain land in production	Right to sell farm to a working farmer, defined by the terms of the OPAV
Property with no restrictions	✓	✓	✓			
Traditional conservation easement			✓	✓		
Conservation easement with Affirmative Agricultural Production Language			✓	✓	✓	
Conservation easement with OPAV			Limited	✓		✓
Conservation easement with OPAV and Affirmative Agricultural Production Language			Limited	✓	✓	✓

CASE STUDY: A LAND TRUST'S CAMPAIGN FOR AFFORDABLE FARMS

The Mount Grace Land Conservation Trust formed in 1986 after a dialog between community members and land use professionals to address haphazard development on productive farm and forest land in North Central and Western Massachusetts.

Mount Grace evaluates use of a version of an OPAV—Option to Purchase at Agricultural Value—for all of its farm conservation projects. In Massachusetts, farmers are fortunate that the state-funded agricultural preservation restrictions (APR) include an OPAV that restricts resale prices for farmland. While APRs are keeping land in production, they are not protecting the affordability of whole farms, including the necessary buildings and infrastructure to run a farm business.

When Mount Grace had the opportunity to help protect Red Fire Farm, a beloved local Community Supported Agriculture farm, it launched the Campaign for Affordable Farms. Mount Grace and Red Fire Farm are partnering to pilot a cutting edge model of shared ownership that compliments the Massachusetts APR program. When the campaign is complete, Mount Grace will own the land and the farmers will own the farmhouse, barn, and other infrastructure – all protected with an OPAV. This will enable the whole farm to remain affordable and for the farmers to build equity in the existing infrastructure and improvements. Mount Grace hopes the project will serve as an alternative model for the protection of whole farms throughout the region.



Campaigning at Red Fire Farm

MOUNT GRACE LAND CONSERVATION TRUST

6

HOW CONSERVATION EASEMENTS CAN MAKE FARMLAND AFFORDABLE



Laura Ginsburg on her grass-based dairy, The Golden Yoke in St. Ignatius, Montana

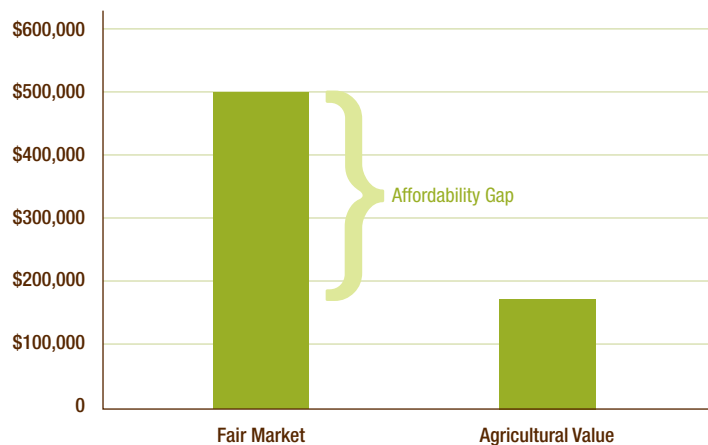
To varying degrees, conservation easements with or without affirmative production language or OPAVs can help to bridge the gap between the fair market price for land and what a farmer can afford. The following takes a closer look at how these tools bridge this ‘affordability gap.’

First and foremost, it’s important to understand that appraisal of farmland depends upon which rights are maintained by the landowner. Land values are generally based on a market analysis of the ‘highest and best use’ of the property. The ‘highest and best use’ is the price of a property with all rights intact (no development restrictions other than local zoning).

Traditionally, the highest and best use of farmland was agricultural production. What a farmer could produce on a given property determined what that property was worth. While this is still the case in many regions, it is generally not the case near urban centers where there exists competition for land from non-farmers. In these regions, farmland is valued by its potential for development, as well as the market value for rural estates and hobby farms.

There is a wide gap between the value of farmland based on agricultural sales and the value of farmland for hobby farms or estates. Appraisers therefore assign two values to farmland properties: fair market value and agricultural value.

FIGURE 4 FAIR MARKET VALUE VERSUS AGRICULTURAL VALUE



The agricultural value of a property is often significantly less than its ‘fair market’ value as illustrated in Figure 4. The gap between these two values is the ‘affordability gap’ —the difference between what the market can bear and what a working farmer can afford. In this case, the gap is \$330,000.

A conservation easement, depending on whether affirmative production language or an OPAV is included, serves to bridge some, or all, of the affordability gap. Figure 5 illustrates the same \$500,000 property and its value with no restrictions (A), a conservation easement (B), a conservation easement and affirmative language (C), and a conservation easement with an Option to Purchase at Agricultural Value (D). Only the Option to Purchase at Agricultural Value fully bridges the affordability gap (D).

FIGURE 5 COMPARING CONSERVATION EASEMENT TOOLS THAT BRIDGE THE FARM AFFORDABILITY GAP

		Price for land trust		Price for buyer	
		A	B	C	D
RESTRICTIONS		No easement or restrictions	Conservation easement	Conservation easement with affirmative language	Conservation easement with Option to Purchase at Agricultural Value
PRICE OF FARMLAND	\$500,000				
	\$400,000		Conservation easement, restricting development rights, paid for by land trust or donated (\$265,000)	Conservation easement, restricting development rights and requiring agricultural production, paid for by land trust or donated (\$300,000)	Conservation easement, restricting development rights and requiring that landowners sell farm to a farmer, paid for by land trust or donated (\$330,000)
	\$300,000	Land can be farmed, developed, used as an estate or for commercial purposes			
	\$200,000		Land must be kept open and cannot be subdivided. Land can be owned by non-farmers and does not need to stay in production	Land must be farmed, but can be owned by non-farmers. In this scenario, land may not meet its potential as a farm business	
	\$100,000				Land must be farmed and sold to a farmer who will earn her living on the land
Price of Easement		\$0	\$265,000	\$300,000	\$330,000
Price of Land		\$500,000	\$235,000	\$200,000	\$170,000
Affordability Gap		\$330,000	\$65,000	\$30,000	\$0

As more restrictions are put on the property, the farmland becomes more affordable to the farmer. Of course, adding more protections to a conservation easement makes that easement more expensive to purchase by the land trust. In Figure 5 the traditional conservation easement (B) would cost \$265,000 for the land trust, whereas the Option to Purchase at Agricultural Value (D) would cost \$330,000. It should be noted that these values only apply to the land. The price of a home or other improvements are considered in addition to the appraised value of the farmland, as illustrated in Figure 6. In addition, the prices of easements and additional restrictions may be highly variable depending on the location of the farm.

HOW HOME VALUES INFLUENCE FARM PRICES

An important consideration is how the value of a home or any improvements will affect the value of a farm property. In many cases, the value of a home and improvements are the primary drivers of price, and they will continue to impact the total price regardless of actions taken by a land trust. The comparison between the agricultural and fair market values of a property is quite simple when there are no existing structures on a property, but when houses and other infrastructure are included, these have a high degree of influence on price.

As seen in Figure 6, the value of a home and improvements can be highly variable, whereas the land value remains the same. In example A, the house is worth \$200,000, bringing the total cost of the property to \$700,000, whereas in example B, the value of the home brings the total price of the property to \$1,000,000. In other words, even if the *land* is affordable the value of a home can make a *property* unaffordable to a farmer. This is why it is critical that land trusts put affordability protections on farms before they are owned by non-farmers. An expensive home or other subsequent improvements can make an otherwise affordable farm property permanently unaffordable to a working farmer.

FIGURE 6 HOW HOME VALUES DRIVE FARM PRICES

	EXAMPLE A	EXAMPLE B
\$1,000,000		
\$900,000		
\$800,000		Value of home and improvements (\$500,000)
\$700,000	Value of home and improvements (\$200,000)	
\$600,000		
\$500,000		
\$400,000		
\$300,000	Value of land (\$500,000)	Value of land (\$500,000)
\$200,000		
\$100,000		

7

LAND TRUST SURVEY

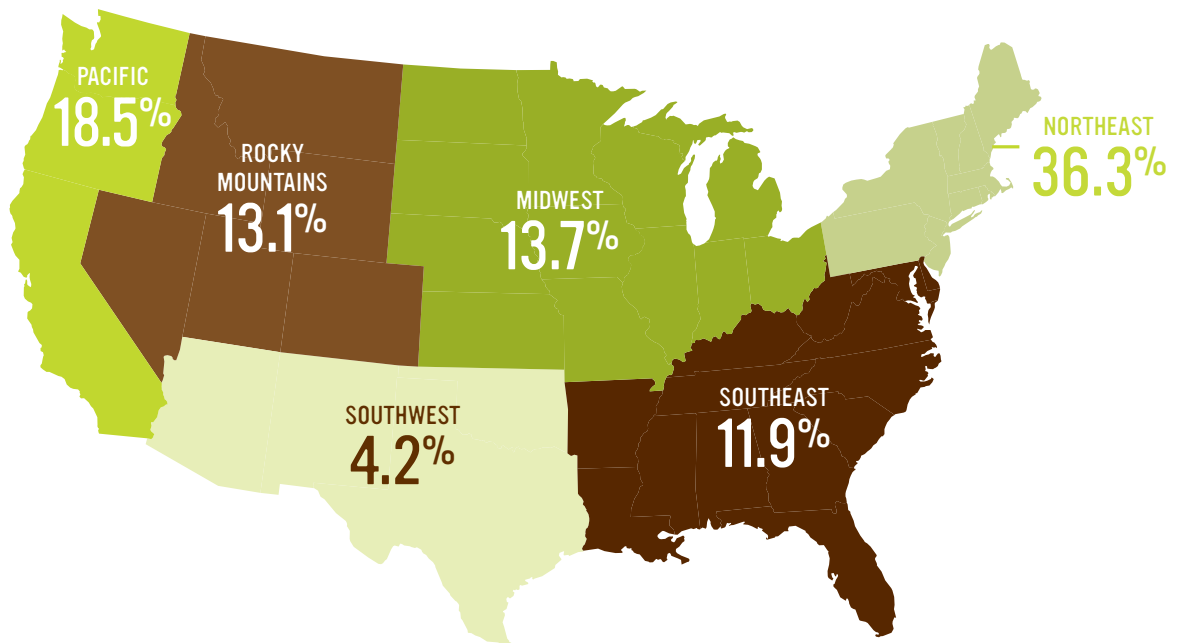
Given the shortcomings of traditional conservation easements and the success of new easement tools, why have so few land trusts adopted these tools and what tactics are necessary to move the practice forward?

To answer this question, NYFC conducted a national survey of land trust²⁷ professionals. In addition, researchers hosted focus groups in Salt Lake City, Utah at the 2012 Land Trust Alliance Rally, and in San Rafael, California. The survey addressed land trusts' experience with land going out of production, use and familiarity with conservation easements with affordability language, partnerships with new growers, as well as their opinions on funding and policy change proposals. This survey is the first survey of its kind to address these topics with a national pool of land trusts. The full survey instrument can be downloaded at: youngfarmers.org/affordablefarms.

GEOGRAPHICAL REPRESENTATION

The survey was distributed to a comprehensive list of land trust professionals, with special assistance from the American Farmland Trust. Drawn from all regions of the U.S., professionals from 223 organizations participated in the survey, representing a diverse sample of groups with varying levels of experience acquiring easements.

FIGURE 7 PARTICIPANTS' GEOGRAPHIC REPRESENTATION What region of the country best describes where the land conservation organization operates?



²⁷ The term 'land trust' is used broadly to include all participants (non-profit groups, government agencies and advocacy organizations), although the vast majority were from private, non-profit land trust organizations.

The majority of survey respondents, 88 percent, represented private, not-for-profit land trust organizations. Approximately six percent of respondents were from governmental agencies, including public boards organized at the local level who receive revenue from a designated source of funds such as local sales tax. A third group, ‘conservation advocacy organizations,’ included groups that work with the land trust community to impact policy, provide professional development and secure resources. Predictably, there were more groups from the Northeast (including New England) because there exists a disproportionately high percentage of land trusts in that region.



CHRIS ESTEN

Alice and Larry Allen protected their 62-acre dairy farm by selling a conservation easement to the Upper Valley Land Trust in 2012. Thanks to an OPAV included in the easement, the farmland was affordable for Walt and Joseph who now farm the property as Boltonville Dairy.

The Land Trust Alliance 2010 Census identified over 1,700 land trusts in the United States. Of these, approximately 600, or 35 percent, identified farmland protection as a primary activity.²⁸ Among 187 private, non-profit land trusts that responded to the survey, 85 percent focused on agriculture in their name, mission or programs. NYFC made a particular effort to hear from these groups.

²⁸ Land Trust Alliance, *2010 National Land Trust Census Report: A Look At Voluntary Land Conservation in America*, (Washington, DC: Land Trust Alliance, 2010), <http://www.landtrustalliance.org/land-trusts/land-trust-census/national-land-trust-census-2010/2010-final-report> (accessed July 2013).

PUBLIC FUNDING PLAYS A MAJOR ROLE IN FARMLAND PROTECTION

Funding sources have a tremendous impact on how cautious or innovative a land trust may be when considering new land protection strategies. Farmland conservation organizations use a variety of methods to fund the purchase of conservation easements, including public and private funds. Among survey respondents, the most common funding strategy was donated easements, followed by state and federal funding. This illustrates the valuable role that public policy can play in influencing the types of conservation easements that are put into place.

FIGURE 8 HOW PARTICIPANTS FINANCE EASEMENT PURCHASES What means does the group use to acquire properties or easements? Please check one answer for each row that applies.

ANSWER OPTIONS	VERY OFTEN	OFTEN	RARELY	NEVER
Donations of easements	82	67	47	6
State public funds	65	50	48	34
Federal grants (i.e. Farm and Ranch Lands Protection Program)	50	49	46	50
Local public funds (i.e. from sales tax or property tax earmarked for conservation)	49	32	30	74
Individual cash donations	47	50	66	29
Foundation grants	32	55	67	37
Foundation Program Related Investments or Mission Related Investments	11	12	50	100
Mitigation funds	8	29	76	73

ANSWERED QUESTION: 205

EASEMENT-PROTECTED FARMS ARE NOT STAYING IN PRODUCTION AND NON-FARMERS PRESENT THE GREATEST RISK

The survey results confirmed that traditional conservation easements are not keeping farms in agricultural production. Responses varied by region, with 30 percent of groups in the Northeast, 33 percent of groups in the Southeast and 43 percent of groups in the Southwest reporting that they saw protected land go out of production. Numbers were smaller in the Rocky Mountain Region (25%), Pacific (23%) and the Midwest (11%).

Among groups that had seen farms go out of production, there was consensus on the reasons why: properties selling to non-agricultural buyers, landowners lacking successors and easement protected properties selling at prices 'too high for farmers to purchase.' These responses highlight the need for affordable land for farmers and a new generation of farmers who will step up and acquire properties in transition.

USE OF AFFORDABILITY TOOLS IS NOT WIDESPREAD

While innovative conservation groups have utilized easement enhancement tools for almost 20 years, the majority of land trusts reported having little experience with or knowledge of them. By easement enhancement tools we mean affirmative production language, OPAVs or similar affordability protections included in conservation easements. Sixty-six percent of groups had not used affirmative production language and 86 percent of groups had not utilized OPAV language. More groups reported working with conservation buyers (62%), but very few groups worked to transition lands to young/beginning farmers (18%).

SEEING LAND GO OUT OF PRODUCTION IS THE PRIME MOTIVATION FOR LAND TRUSTS TO USE AFFORDABILITY TOOLS

Groups reported that not only “concerns about long-term protected properties transitioning out of agricultural production,” but “being better able to serve the public-interest in land protection” were the primary factors leading the use of easement enhancements. The next highest-ranking response credited interest in the tools to staff leadership, suggesting the significant potential of increased professional development and training.

FIGURE 9 WHAT FACTORS LEAD TO EASEMENT PROTECTED PROPERTIES GOING OUT OF PRODUCTION IN YOUR CONSERVATION GROUP'S SERVICE AREA? Check all that apply.

1. Property sold to non-agricultural buyer 84.4%
2. Landowner retired and had no successor 75.6%
3. Price too high for farmers to purchase 64.4%
4. Property marketed through residential and/or estate realtors/brokers rather than agricultural realtors/brokers 46.7%
5. Property no longer viable as a working farm or ranch 35.6%

FIGURE 10 WHAT LED TO YOUR GROUP'S INTEREST IN, OR UTILIZATION OF, EASEMENT ENHANCEMENT TOOLS? Check all that apply.

1. Concerns about long-term protected properties transitioning out of agricultural production 60.2%
2. Better able to serve the public-interest in land protection 53.1%
3. Staff leadership 40.8%
4. Gathering information at professional development trainings (i.e. conference) 35.7%
5. Board leadership 23.5%

BARRIERS TO NEW EASEMENTS

Even for a land trust highly motivated to help farmers acquire farmland, the affordability tools described may be incorporated cautiously because they represent uncharted territory. Kendra Johnson, who consulted with the Yolo Land Trust as they considered OPAV enhancements to their traditional easements, explains: “some land trust leaders consider it risky to be on the cutting edge.”²⁹

Adding affirmative production language and OPAVs to traditional conservation easements creates a new set of responsibilities for land trusts. With affirmative production language, an easement may prove more complicated to monitor. Staff may need guidance in determining whether a landowner is meeting production requirements. Similarly, in the case of an OPAV, an additional process will need to be created to determine whether a potential agricultural buyer is a ‘qualified’ farmer.

When asked about perceived barriers to using these affordability tools, a majority of land trusts (67.8%) responded that enforceability was their top concern, followed by increased cost of defending and enforcing the easements (48%) and monitoring (38%). See “Addressing Barriers to Affordability Tools” for more discussion on these specific challenges.

FIGURE 11 PERCEIVED BARRIERS TO USING EASEMENT ENHANCEMENTS *What barriers or challenges have you seen, or would you anticipate, with implementing easement enhancement tools (examples of tools are described above)?*

1. Enforceability 67.8%
2. Expenses that may be needed to defend/enforce the easement are difficult to project compared to standard easements 48%
3. Monitoring is more difficult 38.8%
4. Language may not be acceptable to certain funders 36.2%
5. Expense of exercising an option to purchase would be too high 31.6%

²⁹ Kendra Johnson, Focus Group Interview, January 22, 2013.

ADDRESSING BARRIERS TO NEW EASEMENTS

ENFORCEMENT

Land trusts are responsible for monitoring and enforcing the terms of a conservation easement. This is a key consideration as a land trust makes decisions about which properties to protect and what the specific provisions of the easement will be.

In a traditional easement restricting subdivisions, homes or a commercial mall on a property, the basic monitoring may be relatively straightforward. When there is a breach or violation of the easement, the land trust will then take steps to enforce its requirements and intent. It may be able to work with the landowner to cure or fix the issue in a mutually satisfactory way. If that fails, the issue will be dealt with through the legal system.

To prepare for potential legal battles, land trusts typically set aside funds in an endowment. In the event of a legal battle in regards to a property with affirmative language or an OPAV, attorneys and the court system will have much less case-law history to rely on in judging a dispute. Though a few cases have been upheld in court,³⁰ some land trusts with less tolerance for risk may hesitate to act.

LEGAL DEFENSE OF NEW EASEMENTS TOOLS

Land trusts are using several strategies to protect their legal standing as they move forward with new easement tools. A severability clause is standard in traditional easements to ensure that if a court deems one piece of the easement unacceptable, the rest of the provisions still stand. Several land trusts that have utilized affordability language in their easements have used a common strategy of going further to include the OPAV or affirmative production language in a separate document. This may be described as a “servitude” to maintain the integrity of the traditional easement protections in the event of a court challenge. The Marin Agricultural Land Trust protects its funding by specifying in the Mandatory Agricultural Production language of its easements that if a landowner challenges the provision and the mandatory agriculture requirement is overturned in court, then they will have to repay MALT the original value paid for that part of the easement along with interest. The Vermont Land Trust has successfully defended two cases challenging OPAVs.

EXPENSES RELATED TO EXERCISING AN OPTION TO PURCHASE

“OPAVs are only as strong as the land trust’s ability to exercise them,” says Jennifer Dubois of Trustees of the Reservations.³¹ A key precautionary approach to addressing this barrier is to ensure that the land trust easement holder can exercise an OPAV if necessary, and find a qualified buyer. With the ability to assign an option to purchase, the land trust can seek out a qualified beginning farmer (or other conservation buyer) who can take on the purchase. At first glance a small land trust’s team may wonder if setting aside funding to exercise an OPAV is the best use of its resources. There are currently two approaches to addressing this issue:

³⁰ *Field v. Costa et al.*, 2008 VT 75, 958 A.2d 1164 (2008) and *Yates v. VLT et al.*, Vermont Superior Court, Addison Unit, Civil Division, Docket No. 87-5-11Ancv

³¹ Jennifer Dubois, Focus Group Interview, Land Trust Alliance Rally, October 2, 2012.

1. Recognizing that the OPAV language, in the vast majority of cases, will ensure that the land is transferred to a qualified farmer, land trusts will set aside a typical endowment for enforcement, and accept that in a worst case scenario the land trust may not be able to afford to exercise its option to purchase and will not be able to fulfill its intention.
2. Record an easement with an OPAV only if the land trust has sufficient money set-aside to exercise the option to purchase. This approach is clearly more conservative and may result in a land trust determining that it is unable to use this enhancement tool.

SECURING QUALIFIED APPRAISALS

Several land trusts identified the challenge of acquiring defensible appraisals as a significant barrier to utilizing OPAV. Determining a defensible value for affirmative agricultural production or OPAV provisions, particularly during the first phase of adoption, in a community or market is challenging because there are no local properties with similar easement language. When the Marin Agricultural Land Trust (MALT) began using affirmative production language in 2011, the staff decided to consult with three independent appraisers to determine the value of the easements. The consensus was that the affirmative production language, or Mandatory Agricultural Provisions, added another 10 percent of the market value to the easement value. MALT has since done five projects with the new language and has used each of the three appraisers in these subsequent projects. Two of the appraisers have specifically included a line item identifying the specific impact of the affirmative language on the total value.³²

INSURANCE

Land trusts had worked for decades without an insurance pool to support enforcement until the Land Trust Alliance launched Terra Firma,³³ its new insurance program for land trusts. Section 3.14 of the policy includes a list of some 33 exemptions. Among them, Terra Firma's policy excludes insuring enhancements described in this report including affirmative provisions, options to purchase, and servitudes. Still, the policy includes severability language. This ensures that a land trust would be able to use the Terra Firma policy if necessary to protect standard elements of an easement restriction.

³² Jeff Stump, interview by Steve Schwartz, April 10, 2013

³³ Land Trust Alliance, "Conservation Defense Insurance," <http://www.landtrustalliance.org/conservation/conservation-defense/conservation-defense-insurance/conservation-defense-insurance> (accessed July 2013).

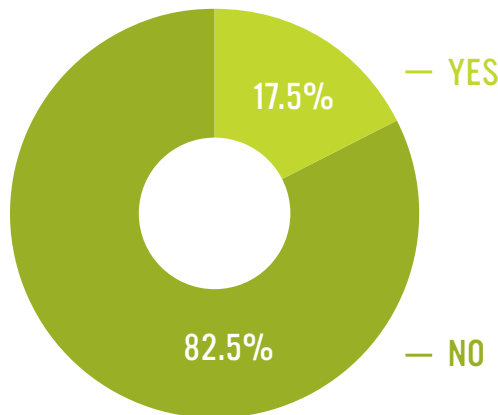
BEGINNING FARMERS ARE UNDERUTILIZED AS CONSERVATION BUYERS

While 62 percent of respondents indicated they work with conservation buyers, only 18 percent said that they target young and beginning farmers as partners. This represents a key opportunity for land trusts to advance their broader mission to protect working farms.

Land trusts reported that timely access to cash was by far their primary desired attribute with a conservation buyer (80%). With help from a land trust and self-initiative, young farmers can acquire the capital necessary to purchase a farm (especially if that farm is being sold at agricultural value with an OPAV protection). Beginning farmers can access down-payment assistance loans from the USDA, may be able to leverage funds through their existing customer base or attract ‘angel investors’ with ‘patient capital.’

Furthermore, when a new farmer acquires a property with a land trust and launches a new business, this demonstrates to a community that the land trust is behind working farms. To enhance the viability of the local farm community, the farmer may be willing to host tours and help the land trust continue its work beyond the transaction.

FIGURE 12 PARTNERSHIPS WITH BEGINNING FARMERS Does the conservation organization explicitly attempt to promote transitions of agricultural lands to young/beginning farmers?



TARGETING PUBLIC FUNDING WOULD ENCOURAGE LAND TRUSTS TO WORK WITH FARMERS

The federal government funds the purchase of agricultural conservation easements through the Farm and Ranch Land Protection Program (FRPP).³⁴ This program received \$189 million in mandatory Federal farm bill dollars in fiscal year 2013.³⁵ Many land trusts depend heavily on the program’s 50/50 matching funds to leverage state, local and private dollars. If the FRPP were amended to prioritize projects that included affordability protections, this would be a significant incentive for land trusts to innovate and help farmers acquire farmland.

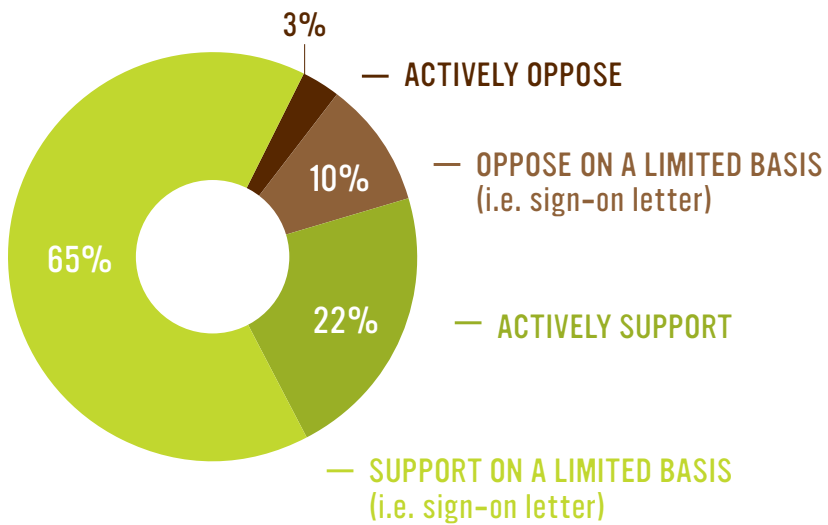
³⁴ The Farm and Ranch Land Protection Program will be renamed and merged with the Grasslands Reserve Program and the Wetlands Reserve Program as the “Agricultural Conservation Easement Program” in the next Farm Bill.

³⁵ Land Trust Alliance, *Public Funding: Summary Table of Recent Funding Levels for Key Conservation Programs*, (Washington, DC: Land Trust Alliance, 2013), <http://www.landtrustalliance.org/policy/public-funding/public-funding#summary-table-of-recent-funding-levels-for-key-conservation-programs> (accessed July 2013). NSAC-FY-2012-Ag-Appropriations-Chart-Final-Conf-Report.pdf (accessed July 2013).

The survey asked several questions regarding different potential reforms to FRPP in order to gauge the impact of various policy options and support for change. If FRPP funds were prioritized for working with beginning farmers, 50 percent of respondents said that they would be more likely to pursue transactions with new farmers. Similarly, if FRPP funds were prioritized for easements that included OPAVs, 40 percent of respondents would be more likely to work with farmers.

There was strong support for targeting funds for easements that promote affordability. Among groups that engage in public policy, 87 percent of respondents indicated that they would actively support, or support on a limited basis, a policy of prioritizing FRPP funds for easements that promote farmland affordability.

FIGURE 13 SUPPORT FOR PRIORITIZING FEDERAL FUNDING FOR EASEMENTS WITH AFFORDABILITY PROVISIONS Would your conservation organization support earmarking FRPP funds for easement enhancement tools in an effort to promote farmland affordability and use of these tools by land trusts?³⁶



³⁶ Thirty-four percent of respondents said that their groups do not engage in public policy work.

8

REFORMS TO ADDRESS NEW THREATS TO FARMLAND AND AMERICAN AGRICULTURE



Alice and Larry Allen signing a conservation easement on their 62-acre dairy farm in Newbury, Vermont. The AI-Len Farm is now protected with a conservation easement that provides a public trail and buffer along 5,800 feet of frontage on the Wells River and is being sold to a younger generation of sustainable dairy farmers.

To keep family farms in business and to protect food security for the nation's cities, public policy and programs must promote farmland ownership by working farmers. There is growing recognition that traditional conservation easements are simply not enough to keep farms feeding the nation. Protected farmland is being underutilized or going out of production, and is selling at prices that will never be affordable to a working farmer.

As described in this report, there are tested and effective tools that land trusts can use to address the shortcomings of traditional conservation easements. To facilitate utilization of the tools by the conservation community beyond the early adopters, public and institutional policies need to support and incentivize these tools.

There are two basic approaches to farmland conservation in public policy: public funding of Purchase of Agricultural Conservation Easement (PACE) programs and tax policies to incentivize donations of easements. These strategies, in addition to initiatives to help beginning farmers acquire protected land, can accelerate utilization of new conservation easements. However, any policy change will not succeed if it is not complemented by professional development training for the land trust community.



FEDERAL POLICY REFORMS

PRIORITIZE FEDERAL FUNDING FOR CONSERVATION EASEMENTS THAT PROTECT FARMLAND AFFORDABILITY

The federal government funds the purchase of conservation easements through the Farm and Ranch Land Protection Program (FRPP),³⁷ which will likely be broadened and renamed the “Agricultural Conservation Easement Program” in the next farm bill. FRPP received \$189 million in federal farm bill dollars in 2013.³⁸ Needed reforms include:

- National ranking criteria should be adopted to prioritize FRPP projects which ensure farm viability and succession through OPAVs or similar innovations that will keep farmers on the land and in production.
- National ranking criteria should be adopted to prioritize projects that help beginning farmers access land.
- NRCS state staff should be given authority to provide a higher cost-share for easements with OPAVs and similar innovations, for example 75 percent federal cost-share rather the current 50 percent.³⁹

CLARIFY ELIGIBILITY OF FEDERAL FUNDS FOR CONSERVATION EASEMENTS THAT INCLUDE AFFORDABILITY PROTECTIONS

Land trusts are using federal funds through FRPP to help in the purchase of conservation easements that include affordability protections, but this fact is not well known. The USDA should clarify its regulatory and guidance language regarding FRPP eligibility to emphasize affordability protections.

TRAIN NRCS STAFF ON AFFORDABILITY PROTECTIONS IN CONSERVATION EASEMENTS AND PROMOTE THEIR USE WITHIN THE LAND TRUST COMMUNITY

NRCS should promote affordability protections to all staff and ‘certified entities’ dealing with farm and ranch land preservation. Detailed guidelines for acceptable practices regarding newer easement provisions, ranking criteria, and appraisal methodology need to be clearly defined and promoted to staff. Training should be provided as needed.

SHARE BEST PRACTICES ON APPRAISALS OF AGRICULTURAL VALUE

Best practices regarding appraisal methodologies separating the value of agriculture from open space value should be identified in order to ensure independent appraisers, NRCS staff and land trust professionals can confidently assess appropriate value of an easement that includes enhanced language around affirmative production or an OPAV. In addition, NRCS should require ‘certified entities’ established in the 2008 farm bill to be familiar with easement enhancements.

³⁷ American Farmland Trust, *FIC Fact Sheet: Farm and Ranchland Protection Program*, (Northampton, MA: American Farmland Trust, 2011), http://www.farmlandinfo.org/documents/38015/FRPP_01-2010.pdf (accessed July 2013).

³⁸ Land Trust Alliance, *Public Funding: Summary Table of Recent Funding Levels for Key Conservation Programs*, (Washington, DC: Land Trust Alliance, 2013), <http://www.landtrustalliance.org/policy/public-funding/public-funding#summary-table-of-recent-funding-levels-for-key-conservation-programs> (accessed July 2013).

³⁹ In the House and Senate passed versions of the 2013 farm bill, a new initiative for protection of grasslands sets precedence for this type of incentive. NRCS would be able to waive requirements regarding non-federal match in order to protect land with “special environmental significance.” (S.954, 113th Congress, 1st Session, <http://www.gpo.gov/fdsys/pkg/BILLS-113s954es/pdf/BILLS-113s954es.pdf> (accessed July 2013) and H.R. 2642, 113th Congress, 1st Session, <http://www.gpo.gov/fdsys/pkg/BILLS-113hr2642eh/pdf/BILLS-113hr2642eh.pdf> (accessed September 2013).

GIVE TAX ADVANTAGES TO FARMERS WHO SELL THEIR LAND TO NEW FARMERS

Congress should pass a capital gains tax advantage to retiring farmers or farm heirs who sell their land to qualified beginning farmers rather than the highest bidder, such as outlined in the Beginning Farmers and Ranchers Act introduced by Congressmen Lee Terry and Collin Peterson.

★ STATE POLICY REFORMS

PRIORITIZE CONSERVATION EASEMENTS WITH AFFORDABILITY PROTECTIONS WITHIN STATE AND LOCAL PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT (PACE) PROGRAMS

The American Farmland Trust estimates that there are 119 state and local Purchase of Agricultural Conservation Easement (PACE) programs with distinct program objectives, funding levels and guidelines.⁴⁰ The resources of these programs can be more effectively leveraged to promote affordable land access for working farmers. Massachusetts's program is unique as it specifically promotes agricultural viability by requiring farmland easements to include both an OPAV and mandatory agricultural production language. As noted, Massachusetts uses FRPP to fund 50 percent of these conservation easement purchases. The only other state known to have specific OPAV language referenced specifically in its PACE program statutes is Vermont.⁴¹ Needed reforms to state and local PACE programs include:

- Include an OPAV or similar innovations in all PACE-funded conservation projects.
- Ensure PACE programs meet the needs of new and beginning farmers. Develop programs within state PACE programs to help beginning farmers access land. These initiatives could include assistance with financing or 'starter farm' provisions for farms that include housing and infrastructure.
- Purchase retroactive OPAVs on protected farms. Farms that are already protected with conservation easements and are still in production should be protected with affordability and affirmative production requirements. Purchase of retroactive OPAVs should target farm properties that are most likely to be converted into estate properties.
- Fully fund and expand state PACE programs. Investing in productive farmland is the right move for economic development and food security. State PACE programs are critical for creating a permanent land base for regional food production.

CREATE TAX INCENTIVES TO SELL LAND TO NEW FARMERS

Even with OPAV and affirmative production language in place, land may not be affordable to beginning farmers as they compete with more experienced and well-capitalized farmers. To address this issue, states can give beginners an advantage with tax benefits. Public programs in Iowa and Nebraska offer possible models.⁴²

⁴⁰ American Farmland Trust, *PACE: Status of Local Programs 2012*, (Northampton, MA: American Farmland Trust, 2012), http://www.farmlandinfo.org/documents/39354/FIC_Local_PACE_09-2012.pdf (accessed July 2013).

⁴¹ American Farmland Trust, *Agricultural Conservation Easement Provisions from Selected Farmland Protection Programs*, (Northampton, MA: American Farmland Trust, 2012), www.farmlandinfo.org/farmland_preservation_literature/index.cfm?function=article_view&article_ID=39352 (accessed July 2013).

⁴² Iowa Code Ann. § 175.37 (2011) and Neb. Rev. St. § 77-52 (2011) Neb. Admin. Code § 91(2010).

LOCAL POLICY REFORMS

CITIES MUST PROTECT FOODSHEDS BY FUNDING FARMLAND PROTECTION

As major cities seek to increase food access and security, they must include farmland protection in their planning and budgeting. New York City has already initiated farmland protection as part of its efforts to maintain a healthy watershed and this model could be expanded to protect foodsheds by conserving working farms for farmers. Given that funding is a major constraint to land trusts, city support could have a substantial effect on farmland protection efforts. However, funding farmland protection is only worthwhile if funds are directed to conservation easements that include OPAV and affirmative production language to ensure continued food production on protected farmland.

LAND TRUST REFORMS

DEVELOP INTERNAL GUIDELINES TO PROTECT ACTIVE FARM PROPERTIES WITH AFFORDABILITY PROTECTIONS

The innovation and leadership demonstrated by a few private land trusts has opened up new possibilities for helping family farmers secure farmland. These groups prove the importance of land trusts in reforming their own internal policies, without waiting for broader policy change or incentives. More land trusts should follow the lead of the Vermont Land Trust and others and make conservation easements with affordability protections the standard.

Land trusts that have the opportunity to conserve active farmland owned by working farmers, as well as farmland which is managed as estates, should prioritize OPAVs and other protections on land that is relatively affordable and includes appropriate farm infrastructure. These are the farms that are most valuable to the future farm economy.

PARTNER WITH THE BEGINNING FARMER COMMUNITY

The beginning farmer community needs land trust partners. Whether by working with farmers as conservation buyers, renting land, or connecting farmers to opportunities, *land trusts can do a lot to help the next generation of farmers succeed.*

NYFC calls on land trusts to evaluate how they can help farmers in their regions, and engage farmers as conservation buyers and partners in their work. This may require land trust staff to be proactive in seeking beginning farmers to work with or to pair existing farmer-landowners with beginning farmer buyers to discuss transitions.

INCREASE PROFESSIONAL DEVELOPMENT AND TRAINING ON AFFORDABILITY PROTECTIONS FOR LAND TRUST STAFF AND APPRAISERS

Associations certifying, training and advocating for the land trust community, such as Land Trust Alliance and American Farmland Trust, should work to increase land trusts' familiarity with affordability protections. This should include the full range of activities used to support professional development: training, fact sheets, sample documents, and other resources around best practices. Land trust certification programs such as that of the Land Trust Alliance should require familiarity with these tools.



FUNDER REFORMS

In this era of public budget cuts, land trusts are especially motivated to form partnerships with private foundations and individual donors. Foundations and individual donors seeking to protect farm and ranch lands as part of thriving agricultural communities should pursue a three-fold path: target dollars to conservation projects that include affordability goals, make program-related investments in a capital pool to help protect innovative land trusts, and support professional development through grants. These strategies are crucial in supporting early adopters and land trusts that are pursuing these transactions for the first time.

DIRECT FUNDING TO CONSERVATION EASEMENTS WITH AFFORDABILITY PROTECTIONS

Funders can make a dramatic difference by directing support to farmland conservation projects that include OPAV protections. In addition, unlike most government entities, private funders can help apply affordability protections retroactively to farmland that is now only protected with traditional easements.

DEVELOP CAPITAL AND LEGAL DEFENSE FUND TO HELP ENFORCE AFFORDABILITY PROTECTIONS

In order to facilitate the accelerated adoption of easement enhancement tools, private sector funders should partner with the land trust community to develop a capital and legal defense fund to enforce conservation easements with affordability protections. According to one land trust professional heavily engaged in the issue, a pool of this nature within the \$10 million range would be adequate to strengthen the resolve of smaller and more conservative land trusts which are hesitant to take on easements with OPAV or affirmative obligations.

FUND PROFESSIONAL DEVELOPMENT

Working together with funders, the land trust community can demystify aspects of implementing new farmland protection tools by supporting professional education and the development of standards and best practices for easements with affordability protections.



9

CONCLUSION

Young Americans are stepping up to meet the growing demand for locally-produced, humane and environmentally-sustainable food. These new farmers are making headway with rented land, but to establish profitable farms that will support their families for a lifetime, they need land to own.

With innovation and dedication to the agricultural community, land trusts are emerging as the most important partners for this new generation, helping farmers acquire land today—and protecting that land for farmers forever. Groups as diverse as Maine Farmland Trust, the Marin Agricultural Land Trust, Scenic Hudson and the Vermont Land Trust demonstrate that land trusts can transform their conservation practices to keep agricultural economies and food systems alive.

To keep independent and family farms viable for the sake of our food security and shared economic prosperity, we must scale up the use of affordability protections on farmland; strengthen partnerships between farmers and land trusts; and reform policy. Furthermore, we must ensure that farmland *protection* means investing in *agricultural production on affordable land* by directing public and private funding towards this goal.

The National Young Farmers Coalition seeks bold partners to implement the models, tools and policy recommendations discussed in this report to keep American farmers feeding communities for many generations to come.

GLOSSARY

Affirmative Agricultural Production Language — language or clause in a conservation easement that requires the continued agricultural production of the land.

Affordability Gap — the price differential between a property's fair market rate and what a typical working farmer can afford to pay for it.

Affordability Protections — language written into a conservation easement that ensures the land can be purchased by a working farmer at its agricultural value (as opposed to its residential or commercial development value).

Agricultural Value — a baseline perceived value for land intended for, suited to, or reserved for agricultural use, determined in relation to regional non-agricultural land values and not necessarily reflective of actual asking prices or prices paid.

Community Supported Agriculture or CSA — a business model in which customers at the beginning of the season purchase a “share” of a farm's production. Customers pay an up-front cost and in return receive farm products (vegetables, meat, eggs, milk, etc.) at regular intervals throughout the growing season. The CSA model allows farmers to establish positive cash flow before the season begins.

Conservation Easements — perpetual agreements between landowners and governments that protect open space and ‘working lands’ by allowing landowners to release or waive specific rights (mineral, residential or commercial development), in exchange for liquid equity, lower taxes, or other compensations.

Conservation Value — the value of farmland restricted from development under the terms of a conservation easement.

Existing Infrastructure — all non-removable structures or systems that may transfer with the sale of a given piece of land. In terms of farmland, this includes, but is not limited to irrigation systems, wells, barns, animal run-ins, sheds, greenhouses, hoop houses, and retail facilities.

Federal Conservation Programs — government programs operating at the federal level aimed at preserving farmland and open spaces. For example, The Farm and Ranch Land Protection Program (FRPP) provides matching funds to help land trusts or public agencies purchase development rights to keep productive farm and ranchland in agricultural uses.

Land Trust — a private non-profit organization or public agency that is dedicated to protecting farmland and open spaces in perpetuity. While some land trusts have both goals in mind, many focus on either agriculture or open spaces.

Option to Purchase at Agricultural Value or OPAVs — the legal name for affordability protections in conservation easements that give an easement holder the option to purchase a protected farm at its agricultural value if the farm will otherwise be sold to a non-farmer. These affordability protections are generally referred to as OPAVs by the land trust community, though only legally called OPAVs in Vermont.

Stewardship — the general practice of preserving, maintaining, or otherwise making decisions that regenerate or sustain the quality of land with or without the motivation of personal or financial gain.

